

Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022

Consultation Draft – Explanation of Clauses

This document has been prepared to assist stakeholders in reviewing the consultation draft *Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022* (the Bill). It provides an overview of the consultation draft Bill and an explanation of each of its clauses.

General outline

The draft Bill amends the *Environment Protection Act 2019* (the Act) and Environment Protection Regulations 2020 (the Regulations) to introduce 'chain of responsibility' (COR) laws. The draft Bill has been developed in response to the recommendations of the 'Scientific Inquiry into Hydraulic Fracturing in the Northern Territory' (2018). The laws will only apply to the onshore petroleum industry at this time.

The laws have been designed in a manner such that they can apply to onshore petroleum activities managed under the Act, and also be extended to apply to onshore petroleum activities managed under the *Petroleum Act 1984* (Petroleum Act) and its supporting Regulations. This is achieved by sections of the draft Bill that allow other laws, being the Petroleum Act, to be prescribed in the Regulations for the purpose of applying the new COR laws.

The laws will operate by enabling an environment protection notice (or equivalent type of compliance notice under a prescribed Act) to be issued to a 'related person' of a 'high risk entity', if the related person has a 'relevant connection' to the high risk entity. A high risk entity is a person who holds, or held, an environmental approval or duty under the Act, or a prescribed approval or duty (which will be environmental approvals and duties under the Petroleum Act), and who meets certain criteria relating to either their financial status or compliance with the approvals and duties. By issuing the notice to the related person, the obligations and responsibilities of the high risk entity to take certain actions will be transferred to the related person. The obligations and responsibilities that can be transferred are limited to those matters for which an environment protection notice (or equivalent prescribed compliance notice) can be issued under section 176 of the Act.

Notes on clauses

Part 1 Preliminary matters

Clause 1 Short title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Environment Protection Legislation Amendment (Chain of Responsibility) Act 2022*.

Clause 2 Commencement

This clause sets out how the amendment Act will be commenced. In this case this will be done by notice given by the Administrator in the Northern Territory Government *Gazette*. If a provision of the Act does not commence before [1 July 2024] it will automatically commence on that day.

The date is usually set as 24 months after the date of the proposed introduction of the Bill into the Legislative Assembly so it may be updated at a later time, prior to introduction of the Bill. This clause is included for certainty to ensure that the amendments are commenced in a timely manner.

Part 2 Amendment of Environment Protection Act 2019

Clause 3 Act amended

This is a formal clause which provides that amendments are made to the Act. Its purpose is to clarify what laws are being amended by the following clauses.

Clause 4 Section 4 amended (Definitions)

This clause amends the definitions section of the Act.

It inserts and amends a number of definitions that are required to assist in the interpretation of the amendments. It also relocates the definition of 'executive officer' that currently exists in section 265(8) of the Act as the term will now apply to more than one section of the Act.

Clause 5 Section 176 amended (Environment protection notice – purpose and issue)

This clause amends section 176 of the Act. Section 176 currently outlines the purpose of environment protection notices and when these notices can be issued. The amendments will enable the COR laws to operate by providing an additional circumstance under which the Chief Executive Officer (CEO) can issue an environment protection notice, being for the purpose of the COR laws specified in the new Division 2A, Subdivision 2 in Part 9 of the Act. The new Part 9, Division 2A, Subdivision 2 is being inserted by this Bill.

Clause 6 Section 183 amended (Emergency environment protection notice issued by environmental officer)

This clause makes a minor amendment to section 183(3) of the Act.

Section 183 of the Act identifies the circumstances under which an environmental officer may issue an 'emergency' environment protection notice, and what requirements may be imposed through such a notice.

Section 183(3) provides that 'an emergency environment protection notice may be given to a person orally *in accordance with regulations*'. The Regulations do not currently identify any specific requirements associated with issuing an emergency environment protection notice orally. Further, due to the broad types of incidents that may result in such a notice being required to be issued orally, there is no intention or beneficial purpose to prescribe such requirements in the Regulations. This amendment removes this unnecessary reference to the Regulations in the Act.

