



New South Wales

Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Bill 2019

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Petroleum (Onshore) Act 1991*—

- (a) to impose a moratorium on the prospecting for, or the mining of, coal seam gas in New South Wales, and
- (b) to reintroduce the public interest as a ground for certain decisions relating to petroleum titles.

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 14 days after the date of assent to the proposed Act.

Schedule 1 **Amendment of Petroleum (Onshore) Act 1991 No 84**

Schedule 1[1] inserts proposed Part 2A into the *Petroleum (Onshore) Act 1991*. The proposed Part—

- (a) imposes a moratorium in all areas of the State on the prospecting for, or mining of, coal seam gas for a period beginning on the commencement of the proposed Part until the day, if any, specified in a moratorium lifting order for an area (*the moratorium period for the area*), and

- (b) provides that, during the moratorium period for an area, any petroleum title (other than an existing production lease) relating to coal seam gas that was in force immediately before the commencement of the moratorium period ceases to have effect to the extent to which it authorises prospecting for, or mining of, coal seam gas, and
- (c) prevents the Minister administering the *Petroleum (Onshore) Act 1991* (**the Minister**) from granting new, or renewing existing, petroleum titles relating to coal seam gas in an area during the moratorium period for the area, and
- (d) prevents the holder of an existing production lease in an area from conducting petroleum mining operations involving drilling or hydraulic fracturing for the purpose of increasing or extending the holder's capacity to produce coal seam gas during the moratorium period for the area, and
- (e) provides for no go zones for coal seam gas extraction to be those areas listed in proposed Schedule 4, and
- (f) provides that the Minister may, by order published in the Gazette, make a moratorium lifting order to specify a day on which the moratorium period for a specified area is to end, and
- (g) establishes the Standing Expert Advisory Body on Coal Seam Gas (**the Standing Expert Advisory Body**), and
- (h) provides that any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of proposed Part 2A, and
- (i) provides that the State is not required to pay compensation in connection with the enactment or operation of the proposed Part 2A, but may nevertheless voluntarily choose to do so.

Schedule 1[2] reintroduces the public interest as a ground for certain decisions relating to petroleum titles. The ground was first introduced by the *Mining and Petroleum Legislation Amendment (Public Interest) Act 2013*, but was replaced by a fit and proper person ground by the *Mining and Petroleum Legislation Amendment Act 2014*.

Schedule 1[3] inserts proposed Schedule 4, which lists the areas designated by the Standing Expert Advisory Body as no go zones for coal seam gas extraction.



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New South Wales

Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Bill 2019

No. , 2019

A Bill for

An Act to amend the *Petroleum (Onshore) Act 1991* to impose a moratorium on the prospecting for, or the mining of, coal seam gas in New South Wales and to reintroduce the public interest as a ground for certain decisions relating to petroleum titles; and for related purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Act 2019*.

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2 Commencement

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This Act commences 14 days after the date of assent to this Act.

