

**Submission
No 12**

**INQUIRY INTO PETROLEUM (ONSHORE) AMENDMENT
(CANCELLATION OF ZOMBIE PETROLEUM
EXPLORATION LICENCES) BILL 2021**

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Submission: Inquiry into *Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Act 2021*

Thank you for the opportunity to make a submission on this Bill. Lock the Gate Alliance is a country-wide network of landholders, First Nations people, conservationists and townspeople concerned about the impacts of coal and unconventional gas on landscapes, water resources, culture, wildlife and people.

We support the *Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Act 2021* with no amendments. We are grateful to Justin Field MLC for introducing it to parliament in an effort to end a years-long paralysis that has affected people, farming businesses and communities across North West NSW caused by the Government's failure to apply its own policies and basic fairness.

Introduction

There are 12 extant Petroleum Exploration Licences (PELs) remaining in NSW, all of them in North West NSW. Of these 12, only one, PEL238, has been subject to any exploration activity in the last six or more years. The grant dates for these licences are all more than twenty years ago, and the oldest is more than 40 years old. Their most recent renewals range between mid-2006 and early 2013.

The remaining eleven licences other than PEL238 extend across 4.6 million hectares of land from the Upper Hunter and Liverpool Plains north to the Queensland border and west to Coonamble, affecting some of our most vital groundwater resources, including the productive groundwater of the Liverpool Plains and aquifers of the Great Artesian Basin, as well as the Warrambungles Dark Sky Park, strategic agricultural lands, the Namoi River and many towns and villages. Santos has an interest in nine of these licences and full details of their ownership and location are provided in the attached table.

PEL238 which covers the Pilliga forest and surrounding farmland has been the subject of active exploration for over ten years and there are petroleum production licence applications over this licence and a consent granted for a production gasfield, the Narrabri gas project. It, too, is expired, and would be affected by this Bill. Most of this submission deals with the other eleven licences, but we address the status of PEL238 in our remarks on the operation of the Bill.

The expired petroleum licences in north west New South Wales pre-date the recommendations of the Chief Scientists report, the Gas Plan and the Strategic Release Framework. They are a legacy of decisions made long before New South Wales created its contemporary framework for managing the impacts of coal seam gas and ensuring there is a strategic, triple-bottom-line approach to the granting of areas for petroleum exploration.

In this submission, we address the provisions of the *Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Act 2021* but also provide the Committee with detailed information about 11 of the 12 expired licences, the Government's current policies regarding licence renewal and how those policies apply to the licences in question. We provide this information to demonstrate the necessity of parliamentary clarification of the law by passage of this Bill since the law as it stands is being abused by Santos and other gas companies who have "banked" expired petroleum exploration licences to the detriment and disadvantage of people and communities in the region.

In this submission, we refer to specific PELs, their owners, expiry dates and work programs. A table summarising this information is provided at the end of the submission.

Government delay and opacity

Communities in North West NSW have been seeking action from the Government to extinguish the expired and unused coal seam gas PELs covering their region for over five years. Section 20 of *Petroleum (Onshore) Act 1991* essentially allows these licences to remain in force in perpetuity and as a result, the Government and Santos have deferred and delayed decision on the renewal of 11 expired and unused PELs in the North West for many years. In the case of PEL6 and PEL462, it has been a decade now since they expired.

In February 2016, eleven member groups of the North West Alliance, from Mullaley, Dubbo, Gilgandra, the Liverpool Plains, Coonamble, Armidale, Coonabararan, Narrabri and Wee Waa wrote to then Minister for Resources, Anthony Roberts seeking action from him in extinguishing the North West seven CSG exploration licences that had expired at that time.

On 15 May 2018, then-Minister Don Harwin was asked in parliament by Jeremy Buckingham MLC about some of the expired licence. The Minister indicated in his answer that he was "not proposing to take any action on the PELs" until the assessment and determination of the Narrabri gas project was complete, effectively further delaying decision on their renewal by more than two more years. In 2019, the NSW National Party passed a conference motion in 2019, proposed by the Boggabri branch, to the effect that petroleum exploration licences should be extinguished as soon as they expire.