Clause 7 Part 9, Division 2A inserted

Clause 7 inserts a new Part 9, Division 2A into the Act after section 192. The new Division comprises three Subdivisions addressing different matters associated with the issue and operation of compliance notices for the purpose of the COR laws.

The Division generally uses the term 'compliance notice', which includes an environment protection notice and a compliance notice (howsoever termed) that is prescribed for the purposes of this Division. This language ensures that the Division is read as applying to environment protection notices and other notices that may be prescribed in the Regulations.

Subdivision 1 Preliminary matters

Subdivision 1 comprises new sections 192A to 192D. These sections contain a number of general matters that will apply to the new laws.

192A Application of Division

This is a technical section which identifies that the new Division 2A only applies to a petroleum activity. It ensures that the laws introduced by the Division cannot be used for any other type of industry or activity.

192B Interpretation

Section 192B contains a range of definitions that are required for the new laws. Earlier amendments by clause 4 made references to these new terms so they are identified in the 'Definitions' section of the Act, but the actual interpretation of these new terms are made in this section.

The new definitions apply only to the new Division 2A.

These definitions include definitions of:

- high risk entity
- petroleum activity

- prescribed approval, environmental duty and compliance notice, amongst others.

Subsection (2) of this section identifies that a reference to a period of three years can, except for certain existing sections in the Act, include a period before the new laws commence. This allows the regulators to consider whether certain relationships existed prior to the laws commencing in order to determine whether the new laws can be applied.

192C Meaning of related person of a high risk entity

This section identifies what is meant by the term 'related person' as it is used in the Bill. It identifies circumstances under which a person can be, and cannot be, considered to be a related person of a high risk entity.

It includes if the person:

- has had a 'relevant connection' to the high risk entity within the last three years
- is a holding entity of the high risk entity
- is an associated entity of the high risk entity and the owner or occupier of land on which the entity has carried out a petroleum activity (within the last three years).

Importantly it excludes persons acting as liquidators or administrators (or similar) for the purposes of corporations and bankruptcy laws, native title holders and Aboriginal persons responsible for land under the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976*.

These exclusions ensure that the laws do not inadvertently restrict those persons that offer liquidation and administration services from accepting roles with companies operating in the Territory where these roles are appropriate.

192D Relevant connection to high risk entity

This section identifies those matters that should be considered by the CEO when determining if a person has a relevant connection to a high risk entity, and therefore may be considered a related person of a high risk entity in accordance with section 192C.

It includes the extent to which the person has, within the last three years, had the capacity to influence the decisions and behaviours of the high risk entity towards compliance with statutory requirements, and:

- the extent of the person's control of the high risk entity (whether alone or jointly with an associated entity of the high risk entity, or by giving directions, approval or funding available)
- whether the person is an 'executive officer' of the high risk entity, its holding company or other company with a financial interest in the high risk entity
- consideration of agreements and other transactions with the high risk entity (other than land access agreements)
- the extent of the person's dealings with the high risk entity
- the extent of the person's financial interest in the high risk entity
- the extent of the person's cooperation and compliance with a requirement under the Act or a prescribed Act to provide information relevant to inform a decision by the CEO.

Subsection (5) identifies additional matters that should be considered when the CEO is considering 'the extent of a person's dealings'. It includes matters such as: how arm's length the dealings were; whether or not the dealings were at market value, independent and commercial footings; and the purpose of the dealings (e.g. professional advice, providing finance etc.). These matters are stipulated as the context of a person's dealings with another is an important factor when determining the relevance of a connection and its likely influence on the high risk entity.

Section 192D(2) identifies matters that must be considered by the CEO; while sections 192D(3) to (5) identify matters that may be considered. These matters are not limiting and the CEO is able to consider other matters that may be relevant to their determination.

Subdivision 2 Redirection to related persons by issue of compliance notices

Subdivision 2 comprises new sections 192E to 192N. These sections are the primary provisions of the COR laws, setting out the procedures for issuing compliance notices to 'related persons'.

192E Purpose of Subdivision

This is a technical section identifying the purpose of the subdivision, which is to establish the circumstances under which a compliance notice can be issued to a related person of a high risk entity.

192F Matters to be considered in deciding to issue a compliance notice to related person

This section identifies the matters that the CEO should consider before deciding to issue a notice to a related person.

