

The implementation of the recommendations contained in the NSW Chief Scientist's Independent Review of Coal Seam Gas Activities in New South Wales



NSW Government response to Portfolio Committee No. 4's inquiry report

Introduction

The NSW Government supports the safe and sustainable development of a local gas industry, which balances the needs of the community, the economy and the environment. The Chief Scientist and Engineer found that the risks of gas development can be effectively managed with the right regulation, engineering solutions and ongoing monitoring and research.

The Government considers that NSW has the required settings in place to allow this to happen. This includes both the robust regulatory requirements, standards and practices that apply to all resource developments and development generally, as well as the additional measures implemented by this Government specifically for gas, including those under the NSW Gas Plan. The Chief Scientist and Engineer's recommendations have informed many of these measures.

Since 2011, the Government has listened to and acted on community concerns about coal seam gas and implemented major reforms in response, including but not limited to:

- cancelling then-pending exploration licence applications via legislation and implementing the voluntary petroleum exploration licence buy-back process to help 'pause and reset' the sector
- establishing the Strategic Release Framework to better control the future release of areas for gas exploration and the allocation of exploration licences
- making all coal seam gas activity subject to an environment protection licence issued by the Environment Protection Authority
- establishing the Environment Protection Authority as the lead regulator for gas exploration and production
- passing legislation to harmonise titles administration under onshore minerals and petroleum legislation and improve the compliance and enforcement tools available to the Environment Protection Authority as lead regulator
- establishing the SEED Portal and publishing information on coal seam gas for the community on government websites
- expanding the State's groundwater and surface water monitoring network and generally improving data on the State's water resources
- establishing codes of practice for well integrity and fracture stimulation
- establishing minimum standards and a merit assessment procedure for determining applications to grant, renew and transfer petroleum prospecting titles, including a 'use it or lose it' approach to tenure management
- establishing first ever standardised codes for rehabilitation and environment management during exploration
- strengthening the land access arbitration framework for all onshore resources
- clarifying landholder compensation requirements, including advice on benchmark compensation rates for gas exploration and production
- establishing the community benefit fund framework to allow gas projects to share benefits with their communities
- establishing the Legacy Wells initiative under the Legacy Mines Program

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- establishing a duties-based framework to ensure personnel in the petroleum industry, including subcontractors, are appropriately trained and competent to perform work safely
- putting in place coal seam gas exclusion and buffer zones
- banning the use of BTEX chemicals in coal seam gas drilling and hydraulic fracturing activities, and formalising testing requirements for all additives used in those activities
- extinguishing parts of petroleum exploration licences that fell over National Parks
- establishing the Mining and Petroleum Gateway process
- establishing the Aquifer Interference Policy.

In the same period, the State's coal seam gas sector has changed significantly, both in terms of scale and risk:

- The Government's petroleum exploration licence buy-back process and extinguishment of pending petroleum exploration licence applications reduced the sector's footprint from around 60 per cent of the state to around seven per cent.
- AGL's Camden Gas Project will cease production earlier than planned in 2023, and AGL has successfully closed, decommissioned and relinquished the title for its exploration project in Gloucester.
- The Narrabri Gas Project is the only other potential gas production project in the pipeline and is currently awaiting a determination by the Independent Planning Commission (IPC).
- The Government has not released any new areas for coal seam exploration or granted any new exploration licences under the Strategic Release Framework, and if it were to do so in the future, it would likely take considerable time for any potential production projects to emerge.

Given the sector's scale now and, its expected scale in the short to medium term, the Government considers that the intent of certain recommendations made by the Chief Scientist and Engineer has been achieved just as effectively by using existing mechanisms collaboratively, giving effect to the intent through different means, and/or or imposing additional requirements on a project-by-project basis.

Overall, the State's underlying regulatory framework for resources projects and the reforms to date ensure NSW is well positioned to develop a safe and sustainable domestic gas industry. The NSW Government is committed to ensuring that NSW continues to have a best practice regulatory framework for coal seam gas that remains fit for purpose, particularly if the gas industry grows beyond its current, relatively small size in the future. It will continue to proactively consider opportunities for improvement, including by monitoring developments in other jurisdictions and reviewing the latest research and expert advice.