In February 2020, this Committee conducted an inquiry into the Implementation of the Chief Scientist's recommendations on coal seam gas. Recommendation 8 of the findings of that inquiry was "That the NSW Government apply the Strategic Release Framework to the consideration of renewals for the 12 expired Petroleum Exploration Licence areas in the North West of the state given the long period that has passed since those licences were active. The Government's response asserted that "There is no legislative basis for this recommendation and taking this action would likely create a sovereign risk issue for the state and result in legal challenges." The Government further responded that "Any Petroleum Exploration Licence renewal application must comply with ..

minimum standards for exploration work programs and technical and financial capabilities and the 'use it or lose it' policy as well as adherence to all codes of practice including environmental management and rehabilitation, produced water and community consultation.”

In September 2020, the Narrabri gas project was approved. That was nine months ago now. Our engagement with the Department of Regional NSW since that time indicates that it subsequently re-opened its consideration of the renewal applications for the expired PELs and sought further information from Santos and other title holders as part of this consideration. None of this information is public, but remarks made by the Deputy Premier indicate that the Government is “negotiating” with Santos over the future of these licences. We do not consider this process to be robust, transparent or fair. For over a decade, the fate of farming communities in the North West has been left to Santos to determine. It was Santos that delayed submission of its Environmental Impact Statement for the Narrabri gas project following a dramatic fall in gas prices. It is Santos now to whom the Government appears to be giving decision-making power over the future of the expired PELs and the economic, social and environmental future of the North West. The implied basis of the Government’s approach appears to the community to be: if Santos wants the PELs renewed, they will be, and it will be done to a timetable that suits Santos.

There was and continues to be no impediment to the Government introducing policy or legislative improvement at any time since the release of the Chief Scientist’s recommendations in 2013 that applied the Strategic Release Framework to the licence renewal process. Failure to do so has created inconsistency and has put communities in North West New South Wales at a disadvantage for no clear policy purpose other than preserving value for Santos and the other three licence holders. Finally, Lock the Gate wrote to the Deputy Premier as the responsible Minister in October 2020 setting out the failure of these companies to comply with the minimum standards and codes of practice, thereby giving him ample grounds to not renew these licences, but we are yet to receive a response to this letter.

The above history demonstrates the need for the parliament to amend section 20 of the *Petroleum (Onshore) Act 1991* to bring to an end the intolerable delay and inconsistency that has been affecting people in North West New South Wales on this issue for many years.

Provisions of the Zombie PEL Bill

The Bill would amend section 20 of the *Petroleum (Onshore) Act 1991* to exclude exploration licences from its operation such that once a licence expires, it ceases to have effect and remain in force. This is the common understanding of the word “expiry” and so the clarification provided by this Bill is sensible and popular.

Currently section 20 includes no time limit on the continuation in force of titles beyond their expiry date as long as a valid application to renew has been made. It is our understanding that the Government considers that valid applications to renew have been made for each of the 12 Petroleum Exploration Licences covering North West NSW, but given the expiry dates for each of these licences passed many years ago, it is clearly intolerable that the Act continue in its current form.

The effect of section 20 is essentially to allow the continuation in force of PELs in perpetuity. This is clearly unacceptable and the uncertainty it creates has led to considerable personal and financial

harm to people and communities in the North West of New South Wales. Legislative intervention to prevent this situation continuing is necessary.

There is only one expired PEL which is being used and for which, therefore, this legislation would have disruptive effect. PEL238 covers the Pilliga forest and its titleholder, Santos, now has a development consent to construct a gasfield in the area and has applied for petroleum production licences for that purpose. This licence expired nearly five years ago, in August 2016 and we have no idea why the Government has not processed and approved the application it received for its renewal. If this legislation were passed as proposed, PEL238 would cease to have effect, and that would affect Santos' applications for petroleum production licences since a current PEL is a necessary pre-condition for such an application. The Committee may wish to consider amendments to the Bill to address this consequence, but in our view, Santos has had ample time already granted to it by the Government and the Government has taken ample time to address this issue and the status of PEL238 should not be an impediment to the parliament to passing this Bill.