Subsection (2) identifies matters that must be considered in issuing a notice.

For an environment protection notice, this includes the objects of the EP Act; while for other types of compliance notices it includes the objects of the relevant prescribed Act. This recognises that different Acts have different objectives. It would be inconsistent to require the CEO to consider the objectives of the Petroleum Act when issuing a compliance notice to the high risk entity under that Act but then be required to consider the objectives of the EP Act when issuing the compliance notice to a related person of the high risk entity under the COR laws.

Other matters include the steps the person took to influence the high risk entity's behaviour in terms of meeting its legal obligations under the EP Act or a prescribed Act.

Subsection (3) identifies that the CEO may consider any financial assurance held under the EP Act or a prescribed Act, such as an environmental bond or petroleum security. This ensures the CEO is considering whether other money is available to achieve the required remediation and rehabilitation objectives, before moving to issue a notice to a related person.

Section 192F(2) identifies matters that must be considered by the Chief Executive; while section 192F(3) identifies a matter that may be considered. These matters are not limiting and the CEO is able to consider other matters that are relevant to their determination.

Subsection (5) prohibits the CEO from issuing a notice if a reasonable person would consider the issue of the notice to be oppressive, unjust or unreasonable in the circumstances. It will be for the Court to determine whether this 'reasonable person' test is met in the event a person challenged the issue of the notice. It is intended to recognise that there are circumstances where a person may otherwise be a 'related person of a high risk entity' but it is nevertheless inappropriate for the person to be issued with a notice. For example, on paper a person may have an interest in the high risk entity because they are a shareholder,

but on closer inspection it becomes apparent that they have held no influence over the actions of the high risk entity or its behaviour on the ground, so it would not be appropriate to hold the person responsible for the high risk entity's statutory obligations.

192G Issue of compliance notice to related person of high risk entity issued with notice

This section allows a compliance notice to be issued to a related person of a high risk entity where that high risk entity has, within the preceding three years, been issued with a compliance notice and is non-compliant with that notice.

These laws will operate retrospectively in that the compliance notice may have been issued to the high risk entity before the laws commence. This has been included to allow the notice to be issued to a related person from commencement of the COR laws, in instances where the high risk entity has failed to comply with said compliance notice.

However, the notice may only be issued to the related entity if the CEO was not aware of the high risk entity's non-compliance with the notice. This limits the retrospectivity of the provisions so they are not considered unjust in their approach.

192H Issue of compliance notice to related person of high risk entity not issued with notice

This section allows the CEO to issue a compliance notice to a related person of a high risk entity where that high risk entity has not itself been issued with a compliance notice in certain circumstances. Those circumstances are specified in subsection (3) and broadly require:

- the high risk entity to have failed to comply with the obligations contained in a prescribed approval or prescribed duty within the preceding three years, or to have a history of non-compliance with their obligations, and
- the CEO to reasonably consider:
 - there is a risk of material or significant environmental harm at the site due to inappropriate management
 - that the high risk entity is not taking reasonable steps to fulfil their legal obligations
 - the high risk entity is in financial difficulty, and
 - that the costs of remediation and rehabilitation may fall to the Territory.

These laws will operate retrospectively in that the CEO may issue a notice for a non-compliance that has occurred within the preceding three years provided the CEO was not aware of that non-compliance before the commencement date of the laws. This has been included to enable related persons involved in a high risks entity's behaviour to be issued with a compliance notice from commencement of the laws for non-compliant actions which occurred before the commencement day, were illegal with the laws of the day, and are relevant to the environmental harm in question.

Subsection (5) identifies that the section does not prevent the CEO from issuing a notice to the high risk entity. This is included for certainty.

192J Issue of compliance notices after compliance notice issued to related person of high risk entity

This section identifies that the CEO may issue a compliance notice to a related person of a high risk entity even if a different related person of that high risk entity has already been issued with a compliance notice.

This section allows the CEO to issue a compliance notice to multiple related persons of the high risk entity.

It is included for certainty and to ensure that the CEO can issue notices to a range of appropriate related entities in order to maximise the opportunity to ensure completion of rehabilitation and remediation requirements.

