



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.



New South Wales

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

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New South Wales

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

No. , 2015

A Bill for

An Act to amend the *Protection of the Environment Operations Act 1997* in relation to the enforcement of requirements for gas and other petroleum exploration and production authorities and of the conditions of those authorities.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Act 2015</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Protection of the Environment Operations Act 1997 No 156	1
		2
Schedule 2A		3
Insert after Schedule 2:		4
Schedule 2A	Enforcement of gas and other petroleum legislation	5
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1	Definitions	7
	In this Schedule:	8
	<i>petroleum</i> has the same meaning it has in the <i>Petroleum (Onshore) Act 1991</i> .	9
	<i>petroleum activities</i> means activities authorised (or required to be authorised) by a petroleum title under the <i>Petroleum (Onshore) Act 1991</i> , and includes activities required or authorised by the conditions of any such title (including, without limitation, conditions relating to the carrying out of assessment activities or conditions relating to the prevention, control or mitigation of harm to the environment or relating to the rehabilitation of land or water affected by the activities under any such title). Petroleum activities do not include:	10
	(a) the construction, alteration or operation of a pipeline for the conveyance of petroleum that is licensed or required to be licensed under the <i>Pipelines Act 1967</i> , or	11
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	(b) activities in the adjacent area of New South Wales (within the meaning of the <i>Petroleum (Offshore) Act 1982</i>), or	17
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	(c) any other activities excluded by the regulations.	20
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	<i>petroleum authority</i> means:	23
	(a) a petroleum title under the <i>Petroleum (Onshore) Act 1991</i> , or	24
	(b) a development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> to the extent that it authorises the carrying out of development for the purposes of petroleum activities, or	25
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	(c) an approval under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> to the extent that it authorises the carrying out of a project for the purposes of petroleum activities, or	28
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	(d) a water access licence, water use approval or water supply work approval under the <i>Water Management Act 2000</i> (or licence in respect of a bore under the <i>Water Act 1912</i>) to the extent that it authorises the taking or use of water, or the construction or use of a water supply work, for the purposes of petroleum activities.	31
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	<i>petroleum offence</i> means any of the following offences:	36
	(a) an offence under section 7, 77 or 136A of the <i>Petroleum (Onshore) Act 1991</i> ,	37
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	(b) an offence under section 125 of the <i>Environmental Planning and Assessment Act 1979</i> in relation to petroleum activities that require a petroleum authority (or environmental assessment) under that Act,	39
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	(c) an offence under Division 1A of Part 2 or Division 1A of Part 3 of Chapter 3 of the <i>Water Management Act 2000</i> (or an offence under the <i>Water Act 1912</i>) in relation to petroleum activities that require a petroleum authority under that Act,	42
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(d)	an offence under a provision of Chapter 4, 6 or 7 of this Act in relation to the exercise of functions under that Chapter as applied by this Schedule,	1 2 3
(e)	any other offence under a provision of or made under an Act referred to in paragraphs (a)–(d) in relation to petroleum activities that is declared by the regulations to be a petroleum offence for the purposes of this Schedule.	4 5 6 7
2	Investigations by EPA and its officers in relation to petroleum offences	8
(1)	Powers and other functions may also be exercised under Chapter 7 of this Act by the EPA (and by authorised officers appointed by the EPA) for the following purposes:	9 10 11
(a)	for determining whether any petroleum offence has been or may be committed,	12 13
(b)	for obtaining information or records for purposes connected with the institution of proceedings for petroleum offences,	14 15
(c)	generally for the administration of this Schedule (and the provisions of this Act applied by this Schedule).	16 17
(2)	The provisions of Chapter 7 of this Act apply for any such purpose:	18
(a)	as if the responsibilities and functions of the EPA under this Act included the matters referred to in subclause (1), and	19 20
(b)	as if references to the regulatory authority were references to the EPA.	21
(3)	This clause does not affect the exercise of powers or other functions under Chapter 7 of this Act in relation to petroleum activities that are authorised to be exercised without reliance on the provisions of this Schedule.	22 23 24
3	Proceedings and penalty notices for petroleum offences	25
(1)	Proceedings for petroleum offences may be instituted by the EPA under this Act.	26 27
(2)	Parts 8.2 and 8.3 of this Act extend to proceedings for petroleum offences instituted by the EPA. The provisions of those Parts apply for that purpose as if references in those Parts to this Act or the regulations included a reference to the Act or regulations under which the petroleum offence arises.	28 29 30 31
(3)	If a provision of Part 8.2 or 8.3 of this Act in relation to proceedings for a petroleum offence that are instituted under this clause is inconsistent with a provision of or made under the Act under which the petroleum offence arises, the provision of Part 8.2 or 8.3 prevails to the extent of the inconsistency.	32 33 34 35
(4)	If under the Act or regulations under which a petroleum offence arises a penalty notice may be issued in respect of the offence:	36 37
(a)	the petroleum offence is taken to be prescribed as a penalty notice offence under this Act, and	38 39
(b)	the penalty payable under a penalty notice served under this Act in respect of the petroleum offence is the penalty prescribed under that other Act in respect of a penalty notice served under that other Act, and	40 41 42
(c)	the officers authorised to serve a penalty notice under this Act in respect of the petroleum offence are the enforcement officers appointed by the	43 44