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Responses to specific inquiry report recommendations

#	Committee recommendation	Government response
1	That the NSW Government implement all outstanding aspects of Recommendation 1 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i>	<p>Noted.</p> <p>The Government considers that the NSW Gas Plan delivers on the recommended public statement.</p>
2	<p>That the NSW Government commit to further improving the accessibility and transparency of information relating to coal seam gas and the wider gas sector through:</p> <ul style="list-style-type: none"> the SEED portal; and regular updates and accessible links to information on the Environment Protection Authority website. 	<p>Supported.</p> <p>The Government is committed to ensuring that information relating to coal seam gas and the wider gas sector remains accessible and transparent.</p> <p>All agencies involved in authorising and regulating those activities will periodically review the information that is available and identify opportunities for improvement.</p> <p>The Government will also continue to identify opportunities to make relevant environmental data available via the SEED portal.</p>
3	That the NSW Government take immediate steps to ensure all information listed in dot point two of Recommendation 2 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i> is implemented, including the publication of all coal seam gas data from companies, in the SEED portal and made available to the community.	<p>Supported in principle.</p> <p>The Government is committed to maintaining clear and open communication on coal seam gas matters.</p> <p>The Government considers that the legislative and regulatory requirements that apply to coal seam gas activities are sufficiently clear. They are also consistent with the framework that applies to all other resource development in NSW.</p> <p>Both explorers and producers must monitor and report on compliance with their regulatory obligations, including providing supporting information and data. There are also publication requirements on industry such as the requirement for holders of an environment protection licence to publish pollution monitoring data on their website or make it available to stakeholders on request.</p> <p>The Government will continue to identify opportunities to make relevant environmental data available via the SEED portal. This includes making it available to the appropriate standard, accuracy and format and managing commercial in confidence and personal information appropriately.</p> <p>The Government will also continue to ensure information about relevant approval requirements, decisions and responses, compliance and enforcement outcomes and monitoring is</p>

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		<p>available on appropriate government websites. Relevant agencies and websites include but are not limited to, the following:</p> <ul style="list-style-type: none"> • the NSW Environment Protection Authority's (EPA) Public Registers, which provides access to compliance and enforcement action amongst other items (https://www.epa.nsw.gov.au/licensing-and-regulation/public-registers) • NSW Resource Regulator's safety and health notifications website (www.resourcesregulator.nsw.gov.au/safety-and-health/notifications) WaterNSW's Water Insights Portal, which provides public information and data about how water is shared, traded and managed in NSW and real-time water data (water quantity and quality) from monitoring stations across the state – (www.waternsw.com.au/waterinsights/water-insights) • the Government's Common Ground website which provides access to information on resource titles overlain on a spatial viewer (http://commonground.nsw.gov.au/) • the DIGS portal, which provides access to reports, publications and geotechnical information on exploration, geotechnical and mining activities (https://search.geoscience.nsw.gov.au/) • the Major Projects Portal, which provides information on State Significant Development and Infrastructure Projects and their status (https://www.planningportal.nsw.gov.au/major-projects).
4	<p>That the NSW Government implement all outstanding aspects of Recommendation 3 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i>.</p>	<p>Noted.</p> <p>As recommended by the NSW Chief Scientist and Engineer, the Government investigated practical measures to strengthen protections and benefits for affected communities. Based on these investigations, the Government implemented measures to:</p> <ul style="list-style-type: none"> • strengthen the regulatory framework for land access arrangements • clarify landholder compensation requirements, including advice on benchmark compensation rates for gas exploration and production • enable a gas titleholder to request that the Minister establish a designated fund to share benefits received from their project with the community hosting it, to which the Government also indirectly co-contributes by refunding a capped proportion of the titleholder's royalties.

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		CSG project proponents can also enter a voluntary planning agreement (VPA) with the relevant local council/s to cover impacts on local infrastructure and services. If the proponent obtains development consent for the project under planning legislation, delivering the VPA can be a condition of the consent.
5	That the NSW Government prioritise the work involved in finalising a cost recovery framework for regulation of the coal seam gas industry and ensure that an annual statement by government on this matter is included in the Budget process going forward.	<p>Supported in principle.</p> <p>The NSW Government has undertaken significant work to understand the regulation of the industry, and existing cost recovery. It has identified that the costs of most NSW agencies to regulate and support the coal seam gas industry are fully recovered from industry under current mechanisms. The cost incurred by the EPA is largely unrecovered.</p> <p>The NSW Government is currently considering options to recover the EPA's remaining regulatory costs with a view to implementing a preferred option for cost-recovery in 2020-21.</p> <p>The Government notes that an annual statement no longer fits the Outcome Budgeting approach now used in the budget papers and is considering the best way to report on this matter as part of the work to implement its response to this recommendation.</p>
6	That the NSW Government provide an immediate explanation why it has not put in place any mechanism to recover these costs or to ensure they are reported in the NSW Budget, as recommended by the Chief Scientist.	See response to Recommendation 5.
7	That the NSW Government implement all outstanding aspects of Recommendation 5 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i> .	<p>Noted.</p> <p>The Government has used its planning powers and capability to designate those areas of the State in which coal seam gas activity is permitted to occur.</p> <p>The State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 now prohibits the carrying out of coal seam gas development on or under land within a coal seam gas exclusion zone and land within a buffer zone. A coal seam gas exclusion zone is land within a residential zone, future residential growth area land, additional rural village land and critical industry cluster land. A buffer zone is land that is not within a coal seam gas exclusion zone but is within two kilometres of land within a residential zone, future residential growth area land and additional rural village land.</p>