192K Provisions applying to issue of compliance notice

This section identifies the matters that may be included in a compliance notice issued for the purpose of the COR laws.

It identifies that the notice can include any requirement that can be imposed on an environmental protection notice under Part 9, Division 2 of the EP Act (these are primarily contained in sections 178 and 179 of the EP Act), or any requirement that can be imposed on a compliance notice issued under a prescribed Act.

Subsection (2) identifies that the power contained in a prescribed Act to issue a compliance notice includes the power to issue a compliance notice for the purposes of this new Part 9, Division 2A of the EP Act. This provides certainty in extending the COR laws under the EP Act to prescribed Acts.

Subsection (3) identifies that the provisions of the prescribed Act apply to certain matters associated with the issue of a compliance notice that is being issued for the purposes of the COR laws. These provisions include:

- the procedures associated with issuing the compliance notice
- compliance and enforcement powers
- the review of compliance notices.

The effect of subsection (3) is to apply the provisions of the prescribed Act and not the EP Act. For example, if a related person of a high risk entity was issued a compliance notice under the Petroleum Act for the purposes of the COR laws and wanted to seek a review of that notice, the review provisions in the Petroleum Act (and not those in the EP Act) would apply. Similarly, if the related person breached the compliance notice, then any enforcement of that breach would be undertaken in accordance with the relevant provisions of the Petroleum Act and not the provisions of the EP Act.

In contrast, if an environment protection notice under the EP Act is issued to a related person of a high risk entity for the purposes of the COR, then:

- any review of that notice would be in accordance with the review power specified in the Schedule of the EP Act (being 'a decision of the CEO under Part 9, Division 2A to issue a compliance notice), and
- a breach of that notice would be enforced through section 191 of the EP Act.

Subsection (4) provides that the CEO may impose conditions in a compliance notice issued to a related person to a high risk entity that differ from those conditions included in a notice issued to the high risk

entity itself. This recognises that the conditions imposed on a high risk entity itself may not be appropriate when imposed on a related person of that high risk entity. The subsection is included for certainty.

192L Procedure where land has changed hands

This section identifies that a compliance notice may be issued to a former owner or occupier of land in certain circumstances.

Under subsection (2), the notice can only be issued if:

- the ownership or occupancy was transferred within the preceding three years
- the former owner or occupier was the owner or occupier when the environmental impact that is the subject of the compliance notice occurred, and
- the former owner or occupier is or was within the preceding three years a related person of the high risk entity.

This section is designed to address circumstances where land is deliberately transferred in order to avoid environmental responsibilities; for example by transferring land to a phoenix company.

This section does not apply if the former owner or occupier of the land is the high risk entity. In those circumstances the general powers to issue a compliance notice applies, and land ownership is not a relevant consideration.

Subsection (3) identifies that the compliance notice can be issued to the former land owner or occupier even if it is a body corporate that has been, or is currently being, wound up. This is to ensure that winding up is not used as an avoidance mechanism.

192M Joint and several liability for compliance

This section identifies that where a compliance notice has been issued to multiple persons (two or more), the persons receiving the notice are jointly and severally liable for complying with the notice. This is to prevent those persons issued with the notice from attempting to disclaim responsibility by reference to the notice issued to another person.

192N Enforcement of compliance by high risk entity not affected

This section identifies that nothing in the Subdivision affects the liability of a high risk entity for failing to comply with a compliance notice, prescribed approval or prescribed environmental duty.

As a consequence, the Chief Executive (a person authorised by the Chief Executive or an environmental officer) may continue to take any form of enforcement action against the high risk entity that originally held the legal responsibilities for complying with the Act, a compliance notice, duty or approval. For example, the Chief Executive may prosecute a high risk entity for failing to comply with an environment protection notice, while at the same time issuing a notice to a related person of that high risk entity.

It is included for certainty about the effect of issuing a notice to a related person under the new Division 2A on the obligations of the original holder of those obligations.

Subdivision 3 Powers of persons to enter land

Subdivision 3 comprises new sections 192P to 192X. These sections allow a person issued with a compliance notice to enter land or premises to undertake works in compliance with the notice, and impose obligations associated with that entry.