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Schedule 1	Amendment of Petroleum (Onshore) Act 1991 No 84	1
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[1] Part 2A		3
Insert after Part 2—		4
	Part 2A Prospecting or mining coal seam gas	5
	7A Definitions	6
	In this Part—	7
	<i>coal seam gas</i> means any petroleum in a gaseous state that is extracted from coal seams or beds, shales or tight sands.	8
	<i>existing production lease</i> means a production lease that was in force immediately before this Part commenced.	9
	<i>greenhouse gas emissions</i> means emissions of carbon dioxide, methane, nitrous oxide, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.	10
	<i>moratorium lifting order</i> —see section 7D.	11
	<i>moratorium period</i> , for an area of the State, is the period—	12
	(a) commencing on the day on which this Part commences, and	13
	(b) ending at the start of the day (if any) specified in a moratorium lifting order as the day on which the moratorium period for the area ends.	14
	Note. All onshore areas will have a moratorium period when this Part first commences.	15
	<i>no go zone for coal seam gas extraction</i> —see section 7C.	16
	<i>petroleum title</i> relating to coal seam gas means any of the following—	17
	(a) an exploration licence granting the holder the exclusive right to prospect for coal seam gas on the land comprised in the licence,	18
	(b) an assessment lease granting the holder the exclusive right to prospect for coal seam gas and to assess any coal seam gas deposit on the land comprised in the lease,	19
	(c) a production lease granting the holder the exclusive right to conduct petroleum mining operations for coal seam gas in and on the land comprised in the lease,	20
	(d) a special prospecting authority granting the holder the exclusive right to conduct speculative geological, geophysical or geochemical surveys or scientific investigations in relation to coal seam gas on and in respect of the land comprised in the authority.	21
	<i>Standing Expert Advisory Body</i> —see section 7E.	22
	7B Moratorium on coal seam gas prospecting or mining	23
	(1) The following provisions apply in an area of the State during the moratorium period for the area—	24
	(a) prospecting for or mining coal seam gas is prohibited except in accordance with an existing production lease (as modified by subsection (2)),	25
	(b) any petroleum title (other than an existing production lease) relating to coal seam gas that is in force immediately before the commencement of the moratorium period is suspended to the extent to which it authorises prospecting for or mining coal seam gas,	26

- (c) the Minister must not (and cannot) grant or renew any petroleum title relating to coal seam gas. 1
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- (2) An existing production lease that is a petroleum title relating to coal seam gas is taken, during the moratorium period for an area of the State, not to authorise its holder to conduct petroleum mining operations involving drilling or hydraulic fracturing in the area for the purpose of increasing or extending the holder's capacity to produce coal seam gas in the area. 3
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- (3) To avoid doubt, section 7 (Offence of prospecting or mining without authority) extends to a person who prospects or mines coal seam gas during the moratorium period except in accordance with an existing production lease (as modified by subsection (2)). 8
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- Note.** Section 7 makes it an offence for a person to prospect for or mine petroleum (including coal seam gas) except in accordance with a petroleum title. 12
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- 7C No go zones for coal seam gas extraction** 14
- (1) Each of the areas listed in Schedule 4 is a *no go zone for coal seam gas extraction*. 15
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- (2) A reference in Schedule 4 to an area designated by the Standing Expert Advisory Body is a reference to an area that is identified by the Advisory Body by order published in the Gazette (whether by means of a description or maps, or both) from time to time. 17
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- Note.** The Minister must ensure that any descriptions or maps (or both) for areas designated by the Standing Expert Advisory Body from time to time for the purposes of Schedule 4 are published and publicly accessible on the website of the Department—see section 7E(5)(a). 21
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- (3) The Minister may, by order published on the NSW legislation website, amend Schedule 4 to add descriptions of additional areas, but only if the Standing Expert Advisory Body has recommended that the area be added to the Schedule. 25
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- (4) An area may be added to Schedule 4 by an order under subsection (3) even if a part of the additional area already falls within a description of another area listed in the Schedule. 29
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- (5) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order made by the Minister under subsection (3) in the same way as they apply to a statutory rule. 32
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- 7D Moratorium lifting orders** 35
- (1) The Minister may, by order published in the Gazette (a *moratorium lifting order*), specify a day (being a day that is no earlier than 21 days after the order is published) on which the moratorium period for a specified area of the State is to end. 36
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- (2) The Minister may make a moratorium lifting order for a specified area of the State only if— 40
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- (a) the Minister is satisfied on reasonable grounds that no part of the area is within any no go zone for coal seam gas extraction, and 42
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- (b) the Minister has published in the Gazette a certificate issued jointly by the NSW Chief Scientist and Engineer and the Standing Expert Advisory Body to the effect that the extraction of coal seam gas, if carried out in accordance with this Act (and any licence conditions of a kind specified in the certificate)— 44
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- (i) would be safe and not cause permanent harm to water sources in the area or any other part of the area's environment, and 1
 - (ii) would not result in an increase of the net greenhouse gas emissions for the State, and 2
 - (iii) would comply with any reporting and operating requirements prescribed by the regulations. 3
 - (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a moratorium lifting order published in the Gazette in the same way as they apply to a statutory rule. 4
- 7E Standing Expert Advisory Body on Coal Seam Gas** 5
- (1) The Minister is to establish the Standing Expert Advisory Body on Coal Seam Gas (the *Standing Expert Advisory Body*). 6
 - (2) The Standing Expert Advisory Body is to consist of at least 3 and not more than 5 members appointed by the Minister as follows— 7
 - (a) one member who, in the opinion of the Minister, has qualifications and expertise in an earth, environmental or biological science, 8
 - (b) one member who, in the opinion of the Minister, has engineering qualifications and expertise concerning the conduct of petroleum mining operations, 9
 - (c) one member who, in the opinion of the Minister, has qualifications and expertise in relation to water management, 10
 - (d) additional members who, in the opinion of the Minister, have qualifications and expertise in medicine or the social sciences. 11 - (3) The regulations may make provision for or with respect to the following— 12
 - (a) terms of office of members of the Standing Expert Advisory Body, 13
 - (b) the appointment of a Chairperson of the Standing Expert Advisory Body and the appointment of deputies for members, 14
 - (c) vacation of office of members (including by removal), 15
 - (d) remuneration of members, 16
 - (e) the procedure for meetings and decisions of the Standing Expert Advisory Body (including quorum requirements). 17 - (4) The Standing Expert Advisory Body has the following functions— 18
 - (a) to advise, and provide recommendations to, the Minister in connection with the following— 19
 - (i) whether petroleum mining operations for coal seam gas should be permitted in any particular area of New South Wales and, if so, the conditions that should apply to the area, 20
 - (ii) the development and maintenance of a risk management and prediction tool with respect to the effects of petroleum mining operations for coal seam gas, and its use in connection with the lifting of the moratorium period for an area of New South Wales and the granting of petroleum titles relating to such gas, 21