The rest of this submission provides the Committee with crucial background information about the 11 expired and unused PELs and the Government's current process for dealing with renewal applications.

Grounds for non-renewal

The matters for considering in granting applications for renewal of petroleum exploration titles are laid out in Schedule 1B of the *Petroleum (Onshore) Act 1991* and we have addressed these statutory matters directly in the attached information, specifically:

1. the need to conserve and protect the environment and opportunity to undertake studies necessary to assist in decision-making;
2. refusal on the grounds the applicants have not met applicable minimum standards with respect to work programs;
3. further information on foreign ownership.

The *Minimum Standards and Merit Assessment Procedure* created in September 2015 sets the NSW Government's framework for determining applications to grant, renew, transfer and assess active prospecting titles. We have based our submission on this document, and the provisions of the Act to demonstrate that there is ample evidence that eleven of the expired PEL licences should not be renewed.

The title holders of the eleven expired and unused petroleum titles other than PEL238 have not complied with minimum standards. None of these 11 titles have been the subject of active exploration in the last five years and none appear to have current active work programs. Most are also not complying with the requirement to provide annual updates to the community or dedicated webpages, which is a breach of the conditions of the licence. We detail these failures below.

Requirement to consider the environment

Section 2 (1) of Schedule 1B of the *Petroleum (Onshore) Act 1991* requires the Minister to take into account the need to conserve and protect the environment in or on the land over which the petroleum title is sought.

Had these eleven licences in question been subject to the Strategic release framework as this committee recommended, the environmental and social aspects further exploration would have been able to be considered in a consistent manner as applies for new applications via a Preliminary Regional Issues Assessment. Such an assessment has recently been undertaken in the Far West for the granting of new exploration titles and involves at least some account being taken of the need to conserve and protect the environment, as well as community consultation. As the situation stands, a Preliminary Issues Assessment has never been conducted that would identify whether the lands in question are suitable for petroleum exploration. Given this, Lock the Gate proposed to the Deputy Premier in October 2020 that further studies needed to be commissioned to assist in the making of the decision on renewal, as is available to be done under section 2 (2) of Schedule 1B. It is not clear what if any studies have been undertaken as the entire renewal process takes place without any public scrutiny.

Non-compliance with minimum standards

Petroleum title holders are required to comply with the provisions of the *Petroleum Minimum Standards and Merit Assessment Procedure* and failure to comply is a relevant consideration for renewal applications under clause 3 of Schedule 1B of the *Petroleum (Onshore) Act 1991* and grounds for refusal of applications to renewal licences under section 5 of Schedule 1B. This procedure includes NSW's "use it or lose it" policy which "requires title holders to commit to developing the State's resources or risk losing their prospecting title. If a serious commitment cannot be demonstrated at application, transfer, upon renewal or during the term of a prospecting title, companies may face refusal or cancellation of their titles." Serious commitment cannot be demonstrated for the eleven licences in question, as detailed in the attached table.

Prospecting title renewal applications must be accompanied by a proposed work program which must include:

- activities to progress the definition and understanding of both the undiscovered and discovered petroleum accumulations in the petroleum title;
- details of the estimated expenditure and proposed activities for effective community consultation over the term of the title, including development of community consultation plans, annual community updates and dedicated websites.

Of the 11 Petroleum Exploration Licences examined here, none have been the subject of active exploration in the last five years and most do not appear to have current work programs or have had work programs during the last five years. Most are also not complying with the requirement to provide annual updates to the community or on dedicated webpages.