192P Application

This is a technical section that identifies when the subdivision applies. It is included to provide an avenue for a related person to enter land and premises in order to fulfil the obligations in the compliance notice in instances where they do not have an existing right to enter the land, either due to them not being the current owner or occupier of the land, or holding an alternative right for access to the land (e.g. holder of petroleum title).

192Q Power to enter land

This section gives a person that has been issued with a compliance notice to enter land in order to comply with the notice. This power extends to contractors that may have been engaged by the person to undertake the works required by the notice (subsection (1)).

The section also identifies that the CEO, or the person issued with the notice, may engage a person to monitor the works ('a monitor') (subsection (2)). Engagement of a monitor is likely to be required where there are significant concerns about the potential environmental impacts being addressed or the management response that is required for those impacts.

Subsection (3) identifies that entry to land or premises is allowed where:

- the owner or occupier has given consent, or
- if no consent is granted, where the person has given the owner or occupier at least 10 business days written notice, or
- in an emergency where there is a risk of environmental harm if the required works are not conducted immediately.

Under subsection (4), if a person is entering land or premises on the basis of an emergency, that person must give oral notice of the entry to the owner or occupier as soon as possible before or after the entry, and must give written notice within 10 business days of the oral notice, or entry, whichever occurred first. This acknowledges that the risks to the environment may be significant enough that giving 10 business days' notice would result in a substantial increase to the resultant environmental harm, while still requiring notice to be given.

When advising an owner or occupier about entry, or proposed entry, onto land or premises, the person issued with the compliance notice must provide the information that is contained in the EP Regulations (subsection (5)). New regulation 254B contains these information requirements. This ensures consistency in the information that is being provided and that minimum information requirements are met.

However, despite the general reference to entry of 'land' or 'premises', a person may only enter residential premises with the consent of the owner or occupier (subsection (6)). It is unlikely that entry into residential premises would be required, unless the premises had been damaged in some way by the petroleum activity. This restriction ensures that a person's right to enjoy their own home is not overridden by a general power of entry provided under this section.

Subsection (7) identifies that the power to enter land or premises includes where the land is Aboriginal land and the person does not have a permit under the *Aboriginal Land Act 1978* to enter or remain on Aboriginal Land. This power is included for certainty and is consistent with section 165 of the Act.

Under section 4 of the Act, 'Aboriginal land' is defined with reference to section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Commonwealth) which states:

Aboriginal land means:

- (a) land held by a Land Trust for an estate in fee simple; or
- (b) land the subject of a deed of grant held in escrow by a Land Council.

192R Notice to CEO

This section requires a person who proposes to enter land under section 192Q to give notice of that proposed entry to the CEO. This ensures the CEO is aware that activity is occurring to ensure compliance with the notice, and can have oversight in the event the land owner or occupier has questions or concerns about the persons proposed entry or proposed activities.

The notice must be given at least 10 business days' prior to the proposed entry onto the land or premises, except in an emergency (subsection (2)). Under subsection (3), if a person is entering land or premises on the basis of an emergency, that person must give oral notice of the entry to the CEO as soon as possible before or after the entry, and must give written notice within 10 business days of the oral notice, or entry, whichever occurred first. This acknowledges that the risks to the environment may be significant enough that giving 10 business days' notice would result in a substantial increase to the resultant environmental harm, while still requiring notice to be given.

When advising the CEO about entry, or proposed entry, onto land or premises, the person issued with the compliance notice must provide the name of any contractor or monitor engaged in relation to the works, and the information that is contained in the EP Regulations (subsection (4)). New regulation 254B contains these information requirements. This ensures consistency in the information that is being provided and that minimum information requirements are met.

192S Powers on entry

This section identifies what a person may do having entered land or premises. It provides the minimum number of powers required for a person to fulfil their obligations under a compliance notice.

The powers to undertake activities having entered the land or premises are provided to support the power of entry.

192T Duties on entry

This section identifies the duties of a person having entered land or premises. The duties are:

- the person must take reasonable steps to minimise disruption to the owners and occupiers of the land or premises,
- the person must not remain on the land or premises any longer than is reasonably necessary.