EPA who are authorised under this Act to serve penalty notices in relation to scheduled activities,	1
and accordingly Division 3 of Part 8.2 of this Act applies to any such penalty notice.	2
(5) This clause does not limit the authority of any other person or body to institute proceedings for petroleum offences or to issue penalty notices for petroleum offences.	3
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4 Use of enforceable undertakings by EPA	8
(1) The EPA may accept a written undertaking given by a person for the purposes of section 253A of this Act in connection with a matter in relation to which the EPA has a function under this Schedule, and accordingly the provisions of section 253A apply to any such undertaking.	9
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(2) This clause does not prevent the acceptance of similar undertakings by a person or body (other than the EPA) under another Act under which a petroleum authority is granted or issued, but if there is a direct inconsistency between a written undertaking accepted by the EPA and a similar undertaking accepted by a person or other body under that other Act, the undertaking accepted by the EPA prevails to the extent of the inconsistency.	13
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5 Use of environment protection notices by EPA	19
(1) The powers and other functions that may be exercised by the EPA under Chapter 4 of this Act extend to any petroleum activities authorised or required to be authorised by a petroleum authority.	20
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(2) For the purposes of Part 4.3 of this Act, an activity is carried on in an environmentally unsatisfactory manner if (in addition to the circumstances set out in section 95 of this Act):	23
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(a) a petroleum offence is committed or is likely to be committed in carrying on the activity, or	26
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(b) it is not carried on in accordance with good environmental and engineering practice and any applicable work program to which it is subject.	28
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(3) The provisions of Chapter 4 of this Act apply for the purposes of this clause as if references to the regulatory authority were references to the EPA.	31
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(4) This clause does not prevent the exercise of similar powers or other functions under another Act under which a petroleum authority is granted or issued, but if there is a direct inconsistency between an environment protection notice issued by the EPA and a similar notice, order or direction under that other Act, the environment protection notice issued by the EPA prevails to the extent of the inconsistency.	33
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(5) A reference in this clause to Chapter 4 of this Act includes a reference to Part 9.2 (Appeals) in relation to powers and other functions exercised by the EPA under that Chapter as applied by this clause.	39
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6 Environmental audits in relation to petroleum activities	42
(1) The EPA may, by notice served on the holder of a petroleum authority, require the holder of the authority to undertake a mandatory environmental audit in accordance with Chapter 6 of this Act if:	43
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(a) the EPA reasonably suspects:	46