(iii)	the process for characterising and modelling the sedimentary basins of the State,	1
		2
(iv)	any scientific and technological developments concerning the conduct of petroleum mining operations for coal seam gas,	3
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(v)	research that should be undertaken with respect to the conduct of petroleum mining operations for coal seam gas in the State,	5
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(b)	to designate areas for the purposes of Schedule 4 (including the preparation of descriptions or maps, or both, to assist in the identification of such areas),	7
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(c)	to provide an annual report to the Minister on the environmental impacts on the State during the year concerned of coal seam gas,	10
		11
(d)	any other functions as may be imposed or conferred on it by or under this or any other Act.	12
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(5)	The Minister must ensure that the following are published and publicly accessible on the website of the Department—	14
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(a)	any descriptions or maps, or both, for areas designated by the Standing Expert Advisory Body from time to time for the purposes of Schedule 4,	16
		17
(b)	any annual report referred to in subsection (4)(c) that is provided to the Minister by the Standing Expert Advisory Body.	18
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7F	Restraint of contraventions of this Part and regulations	20
(1)	In this section, <i>contravention</i> includes threatened or apprehended contravention.	21
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(2)	Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Part (or regulations made for the purposes of this Part), whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.	23
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(3)	Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.	27
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(4)	Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.	32
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(5)	If the Court is satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.	35
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7G	Compensation not payable	38
(1)	Compensation is not payable by or on behalf of the State—	39
(a)	because of the enactment or operation of this Part, the <i>Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Act 2019</i> or any Act that amends this Part, or	40
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(b)	because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or	43
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(c)	because of any conduct relating to any such enactment or operation.	46