These duties are included to protect the activities of, and limit impact on, land owners and occupiers, while recognising that some disruption is likely where a person is complying with a compliance notice.

192U Recovery of costs

This section identifies that a person is entitled to be paid reasonable compensation for loss or damage that results from an action taken by a person issued with a compliance notice, their contractor or monitor (subsections (2) and (1) respectively).

However, the entitlement does not extend to any loss or damage that may be suffered by the high risk entity itself (subsection (4)). This is because the high risk entity is the original obligation holder and should not have an avenue to seek redress when any loss or damage is a consequence of its failure to comply with its legal obligations.

The section identifies the right to compensation is payable by the person issued with the compliance notice (subsection (3)). This provides the person that has suffered the loss or damage with clear advice about which party should be pursued for any claim. It is expected that the person issued with the notice would implement appropriate contractual arrangements to protect themselves from any claim that resulted from the actions of their contractor or monitor.

Subsection (5) identifies that a claim for loss or damage may not be made against the Territory. This provides certainty that the issue of a compliance notice does not itself give rise to a damages claim.

This section is in addition to any other legal avenues a person who suffers loss or damage may have under the Act or at law.

192V Offence to obstruct entry

Subsection (1) establishes an offence for a person to intentionally obstruct another person from complying with a notice issued for the purpose of the COR laws.

Subsection (2) establishes an offence for a person to intentionally obstruct a person that has been appointed by the CEO to monitor another person's compliance with a notice issued for the purpose of the COR laws.

The penalty applied is that of an 'environmental offence level 2'. This penalty is specified in the *Environmental Offences and Penalties Act 1996* and is currently:

- for an individual, 154 to 1540 penalty units
- for a body corporate, 770 to 7700 penalty units.

Subsection (3) identifies that it is a defence if the person took reasonable steps and exercised due diligence to prevent the commission of the offence. The person has the legal burden of proof (on the balance of probabilities) to show that the requirements of the defence have been met (subsection (4)).

These offences have been included in recognition that the person issued with the notice, or the monitor, may not have access rights to the land, and that the owner or occupier of the land may seek to prevent further activity occurring on the land, particularly if damage has already been caused due to concern that further damage may result.

The offences are designed to ensure that the person issued with the notice, and the monitor, are able to fulfil their legal responsibilities as instructed by the CEO.

192W Offence to fail to give notice

This section establishes an offence if a person fails to give notice to a land owner or occupier, or the CEO, as required by sections 192Q and 192R respectively.

It is an offence of strict liability with a penalty of 50 penalty units (for an individual), and an infringement notice may be issued. In accordance with section 29 of the *Sentencing Act 1995*, the penalty for a body corporate will be 250 penalty units.

The offence is designed to ensure that appropriate notice is given to the land owner, occupier and CEO about the proposed entry onto land.

192X Offence to fail to comply with duty on entry

Section 192T provides that a person who has entered land or premises in accordance with the powers provided under section 192Q has a duty to minimise disruption to the owners and occupiers of the land or premises and is not to remain on the land or premises any longer than is reasonably necessary.

Section 192X(1) establishes an offence for intentionally failing to comply with this duty.

The offence has a penalty of 100 penalty units (for an individual), and an infringement notice may be issued. In accordance with section 29 of the *Sentencing Act 1995*, the penalty for a body corporate will be 500 penalty units.

Subsection (3) identifies that it is a defence if the person took reasonable steps and exercised due diligence to prevent the commission of the offence. The person has the legal burden of proof (on the balance of probabilities) to show that the requirements of the defence have been met (subsection (4)).

The offence is designed to acknowledge the importance of these duties and the commensurate impact on land owners and occupiers of having persons on their land.

Clause 8 Section 215 amended (CEO may accept enforceable undertaking)

Section 215 identifies that the CEO may accept an enforceable undertaking given by an environmental approval holder or the proponent of an action or strategic proposal to carry out remediation, rehabilitation or other activities, to rectify environmental harm resulting from a breach of the approval or a contravention of the Act. An enforceable undertaking may be accepted in lieu of, or following, civil or criminal proceedings associated with an alleged breach of the approval or Act.

