

LEGISLATIVE ASSEMBLY

**Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting
Titles) Bill 2015**

First print

Proposed amendments

No. 1 **Coal seam and other unconventional gas moratorium**

Page 2, clause 2, line 6. Omit all words on that line. Insert instead:

- (1) This Act (except Schedule 3) commences on a day or days to be appointed by proclamation.
- (2) Schedule 3 commences on the date of assent to this Act.

No. 2 **Coal seam and other unconventional gas moratorium**

Page 12. Insert after line 21:

**Schedule 3 Amendment of Petroleum (Onshore) Act 1991
No 84 relating to moratorium**

Insert at the end of the Act:

**Schedule 4 Coal seam and other unconventional gas
moratorium**

Part 1 Preliminary

1 Interpretation

In this Schedule:

coal seam or other unconventional gas means any petroleum in a gaseous state that is extracted (whether by drilling, hydraulic fracturing or other means) from:

- (a) coal seams or beds, or
- (b) layers of shale rock, or
- (c) tight sands such as sandstone or limestone.

existing production lease means a production lease that was in force immediately before the day on which this Schedule commenced.

greenhouse gas emissions 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.

moratorium lifting order—see clause 4.

moratorium period for an onshore area of the State is the period:

- (a) commencing at the start of the day on which this Act commenced, and
- (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.

Note. All onshore areas will have a moratorium period on the commencement of this Schedule.

no go zone for coal seam or other unconventional gas extraction—see clause 3.

petroleum title relating to coal seam or other unconventional gas means any of the following:

- (a) an exploration licence granting the holder the exclusive right to prospect for coal seam or other unconventional gas on the land comprised in the licence,
- (b) an assessment lease granting the holder the exclusive right to prospect for coal seam or other unconventional gas and to assess any coal seam gas deposit on the land comprised in the lease,
- (c) a production lease granting the holder the exclusive right to conduct petroleum mining operations for coal seam or other unconventional gas in and on the land included in the lease,
- (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 or other unconventional gas on and in respect of the land comprised in the authority.

Standing Expert Advisory Body—see clause 5.

Part 2 Moratorium on coal seam or other unconventional gas prospecting or mining

2 Moratorium on coal seam or other unconventional gas prospecting or mining

- (1) The following provisions apply during the moratorium period for each onshore area:
 - (a) prospecting for or mining coal seam or other unconventional gas is prohibited in the area except in accordance with an existing production lease (as modified by subclause (2)),
 - (b) any petroleum title (other than an existing production lease) relating to coal seam or other unconventional gas that is in force immediately before the commencement of this Act ceases to have effect to the extent to which it authorises prospecting for or mining coal seam or other unconventional gas in the area,
 - (c) the Minister must not (and cannot) grant or renew any petroleum title relating to coal seam or other unconventional gas for the area.
- (2) An existing production lease that is a petroleum title relating to coal seam or other unconventional gas is taken, during the moratorium period for an onshore area, not to authorise its holder to conduct petroleum mining operations involving drilling or hydraulic fracturing for the purpose of increasing or extending the holder's capacity to produce coal seam or other unconventional gas in the area.
- (3) To avoid doubt, section 7 (Offence of prospecting or mining without authority) of the Act extends to a person who prospects or mines coal seam or

other unconventional gas in an onshore area during the moratorium period for the area except in accordance with an existing production lease (as modified by subclause (2)).

3 No go zones for coal seam or other unconventional gas extraction

- (1) Each of the areas listed in Appendix 1 is a ***no go zone for coal seam or other unconventional gas extraction***.
- (2) A reference in Appendix 1 to an area designated by the Standing Expert Advisory Body is a reference to an area that is identified by the Advisory Body (whether by means of a description or maps, or both) from time to time.
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 Appendix 1 are published and publicly accessible on the website of the Department.
- (3) The Minister may, by order published on the NSW legislation website, amend Appendix 1 to add descriptions of additional areas, but only if the Standing Expert Advisory Body has recommended that the area be added to the Appendix.
- (4) An area may be added to Appendix 1 by an order under subclause (3) even if a part of the additional area already falls within a description of another area listed in the Appendix.
- (5) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order under this clause in the same way as they apply to a statutory rule.