(2)	This section extends to conduct and any other matter occurring before the commencement of this section.	1 2
(3)	To avoid doubt, nothing in this section prevents the State from voluntarily providing compensation, in such circumstances as it considers appropriate, for any conduct or other matter of a kind referred to in subsection (1)(a), (b) or (c).	3 4 5
(4)	In this section— <i>compensation</i> includes damages or any other form of compensation. <i>conduct</i> includes any statement, or any act or omission— (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise. <i>statement</i> includes a representation of any kind, whether made orally or in writing. <i>the State</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> or an officer, employee or agent of the Crown.	6 7 8 9 10 11 12 13 14 15 16
7H	Operation of Part	17
	This Part (or any regulations made for the purposes of this Part) has effect despite any other provision of this Act or any other law.	18 19
[2]	Section 24B	20
	Insert after section 24A—	21
24B	Public interest relevant ground for making certain decisions about petroleum titles	22 23
(1)	The public interest is a ground (in addition to any other available ground) on which any of the following decisions may be made under this Act— (a) a decision to refuse to grant, renew or transfer a petroleum title, (b) a decision to cancel a petroleum title or to suspend operations under a petroleum title (in whole or in part), (c) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title.	24 25 26 27 28 29 30
(2)	To avoid doubt— (a) section 22A(6) extends to the cancellation of a petroleum title under this section, and (b) section 77(5) extends to the suspension of operations under a petroleum title under this section.	31 32 33 34 35
(3)	This section has effect despite any other provision of this Act.	36
(4)	This section applies to any decision made after the commencement of this section, including— (a) a decision with respect to an application or other matter that was pending on that commencement, and (b) a decision based on conduct that occurred, or on a matter that arose, before that commencement.	37 38 39 40 41 42
[3]	Schedule 4	43
	Insert after Schedule 3—	44

Schedule 4	No go zones for coal seam gas extraction	1
	Sections 7C and 7E(4)(b)	2
1	Northern rivers of New South Wales	3
	Each of the following local government areas—	4
	(a) Ballina Shire,	5
	(b) Byron Shire,	6
	(c) Clarence Valley,	7
	(d) Kyogle,	8
	(e) Lismore City,	9
	(f) Richmond Valley,	10
	(g) Tweed Shire.	11
2	Core drinking water catchment areas	12
	Each of the following areas—	13
	(a) a special area under the <i>Water NSW Act 2014</i> , but only to the extent that it is located in the Sydney catchment area within the meaning of that Act,	14 15 16
	(b) an area identified as a water catchment area (however described) under an environmental planning instrument,	17 18
	(c) each catchment area referred to in clause 4 of the <i>Hunter Water Regulation 2015</i> ,	19 20
	(d) without limiting paragraph (a), (b) or (c), the Mangrove Creek water catchment area or any other water catchment area (as designated by the Standing Expert Advisory Body), including for each of the following dams—	21 22 23 24
	(i) Avon,	25
	(ii) Cordeaux,	26
	(iii) Warragamba,	27
	(iv) Woronora.	28
3	Recharge zone of the Great Artesian Basin	29
	An area that is within the recharge zone of the Great Artesian Basin (as designated by the Standing Expert Advisory Body).	30 31
4	National parks and other environmentally significant areas	32
	Each of the following areas (or any area within 2 kilometres of each of the following areas)—	33 34
	(a) land declared as a wilderness area under the <i>Wilderness Act 1987</i> ,	35
	(b) land reserved under the <i>National Parks and Wildlife Act 1974</i> ,	36
	(c) an area listed as a wetland under the Convention on Wetlands of International Importance signed at Ramsar, Iran on 2 February 1971,	37 38
	(d) the Greater Blue Mountains World Heritage Area.	39
5	Residential areas	40
	Land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the <i>Environmental Planning and</i>	41 42

Assessment Act 1979) for, or principally for, residential purposes (or land within 2 kilometres of such land). 1
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6 Critical industry clusters 3

An area designated by the Standing Expert Advisory Body to be a critical industry cluster (or an area within 2 kilometres of such an area). 4
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7 Prime agricultural land 6

An area designated by the Standing Expert Advisory Body to be prime agricultural land (or an area within 2 kilometres of such an area). 7
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