(i)	that the holder of the authority has on one or more occasions committed a petroleum offence in connection with activities to which a petroleum authority relates, and	1 2 3
(ii)	that the offence has caused, is causing or is likely to cause, harm to the environment, or	4 5
(b)	the EPA reasonably suspects that any petroleum activity has not been or is not being carried out by the holder of the authority in accordance with good environmental and engineering practice and any applicable work program to which it is subject.	6 7 8 9
(2)	Chapter 6 (and Part 9.2) of this Act apply to a mandatory environmental audit requirement imposed under this clause. The requirement imposed on the holder of a petroleum authority under this clause is taken to be a condition of the authority.	10 11 12 13
(3)	The holder of a petroleum authority may commission or carry out a voluntary environmental audit in accordance with Chapter 6 of this Act in connection with activities to which the petroleum authority relates.	14 15 16
(4)	This clause does not prevent the imposition of a mandatory environmental audit requirement, or the commissioning or carrying out of a voluntary environmental audit, under any other Act under which a petroleum authority is granted or issued.	17 18 19 20
7	Exchange of information and advice between petroleum agencies for the purpose of the administration of petroleum authorities	21 22
(1)	In this clause: <i>administration of petroleum authorities</i> includes:	23 24
(a)	the grant or issue of petroleum authorities, and	25
(b)	the cancellation, revocation, suspension and amendment of petroleum authorities, and	26 27
(c)	the issue of notices, orders and directions in connection with the carrying out of petroleum activities under petroleum authorities, and	28 29
(d)	the institution of proceedings for petroleum offences.	30
	<i>petroleum agency</i> means the EPA and any other statutory body or Public Service agency responsible for the administration of petroleum authorities.	31 32
	<i>petroleum authority</i> includes an environment protection licence under this Act to the extent that it authorises the carrying out of activities or work for the purposes of petroleum activities.	33 34 35
	<i>petroleum offence</i> includes an offence under Part 3.2 or 3.4 of this Act in relation to petroleum activities.	36 37
	<i>relevant information or records</i> means:	38
(a)	information or records obtained by the EPA under this Schedule or under any other provision of this Act in connection with the administration of petroleum authorities, or	39 40 41
(b)	information or records obtained by any other petroleum agency under the Act under which it administers petroleum authorities in connection with the administration of those authorities.	42 43 44
(2)	Relevant information or records held by a petroleum agency may be provided to another petroleum agency for the purposes of the administration of petroleum authorities by that other agency.	45 46 47

(3)	A petroleum agency may provide advice to another petroleum agency about the administration of petroleum authorities.	1 2
(4)	A petroleum agency (and a Minister to whom the agency is responsible) may rely on relevant information or records (and have regard to advice) provided to it under this clause for the purposes of the administration of a petroleum authority.	3 4 5 6
8	Regulations	7
	The regulations may make provision for or with respect to modifying or supplementing any provision of or made under this Act for the purposes of this Schedule.	8 9 10
	Note. Paragraph (e) of the definition of petroleum offences in clause 1 authorises the regulations to declare other offences against other Acts relating to petroleum activities to be petroleum offences for the purposes of this Schedule.	11 12 13
9	Application of Schedule to previous activities, existing authorities etc	14
	A reference in this Schedule to petroleum activities, petroleum authorities or petroleum offences (or relevant information or records) includes a reference to activities carried out, authorities granted or issued or offences committed (or information or records obtained) before the commencement of this Schedule.	15 16 17 18

Schedule 2	Consequential amendments of other Acts	1
2.1	Environmental Planning and Assessment Act 1979 No 203	2
	Section 117BA	3
	Insert after section 117B:	4
	117BA Gas and other petroleum activities—enforcement by EPA	5
	Schedule 2A to the <i>Protection of the Environment Operations Act 1997</i> (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.	6 7 8
2.2	Petroleum (Onshore) Act 1991 No 84	9
	Section 136B	10
	Insert after section 136A:	11
	136B Gas and other petroleum activities—enforcement by EPA	12
	Schedule 2A to the <i>Protection of the Environment Operations Act 1997</i> (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.	13 14 15
2.3	Protection of the Environment Administration Act 1991 No 60	16
	Section 3 Definitions	17
	Insert “, or under Schedule 2A to,” after “Part 8.4 of” in the definition of <i>criminal or related proceedings</i> in section 3 (1).	18 19
2.4	Water Management Act 2000 No 92	20
	Section 389B	21
	Insert after section 389A:	22
	389B Gas and other petroleum activities—enforcement by EPA	23
	Schedule 2A to the <i>Protection of the Environment Operations Act 1997</i> (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.	24 25 26