4 Moratorium lifting orders

- (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 onshore area is to end.
- (2) The Minister may make a moratorium lifting order for a specified onshore area only if:
 - (a) the Minister is satisfied on reasonable grounds that no part of the area is within any of the no go zones for coal seam or other unconventional gas extraction, and
 - (b) the Standing Expert Advisory Body has provided the Minister with a certificate to the effect that, in its opinion, the moratorium regulatory framework referred to in clause 6 is in force and any applicable requirements of the framework are being (or are capable of being) complied with within the area by holders (or proposed holders) of petroleum titles, and
 - (c) the Minister has published in the Gazette a certificate prepared by both the NSW Chief Scientist and Engineer and the Standing Expert Advisory Body to the effect that the extraction of coal seam or other unconventional gas, if carried out in accordance with the *Petroleum (Onshore) Act 1991* and this Act (and any licence conditions of a kind specified in the certificate):
 - (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
 - (ii) would not result in an increase of the net greenhouse gas emissions for the State during the life of the proposed petroleum title or titles for the area.
- (3) The end of the moratorium period for an onshore area does not operate to revive any petroleum title to the extent to which that title ceased to have effect because of the operation of clause 2.

-
- (4) 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 published on the NSW legislation website.

5 Standing Expert Advisory Body on Coal Seam or Other Unconventional Gas

- (1) The Minister is to establish the Standing Expert Advisory Body on Coal Seam or Other Unconventional Gas (the *Standing Expert Advisory Body*).
- (2) The Standing Expert Advisory Body:
- (a) is to consist of at least the following 3 members:
 - (i) one member who, in the opinion of the Minister, has qualifications and expertise in an earth, environmental or biological science,
 - (ii) one member who, in the opinion of the Minister, has engineering qualifications and expertise concerning the conduct of petroleum mining operations,
 - (iii) one member who, in the opinion of the Minister, has qualifications and expertise in relation to water management, and
 - (b) may include no more than 2 additional members who, in the opinion of the Minister, have qualifications and expertise in medicine or the social sciences.
- (3) The regulations may make provision for or with respect to the following:
- (a) terms of office of members of the Standing Expert Advisory Body,
 - (b) the appointment of a Chairperson of the Standing Expert Advisory Body and the appointment of deputies for members,
 - (c) vacation of office of members (including by removal),
 - (d) remuneration of members,
 - (e) the procedure for meetings and decisions of the Standing Expert Advisory Body (including quorum requirements).
- (4) The Standing Expert Advisory Body has each of the following functions:
- (a) to advise, and provide recommendations to, the Minister in connection with the following:
 - (i) whether petroleum mining operations for coal seam or other unconventional gas should be permitted in any onshore area and, if so, the regulatory system that should apply to the area (including conditions that should be imposed on petroleum titles relating to coal seam or other unconventional gas granted for the area),
 - (ii) the establishment and contents of, and analysis of the data held in, the Whole of Environment Data Repository referred to in clause 6 (2) (d),
 - (iii) the development and updating of a risk management and prediction tool with respect to the effects of petroleum mining operations for coal seam or other unconventional gas and its use in connection with the lifting of the moratorium period for an onshore area and the granting of petroleum titles relating to such gas,
 - (iv) the processes for characterising and modelling the sedimentary basis of the State,
 - (v) the planning implications for the State if petroleum mining operations for coal seam or other unconventional gas are permitted to be conducted in an onshore area,
 - (vi) any scientific and technological developments concerning the conduct of petroleum mining operations for coal seam or other

-
- unconventional gas (including whether such developments should be incorporated into the regulatory system for such operations),
- (vii) research that should be undertaken with respect to the conduct of petroleum mining operations for coal seam or other unconventional gas in the State,
 - (viii) the development with the private sector and public sector bodies (both national and international) of joint or harmonised approaches to research, data collection, modelling and scale issues (such as subsidence) in connection with petroleum mining operations for coal seam or other unconventional gas,
- (b) to designate areas for the purposes of the provisions of Appendix 1 that provide for designation by the Standing Expert Advisory Body (including the preparation of descriptions or maps, or both, to assist in the identification of such areas),
 - (c) to provide an annual report to the Minister, based on data contained in the Whole of Environment Data Repository referred to in clause 6 (2) (d), on the environmental impacts on the State during the year concerned of coal seam or other unconventional gas,
 - (d) such other functions as may be imposed or conferred on it by or under this or any other Act.
- (5) The Minister must ensure that the following are published and publicly accessible on the website of the Department:
- (a) any descriptions or maps (or both) for areas designated by the Standing Expert Advisory Body from time to time for the purposes of Appendix 1,
 - (b) any annual report referred to in subclause (4) (c) that is provided to the Minister by the Standing Expert Advisory Body.

