



New South Wales

Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to restrict energy-from-waste development (which is defined as the carrying out of development for the purposes of energy recovery from the thermal treatment of waste). This Bill:

- (a) permanently prohibits energy-from-waste development in those local government areas (including all of the Sydney Basin area) that are currently classified as **critical zones for air pollutants** for the purposes of the load-based licensing scheme established by the *Protection of the Environment Operations (General) Regulation 2009*, and
- (b) establishes a moratorium on energy-from-waste development in areas outside of the critical zones for air pollutants, and
- (c) provides for the regulations to lift the moratorium in its application to a particular area, but only after expert advice has been sought from the Standing Expert Advisory Body on Energy from Waste Technology that is established by this Bill, and
- (d) requires that advisory body to be consulted in relation to any application for development consent (including consent for State significant development) to carry out energy-from-waste development on land where the moratorium has been lifted.

Although the restrictions imposed by this Bill do not apply to energy recovery from the thermal treatment of waste that has been declared to be exempt waste fuel, such energy recovery:

- (a) may still be prohibited, or require development consent, under an environmental planning instrument, or require approval under the *Environmental Planning and Assessment Act 1979*, and

- (b) may be subject to licensing requirements and other obligations under the *Protection of the Environment Operations Act 1997*, the *Waste Avoidance and Resource Recovery Act 2001* and any other relevant legislation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

Schedule 1 [1] defines terms used in the proposed provisions.

Schedule 1 [2] provides that development consent cannot be granted for energy-from-waste development unless the consent authority:

- (a) has consulted with the proposed Standing Expert Advisory Body on Energy from Waste Technology about the imposition of conditions that adopt world's best practices in emissions, emissions monitoring and residual waste disposal, the impact of the proposed development on human health and on current recycling targets and any scientific or technology advances that have an impact on energy-from-waste development that should be incorporated into the operations of the proposed facilities, and
- (b) has had regard to the current *Eligible Waste Fuels Guidelines*, or other guidelines regarding energy-from-waste technology, published by the Environment Protection Authority.

Schedule 1 [3] makes similar provision for the granting of consent to State significant development involving energy-from-waste development.

Schedule 1 [4] inserts a new Part that imposes restrictions on energy-from-waste development:

- (a) **Proposed section 7A.1** defines *critical zones for air pollutants* and *Sydney Basin area*.
- (b) **Proposed section 7A.2** prohibits energy-from-waste development in the critical zones for air pollutants. That prohibition is permanent.
- (c) **Proposed section 7A.3** prohibits energy-from-waste development in all areas of the State that are outside the critical zones for air pollutants. That prohibition only applies during the operation of the moratorium for each area.
- (d) **Proposed section 7A.4** provides for the regulations to lift the operation of the moratorium for part of the State (but not for any land in the critical zones for air pollutants). The Minister must not recommend the making of regulations that prescribe all or part of the State as an area where the moratorium no longer applies unless the proposed Standing Expert Advisory Body on Energy from Waste Technology has recommended to the Minister that the area of land be prescribed.
- (e) **Proposed section 7A.5** provides for the Minister to establish the Standing Expert Advisory Body on Energy from Waste Technology and for the Chief Scientist and Engineer to chair that body.
- (f) **Proposed section 7A.6** provides that the principal function of the Standing Expert Advisory Body is to advise, and make recommendations to, the Minister administering the *Environmental Planning and Assessment Act 1979* about lifting any moratorium and specific proposals for energy-from-waste development. The provision also confers the function of advising the Minister administering the *Protection of the Environment Operations Act 1997* about the application of the fit and proper person test under that Act when the Environment Protection Authority exercises licensing functions under that Act.

- (g) **Proposed section 7A.7** confers on the Standing Expert Advisory Body additional functions, including providing an annual report to the Minister of its activities during the year, and requires the Minister to make any such report publicly available.
- (h) **Proposed section 7A.8** provides that the proposed Part does not prohibit development for the purposes of the recovery of energy from the thermal treatment of exempt waste fuel only. The regulations may amend Schedule 9 (which sets out the categories of waste that are exempt waste fuel).
- (i) **Proposed section 7A.9** provides that the proposed Part applies despite any other provision of the *Environmental Planning and Assessment Act 1979*, or of any other Act, or of any environmental planning instrument.
- (j) **Proposed section 7A.10** provides that the State is not required to pay compensation in connection with the enactment or operation of the proposed Act, but may nevertheless voluntarily choose to do so.
- (k) **Proposed section 7A.11** provides that:
 - (i) any existing development consent or approval ceases to have effect to the extent to which it authorised the carrying out of energy-from-waste development, except as provided by the regulations, and
 - (ii) pending applications for development consent or for certain planning approvals are to be refused.

Schedule 1 [5] declares certain waste to be exempt waste fuel. The categories of waste fuel declared are based on the *Eligible Waste Fuels Guidelines* published by the Environment Protection Authority.