We note that an audit of compliance with the requirements of petroleum exploration licences was undertaken in 2014 but we are not aware of any audit conducted in the years since.¹ That audit "identified a number of non-compliances which appeared to be common across a significant number of titles." These included:

¹ This audit was conducted by Office of Coal Seam Gas, Department of Trade and Investment, and was provided to PEL titleholders in November 2014. A letter to Santos enclosing a summary of the audit findings was obtained under GIPA by The Wilderness Society in GIPA request 17-3, August 2016.

- Community consultation reports were not submitted or were not submitted within the required timeframe;
- Details of the current Exploration/Technical Manager were not advised;
- Annual exploration geology reports, well completion reports and other required reports were not submitted within the timeframes specified in the Regulation or departmental guidelines;
- Approvals were not sought to suspend or abandon wells.

Our investigations indicate that the holders of the eleven titles in question will not be able to demonstrate having undertaken the activities above at any time in the last five years and that this non-compliance has continued since the last audit.

The proposed work programs for PEL1, PEL6 and PEL428 submitted with their renewal applications in 2015 were obtained under GIPA by the Wilderness Society in 2016. The work programs proposed for PELs 6 and 428 appeared to indicate that no “active” work would be undertaken on these PELs, in breach of the Minimum Standards. Furthermore, these programs did not include the requisite detail regarding community consultation activities. The work programs for PEL1, PEL6 and PEL428 at that time indicated that no exploration or appraisal activities had occurred since September 2013. The same is the case for PEL12, PEL427, PEL433, PEL434 and PEL456 - no “active” exploration or appraisal activities have occurred on these PELs since late 2013. Comet Ridge is the title holder of PEL 427, PEL 428 and PEL 6 and admits on its website that it has undertaken no activity since 2011.

Consideration of contiguous titles

The *Minimum Standards and Merit Assessment Procedure* allows for some flexibility in the requirement to undertake a work program where there are contiguous titles that have “a common holder, with a majority interest in all titles of any project.” For such contiguous exploration projects, the procedure allows that “some titles are worked more actively than others” and that only one prospecting title within a project must meet the Minimum Standards. However, the procedure still specifies that “For the remaining prospecting titles within a project, there must continue to be active work undertaken.”

Santos is a title holder and/or has a majority interest in 9 of the 11 expired petroleum exploration licences between the Upper Hunter and the Queensland border. In its application to renew PELs 1, 6 and 428 in 2015, Santos argued that *all* PELs in the North West were contiguous exploration projects with PEL238. However, there are several reasons why we believe this provision does not apply to the expired PELs:

- We understand from the Department that no application to consider these titles as contiguous had been received or approved by the Minister as of 12 September 2019.
- Santos does not have a majority interest and is not a title holder in PELs 427 or 428.
- The 2015 proposed work programs for PEL1, PEL6 and PEL428 provided no specific information as to how the investment and work proposed in each PEL was connected to the other PELs, including PEL 238, as required for them to be considered contiguous titles.

- In February 2016, Santos reclassified its Gunnedah Basin assets as “contingent” resources and wrote down the value of its exploration licences to zero.²
- In June 2016, Santos released a statement confirming that it “has no plans to carry out any exploration activity on the Liverpool Plains in the Petroleum Exploration Licence (PEL) 1 area” and that it has applied for renewal of the licence “to maintain its licences in good order.”³
- The only NSW titles to have been mentioned in Santos’ Annual Reports since 2015 are PAL2 and PEL238.

On this basis, any argument that Santos may make that eight (or nine) of the expired PELs are contiguous titles, thereby absolving the company and the three other companies involved, from having to comply with the minimum standards for work programs are spurious.

Non-compliance with conditions

One of the matters to be considered by the Minister in determining renewal applications is that the applicant has demonstrated satisfactory compliance with the conditions of *any title held in NSW*.

We note that Santos, which is the sole or joint title holder of nine of the PELs in question, became more than 15% foreign-owned in 2015. Condition 45 of PEL12, PEL 433, PEL434 and PEL238 required prior written approval from the Minister before this acquisition occurred. Our letter to the Minister of November 2020 sought confirmation as to whether action was taken and this condition has been complied with.