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		<p>The Government also bought back several petroleum production licences and passed legislation to extinguish pending applications for new prospecting authorities, significantly reducing the industry's footprint.</p> <p>The Government then established the Strategic Release Framework to provide a more controlled and transparent approach for deciding whether to release new coal and petroleum (gas) exploration areas in NSW and for competitively allocating the associated exploration licences to permit the exploration activities to occur. This framework includes a preliminary, upfront assessment of social, environmental and economic issues associated with the potential release area, informed by community consultation, as well as an assessment of the potential for discovery of a resource of sufficient quality and size to support a stand-alone operation. An independently-chaired advisory body oversees the process and, after considering the assessments, makes recommendations to the Government on whether to release the area. Cabinet considers this recommendation and approves the final decision to release or not. If an area is released, a competitive auction process and rigorous assessment process follows to allocate the associated exploration licence/s.</p> <p>Granting an exploration licence does not guarantee that production will occur. A coal seam gas development proponent would still need to obtain development consent for the proposal. This includes undergoing a comprehensive and rigorous merit assessment process, including a detailed environmental impact assessment and extensive public consultation. If the proponent obtains development consent, they would also need to obtain a petroleum production lease, an environment protection licence and other relevant approvals.</p>
8	<p>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.</p>	<p>Noted.</p> <p>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. A Petroleum Exploration Licence holder is legally entitled to apply to renew that title and have that application granted or refused following a merit assessment process.</p> <p>Any Petroleum Exploration Licence renewal application needs to comply with the requirements outlined in the <i>Petroleum (Onshore) Act 1991</i>. This includes 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, rehabilitation, produced water and community consultation.</p>

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9	That the NSW Government move to a single Act for all onshore subsurface resources (excluding water).	<p>Supported in principle.</p> <p>In 2015, the Government passed legislation that significantly harmonised the legislative and regulatory frameworks for onshore mineral and petroleum exploration and extraction. The Government considers that this legislative approach gives effect to the intent of the Chief Scientist and Engineer's recommendation without the need for more complex and potentially disruptive changes.</p> <p>The Government will continue to identify opportunities to further harmonise the frameworks where appropriate.</p>
10	That the NSW Government implement all outstanding aspects of Recommendation 7 in the <i>NSW Chief Scientist's Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i> .	<p>Noted.</p> <p>The Government has implemented the Chief Scientist and Engineer's recommendation for coal seam gas activities, which was the focus of the Chief Scientist and Engineer's report.</p> <p>The NSW Government appointed the EPA as the lead regulator for onshore gas activities in NSW (excluding work health and safety related matters) on 1 July 2015, and legislative changes were made to give the EPA the regulatory powers and compliance tools to regulate the gas industry.</p> <p>The Government will continue to consider whether a lead regulator model is also required for onshore mineral exploration and mining. Currently, the regulatory agencies for onshore mineral exploration and mining take a collaborative approach to dealing with compliance and enforcement issues. They do so efficiently and effectively by using the most appropriate regulatory instruments and powers in the same way that a single or lead regulator would.</p>
11	That the NSW Government implement all outstanding aspects of Recommendation 8 in the <i>NSW Chief Scientist's Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i>	<p>Noted.</p> <p>The Government considers that the regulatory system for coal seam gas, as updated since 2014, is consistent with the Chief Scientist and Engineer's recommendation.</p> <p>Explorers and producers are subject to both coal seam gas-specific requirements and standards as well as those that apply to resources development and development generally. These comprehensive requirements and standards then inform approval and licensing conditions.</p> <p>The Government's harmonisation process for onshore resources legislation also improved the compliance and enforcement provisions available under the petroleum legislation to support appropriate and proportionate responses to non-compliance.</p>