6 Moratorium regulatory framework

- (1) The regulations may make provision for or with respect to the creation, administration and enforcement of the moratorium regulatory framework.
- Note.** The Minister cannot begin to make moratorium lifting orders until the Standing Expert Advisory Body has certified certain matters concerning the establishment and operation of the moratorium regulatory framework.
- (2) The *moratorium regulatory framework* is to provide for the following:
- (a) the establishment of an accreditation or certification system for workers conducting permissible petroleum mining operations for coal seam or other unconventional gas (including mandatory training requirements for such workers),
 - (b) the inspection and auditing of permissible petroleum mining operations for coal seam or other unconventional gas to determine compliance with requirements of this Act and the regulations and conditions of petroleum titles,
 - (c) the reporting, collection and publication of data concerning the conduct of permissible petroleum mining operations for coal seam or other unconventional gas,
 - (d) the establishment of a publicly accessible repository of data (to be called the “Whole of Environment Data Repository”) containing data that has been collected under legislation of the State concerning activities involving water management, gas extraction, mining, manufacturing and chemical processing in the State,
 - (e) the manner in which permissible petroleum mining operations for coal seam or other unconventional gas are to be conducted,

-
- (f) the provision to the Minister by a holder of a petroleum title relating to coal seam or other unconventional gas of information concerning potential impacts (and the likelihood of potential impacts) on water sources in the area as a precondition to commencing to conduct permissible petroleum mining operations under the authority of that title.
 - (3) It is sufficient compliance with subclause (2) if a requirement referred to in that subclause that is or can be applicable to the holder of a petroleum title relating to coal seam or other unconventional gas is imposed by way of a condition of the title prescribed by the regulations.
 - (4) In this clause:
 - permissible petroleum mining operations* for coal seam or other unconventional gas means petroleum mining operations that are conducted under the authority of:
 - (a) an existing production lease, or
 - (b) a petroleum title granted over a part of an onshore area for which the moratorium period has ended.

Part 3 Miscellaneous

7 Restraint of contraventions of this Act and regulations

- (1) In this clause, *contravention* includes threatened or apprehended contravention.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Schedule (or regulations made under this Schedule), whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.
- (3) Proceedings under this clause 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.
- (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.
- (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.

8 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
 - (a) because of the enactment or operation of this Schedule or any Act that amends this Schedule (or any regulations made under this Schedule), or
 - (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
 - (c) because of any conduct relating to any such enactment or operation.
- (2) This clause extends to conduct and any other matter occurring before the commencement of this clause.
- (3) To avoid doubt, nothing in this clause 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 subclause (1) (a), (b) or (c).

-
- (4) In this clause:
compensation includes damages or any other form of compensation.
conduct 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.
- statement** includes a representation of any kind, whether made orally or in writing.
the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

9 Relationship of Schedule with other laws

This Schedule has effect despite this Act or any other law.

Appendix 1 No go zones for coal seam or other unconventional gas extraction

1 Northern rivers of New South Wales

Each of the following local government areas:

- (a) Ballina,
- (b) Byron,
- (c) Clarence Valley,
- (d) Kyogle,
- (e) Lismore,
- (f) Richmond Valley,
- (g) Tweed.

2 Core drinking water catchment areas

Each of the following areas:

- (a) a special area under the *Water NSW Act 2014*, but only to the extent that it is located in the Sydney catchment area within the meaning of that Act,
- (b) an area identified as a water catchment area (however described) under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*),
- (c) each catchment area referred to in clause 4 of the *Hunter Water Regulation 2015*,
- (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:
 - (i) Avon,
 - (ii) Cordeaux,
 - (iii) Warragamba,
 - (iv) Woronora.

3 Recharge zone of the Great Artesian Basin

An area that is within the recharge zone of the Great Artesian Basin (as designated by the Standing Expert Advisory Body).

4 National parks and other environmentally significant areas

Each of the following areas (or any area within 2 kilometres of each of the following areas):

- (a) land declared as a wilderness area under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*,
- (b) land reserved under the *National Parks and Wildlife Act 1974*,
- (c) an area listed as a wetland under the *Convention on Wetlands of International Importance* done at Ramsar, Iran on 2 February 1971,
- (d) the Greater Blue Mountains World Heritage Area.

5 Residential areas

Land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for, or principally for, residential purposes (or land within 2 kilometres of such land).

6 Critical industry clusters

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).

7 Prime agricultural land

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

No. 3 **Coal seam and other unconventional gas moratorium**

Page 1, long title. Insert “, and to place a moratorium on prospecting for, or the mining of, coal seam or other unconventional gas” after “for coal and petroleum”.