This amendment identifies that a reference to an 'approval holder' in Part 9, Division 6 (enforceable undertakings) of the Act includes a related person that has been issued a notice in accordance with the COR laws in the new Part 9, Division 2A. This ensures that an enforceable undertaking may be given for an alleged breach of the notice.

Clause 9 Section 265 amended (Criminal liability of executive officer of body corporate)

Clause 9 amends section 265 of the Act. Section 265 identifies the criminal liability of executive officers of bodies corporate.

The amendment removes the definition of 'executive officer' from this section. It is currently included in section 265 because it is the only reference to 'executive officer' in the Act.

The term 'executive officer' is used multiple times throughout the new Part 9, Division 2A. It is appropriate that a single definition of the term apply across the Act. As per the amendments outlined in clause 4 of the Bill, the definition is now included in section 4 of the Act rather than section 265.

Clause 10 Schedule amended (Reviewable decisions and affected persons)

Clause 10 amends the Schedule to the Act. The Schedule identifies those persons that can seek merits review of a decision under section 277 of the Act. The Northern Territory Civil and Administrative Tribunal (NTCAT) conducts the merit review.

The amendment ensures that a person issued with an environment protection notice under the COR laws can seek a review of the decision.

Part 3 Amendment of Environment Protection Regulations 2020

Clause 11 Regulations amended

This is a formal clause which provides that amendments are made to the *Environment Protection Regulations 2020*. Its purpose is to clarify what laws are being amended by the following clauses.

Clause 12 Part 9A inserted

Clause 12 inserts a new Part 9A into the Regulations. The new Part includes two regulations containing matters associated with the issue and operation of environment protection notices.

254A Prescribed enactments for section 192D of Act

Regulation 254A prescribes certain Acts for the purposes of section 192D(3)(c) of the Act.

Section 192D identifies matters that the CEO is to consider in determining if a person has a 'relevant connection' to a 'high risk entity'. Under section 192D(3)(c) the considerations can include consideration of agreements and transactions, other than certain agreements for access to land. Those land access agreements are the agreements contained in the legislation identified in regulation 254A, being:

- the *Petroleum Act 1984*
- the *Native Title Act 1995* (Commonwealth)
- the *Aboriginal Land Rights (Northern Territory) Act 1976* (Commonwealth), and
- the repealed *Petroleum (Prospecting and Mining) Act*

These Acts are prescribed as they contain specific statutory requirements for the owners of the land to grant access to the land. The existence of these types of statutory land access agreements by themselves do not establish an appropriate relationship for the owner of the land to be considered to have a 'relevant connection' to the high risk entity. For a person with one of these agreements to be considered a 'relevant connection', other criteria within section 192D would also need to be met.

254B Information to be provided in notice of entry to land

Section 192Q of the Act provides a power for a person that holds an environment protection notice (or other prescribed compliance notice) to enter land to undertake those activities required to comply with the notice. The person proposing to enter the land must give notice to the land owner or occupier.

Section 192R requires the person proposing to enter land under section 192Q to give notice of the proposed entry to the CEO.

Sections 192Q(3) and 192R(4)(b) identify that the notice to be given to the land owner, occupier or CEO must include the matters 'prescribed by regulation'.

Regulation 254B identifies the information that must be provided for the purposes of those sections. The information identified in the regulation is the minimum information that is required to be given and will ensure that land owners, occupiers and the CEO are informed about the people that are accessing properties, when access is occurring, and the type of work that is anticipated to be carried out as part of that access.

Clause 13 Schedule 2 amended (Infringement notice offences and prescribed amounts)

This clause amends Schedule 2 by inserting a reference to the new offence at section 192W(1) to enable an infringement notice to be issued for the offence.

(Section 192W establishes an offence for failing to give notice to a land owner or occupier or the CEO of proposed entry onto land in accordance with the powers of entry under section 192Q.)

Part 4 Act repealed

Clause 14 Act repealed

This is a formal clause which provides that the Act is repealed on the day after it commences. As this is an amending Bill, once the proposed amendments to the *Environment Protection Act 2019* and *Environment Protection Regulations 2020* have been made by this Bill it no longer has any relevance and can be repealed.