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		Finally, all gas exploration and production operations are subject to rigorous reporting and monitoring requirements and requirements to adaptively manage potential impacts and address risks.
12	That the NSW Government expedite its work for including coal seam gas industry data on the SEED portal and ensuring the portal has all the elements and functionality recommended by the Chief Scientist.	<p>Supported in principle.</p> <p>Current best practice data management involves the use of a distributed data model rather than a central repository.</p> <p>The Government will continue to use best practices to ensure the SEED portal meets the intent of the Chief Scientist and Engineer's recommendations</p>
13	That the NSW Government implement all outstanding aspects of Recommendation 11 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i> .	<p>Noted.</p> <p>Agencies will continue to use various existing risk prediction, assessment and management methods and tools to evaluate proposals, analyse risk (including cumulative impacts) and inform compliance activities. These include:</p> <ul style="list-style-type: none"> • Risk-based codes of practice to assist proponents to mitigate risks • Risk-based licensing • Risk prediction and analysis as part of the environmental impact assessment process • The application of approval conditions that require proponents to undertake ongoing risk assessment, management and public reporting, including requirements to: <ul style="list-style-type: none"> ○ set clear limits and performance standards ○ require regular monitoring and public reporting on compliance ○ require detailed management plans to be submitted for approval prior to each stage of the project ○ require regular independent environmental audits to be carried out. • Applicable standards and guidelines, such as AS NZS ISO 31000:2009 Risk Management – Principles and Guidelines. <p>Agencies will also continue to work closely to share risk management and prediction data and coordinate responses.</p> <p>Given the current scale of the sector and the existing tools and practices in place, the Government considers there would be minimal added benefit in establishing a centralised tool.</p>

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14	That the NSW Government reconsider the establishment of a state based Expert Advisory Body to fulfil the recommendations by the NSW Chief Scientist recognising the limitations of the Commonwealth's Independent Expert Scientific Committee.	<p>Noted.</p> <p>The Government will continue to source internal and external expert advice on a project-by-project basis for proposals (as occurred for the Narrabri Gas Project), consider the latest research and advice from established external sources, and commission additional work where required. It considers this approach is appropriate given the current scale of the sector.</p>
15	That the NSW Government prioritise the full implementation of Recommendation 13 in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i> .	<p>Supported in principle.</p> <p>NSW Government agencies and state-owned corporations responsible for the management of the State's water resources and the regulation of extractive industries continue to work together to ensure greater community confidence around how impacts on water from these activities, including coal seam gas exploration and extraction, are assessed, managed and monitored in NSW.</p> <p>Public access to real-time water data is being enhanced through WaterNSW's website.</p> <p>Over many decades, the Government has built a network of 3,500 monitoring bores across NSW. The Department of Planning, Industry and Environment's Water Group (DPIE Water) is currently completing work under the NSW Government's Water Monitoring Framework to further expand groundwater monitoring infrastructure in NSW coal basins, drilling at least 67 new monitoring bores across the Southern, Hunter, Western Coalfields and the Gunnedah and Gloucester Basins. Some of these bores are already providing real-time data, and the remainder will be online soon.</p> <p>The water monitoring data from these new bores will add to that from the State's wider water monitoring network. The data will be made publicly available via the WaterNSW website.</p> <p>In relation to modelling cumulative impacts, additional government cumulative models are only considered in areas with a number of future projects, and further evidence confirms that for each area of concern government cumulative models would provide the most effective approach to characterise and manage likely impacts.</p> <p>The NSW Government will seek industry support to assist resourcing the development of these models where required.</p>
16	That the NSW Government implement all outstanding aspects of Recommendation 16	<p>Noted.</p> <p>As recommended by the NSW Chief Scientist and Engineer, the Government considered the need for alignment of legislation and</p>

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	<p>in the NSW Chief Scientist's <i>Final Report of the Independent Review of Coal Seam Gas Activities in NSW</i>.</p>	<p>regulation on these issues. Based on this consideration, it concluded that existing arrangements meet the recommendation's intent. The risks associated with coal mine methane are managed consistently across resource types under the harmonised work health and safety (mines and petroleum) legislation. Future petroleum titles will be subject to the Strategic Release Framework process, meaning that government will consider local and regional sensitivities when determining the location and footprint of future exploration titles.</p>
17	<p>That the NSW Government review all new findings in relation to health impacts and that these be included in any new assessment of coal seam gas activities.</p>	<p>Supported. The NSW Government is committed to considering the best available evidence when assessing coal seam gas activities.</p>