



New South Wales

Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015

Explanatory note

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

This Bill is cognate with the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015*.

Overview of Bill

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* to confer on the Environment Protection Authority (the **EPA**) responsibility for investigating and instituting proceedings for offences against relevant Acts in relation to the carrying out of petroleum activities that are authorised, or required to be authorised, by the following:

- (a) exploration licences, assessment leases, production leases and special prospecting authorities under the *Petroleum (Onshore) Act 1991*,
- (b) development consents under Part 4 of the *Environmental Planning and Assessment Act 1979*, to the extent that they authorise the carrying out of development for the purposes of petroleum activities,
- (c) approvals under Part 3A of the *Environmental Planning and Assessment Act 1979*, to the extent that they authorise the carrying out of projects for the purposes of petroleum activities,
- (d) water access licences, water use approvals and water supply work approvals under the *Water Management Act 2000*, and licences in respect of bores under the *Water Act 1912*, to the extent that they authorise the taking or use of water, or the construction or use of a water supply work, for the purposes of petroleum activities.

The amendments will not authorise the EPA to grant or cancel any of those authorities, or to generally administer those authorities, but will authorise the EPA to provide relevant information or records to the agencies responsible for the administration of those authorities.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

Schedule 1 amends the *Protection of the Environment Operations Act 1997* (the **principal Act**) to establish the EPA as the lead regulator responsible for compliance and enforcement of certain authorities for activities related to petroleum, including the enforcement of conditions about air pollution, water pollution, land pollution, rehabilitation, noise pollution, and the taking and using of water. The amendment inserts proposed Schedule 2A (Enforcement of gas and other petroleum legislation), which contains the following provisions:

- (a) **Clause 1** defines terms used in the proposed Schedule. In particular, **petroleum offences** is defined to include offences under the *Petroleum (Onshore) Act 1991* of prospecting or mining without authority or contrary to the conditions of a petroleum title, offences under the *Environmental Planning and Assessment Act 1979* of carrying out development without consent or contrary to the conditions of consent and offences under the *Water Management Act 2000* in relation to a petroleum activity.
- (b) **Clause 2** provides for investigations by the EPA and its officers in relation to petroleum offences, and authorises the exercise of existing enforcement powers and functions under Chapter 7 of the principal Act to determine whether any petroleum offence has been or may be committed, to obtain information or records for purposes connected with the institution of proceedings for petroleum offences and for the administration of the proposed Schedule.
- (c) **Clause 3** provides that proceedings for petroleum offences may be instituted by the EPA under the principal Act and extends relevant provisions of Parts 8.2 and 8.3 of the principal Act to those proceedings. It also provides that penalty notices under Acts or regulations under which a petroleum offence arises may be issued by EPA officers under the principal Act.
- (d) **Clause 4** provides that the EPA may accept a written undertaking for the purposes of section 253A of the principal Act in connection with a matter in relation to which the EPA has a function under the proposed Schedule (which may include undertakings to carry out a restorative justice activity and which gives the Land and Environment Court the power to enforce the undertakings).
- (e) **Clause 5** provides for the extension of the EPA's powers to issue environment protection notices under Chapter 4 of the principal Act to petroleum activities if petroleum offences are or are likely to be committed in carrying out the activities or the activities are not carried out in accordance with good environmental and engineering practice and any applicable work program.
- (f) **Clause 6** authorises the EPA to require a mandatory environmental audit in relation to petroleum activities if the EPA reasonably suspects that the holder of the authority has on one or more occasions committed a petroleum offence that causes or is likely to cause harm to the environment (or that a petroleum activity is not carried out in accordance with good environmental and engineering practice and any applicable work program). The proposed clause also enables the holder of a petroleum authority to commission or carry out a voluntary environmental audit.
- (g) **Clause 7** provides for the exchange of information or records and advice in connection with petroleum authorities and environment protection licences between relevant agencies (including the EPA) and authorises the agencies (and the relevant Ministers) to rely on the information or records (and have regard to advice) for the purposes of the administration of petroleum authorities and environment protection licences.

- (h) **Clause 8** enables the making of regulations for the purpose of modifying or supplementing any provision of or made under the principal Act for the purposes of the proposed Schedule.
- (i) **Clause 9** extends the proposed Schedule to activities carried out, authorities granted or issued or offences committed (or information or records obtained) before the commencement of the proposed Schedule.

Schedule 2 Consequential amendments of other Acts

Schedule 2.1 amends the *Environmental Planning and Assessment Act 1979* to provide that proposed Schedule 2A applies to that Act, and the operation of that Act is subject to that Schedule.

Schedule 2.2 amends the *Petroleum (Onshore) Act 1991* to provide that proposed Schedule 2A applies to that Act, and the operation of that Act is subject to that Schedule.

Schedule 2.3 amends the *Protection of the Environment Administration Act 1991*:

- (a) to provide that the EPA is not subject to Ministerial control in relation to a decision to institute criminal proceedings under the proposed gas and other petroleum enforcement functions conferred by the proposed Act, and
- (b) to authorise the Board of the EPA to develop guidelines relating to the institution of those criminal proceedings.

Schedule 2.4 amends the *Water Management Act 2000* to provide that proposed Schedule 2A applies to that Act, and the operation of that Act is subject to that Schedule.