Three of the expired PELs (PEL434, PEL433 and PEL456) have licence conditions specifically requiring the holder to submit annual Community Consultation Reports. Lock the Gate requested access to them under the Government Information (Public Access) Act but was told no such reports exist.

Fit and proper person

Finally, when considering whether to renew Petroleum Exploration Licences, the character of the title holder is a relevant consideration. We draw to the Committee’s attention Santos’ poor environmental compliance record in the Gunnedah Basin. On 11 February 2014, Santos NSW (Eastern) Pty Ltd was issued a penalty notice under the *Protection of the Environment Operations Act* by NSW EPA for a water pollution incident involving a leak from a CSG waste water storage pond at the Bibblewindi Water Transfer Facility. On 29 July 2014, another leak from a different storage pond resulted in the EPA issuing a clean-up notice under the *POEO Act* to Santos NSW (Eastern) Pty Ltd. On 10 January 2014, Santos NSW Pty Ltd was fined more than \$50,000 by the Land and Environment Court for four separate offences under the *Petroleum (Onshore) Act* relating to breaches of the conditions of PAL 2, including the failure to report a leak of CSG water.

² Santos Ltd “Statement on NSW assets” February 2016.

<https://narrabrigasproject.com.au/2016/02/statement-on-santos-nsw-assets/>

³ Santos Ltd “Statement on NSW assets” June 2016. <https://narrabrigasproject.com.au/2016/06/statement-on-santos-nsw-activities/>

Title	Title holder	Operator (interest)	Grant date	Expiry date	Evidence of activity
PEL 1	Australian Coalbed Methane Santos QNT	Santos QNT (65%)	11-Feb-1993	10-Feb-2015	Two year work program varied in 2013 and nothing since. No activity according to company's Quarterly Activity Statements.
PEL 6	Comet Ridge Gunnedah Santos NSW	Santos NSW (70.45%)	09-Dec-1993	08-Dec-2011	Two year work program agreed in 2010. Company website reports "since 2011, no operational activities have been able to be completed.."
PEL 12	Australian Coalbed Methane Santos QNT	Santos QNT (65%)	27-Sep-1995	26-Sep-2016	The work program for PEL 12 comprised two years of activity agreed in 2013. No evidence of required community consultation.
PEL 427	Comet Ridge Gunnedah Comet Ridge	Santos NSW (40.91%)	21-May-1998	20-May-2016	Company website reports "since 2011, no operational activities have been able to be completed.."
PEL 428	Comet Ridge Gunnedah Comet Ridge Davidson Prospecting	Santos NSW (31.58%)	15-Sep-1998	14-Sep-2012	Company website reports "since 2011, no operational activities have been able to be completed.."
PEL 433	Santos NSW Santos QNT	Santos (100%)	14-Feb-2001	13-Feb-2015	Work program comprises two years of activity agreed in 2013. Relinquishment of some wells in 2015. No evidence of required community consultation.
PEL 434	Santos NSW Santos QNT EnergyAustralia Narrabri	Santos (80%)	14-Feb-2001	13-Feb-2016	Work program comprises two years of activity agreed in 2013. No evidence of required community consultation.
PEL 450	Santos QNT	Santos QNT (100%)	16-Jun-2006	15-Jun-2012	Three year work program from 2006. Relinquishment report for some wells in 2015.
PEL 452	Santos QNT	Santos QNT (100%)	10-Jan-2007	09-Jan-2013	Work program comprised two years of activity agreed in 2013 and nothing since.
PEL 456	Hunter Gas Santos QNT	Santos QNT (unknown%)	05-Mar-2008	05-Mar-2018	Work program comprised two years of activity agreed in February 2013. Relinquishment report for some wells in 2015. No evidence of required community consultation.
PEL 462	Santos QNT	Santos QNT (100%)	22-Oct-2008	22-Oct-2011	Work program comprised two years of activity agreed in 2009.