

Article Information

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NSW Coal Seam Gas Industry - Major new developments proposed

On 13 November 2014, the Baird Government announced a new regime for the regulation of Coal Seam Gas exploration in New South Wales.

The new NSW 'Gas Plan' will be introduced into Parliament later this month. It will reset the areas available for Coal Seam Gas exploration in New South Wales and provide for a detailed compensation regime for farmers and other community groups adversely affected by Coal Seam Gas operations.

Regulatory developments

Whilst the full details of the new regime have not yet been made publicly available, the NSW Government has announced the following policies which will form the backbone of the new Gas Plan:

Landholder Compensation

A compensation regime will be introduced for landholders in respect of Coal Seam Gas (CSG) exploration activities conducted on their property. The amount of compensation will be set by the Independent Pricing and Regulatory Tribunal, with media reports speculating that NSW Chief Scientist and Engineer Mary O'Kane will play an important part of this process. The new Gas Plan is also expected to provide landholders a share of any royalties received by the State from any CSG extracted from their property.

Tendering Process

Under the previous regime, applications are made by prospective CSG exploration companies in relation to sites that potentially hold CSG reserves. This process will be replaced under the new Gas Plan by a government tendering process, where specific areas will be offered by the NSW Government for CSG exploration.

At present 60% of the State is subject to CSG exploration licence applications, which will be replaced by the tender process that will cover approximately 15% of the State. As a result of the changes, existing exploration licence applications will be extinguished and any application fees that have been paid under the previous regime will be refunded.

Under the previous regime, a number of small and medium sized exploration enterprises were able to obtain exploration licences, with little or no investment being made subsequent to their issue. To reduce the number of unused licences already issued under the previous regime, a one-off buy-back of petroleum exploration licences will be conducted by the NSW Government. A new 'Use It or Lose It' policy will also be introduced, with licences facing the risk of being cancelled if serious investment commitments are not observed by licence holders.

Community Benefits Fund

The new Gas Plan will establish a Community Benefits Fund for the benefit of local communities that will potentially be affected by CSG extraction operations. CSG companies will be able to make voluntary payments into the fund that will be matched by the State Government. At present the NSW Government is expected to contribute towards the fund at a rate of one dollar for every two dollars contributed by CSG companies.

Safety Standards

More stringent safety standards will be developed by the NSW Government in relation to CSG operations conducted under

the new regime. The higher standards that will be implemented under the Gas Plan will address environmental concerns that have been raised by stakeholders in relation to CSG extraction operations in Australia. In particular, licence conditions will be tailored to address particular risks associated with certain areas and types of activities that will be conducted under a licence.

The NSW Government has indicated that the details of the new compliance regime and the areas that will form part of the new tendering process will be made available after the NSW State election, in March 2015. In the meantime, the existing moratorium on further exploration licence applications is expected to remain in place until October 2015.

Background for the New Proposals

The recent announcement by the Baird Government follows a lengthy review of the CSG industry amidst ongoing public scrutiny of the environmental and social impacts of CSG extraction.

The new Gas Plan was announced in response to the final report of NSW Chief Scientist & Engineer Mary O’Kane, who was engaged in February 2013 by the previous NSW Government to conduct an independent review of CSG activities in New South Wales (CSG Report). All 16 of the recommendations made by Ms O’Kane in the CSG Report are to be adopted under the NSW Gas Plan.

Along with the key measures announced by the NSW Government today, Ms O’Kane’s report addresses a number of other issues that are likely to be addressed under the new regime:

- Insurance and environmental risk coverage for short and long term impacts from CSG - including coverage for landholders, an environmental rehabilitation fund and a scheme to manage legacy issues will all be implemented.
- Land access arrangements to strengthen protections and benefits for affected communities, particularly in developing practical measures for land valuation and compensation for landholders.
- Designated areas for CSG development, as opposed to the current system whereby the whole State is open to CSG, with the exception of certain areas which are restricted - notably residential zones and wine and thoroughbred regions.
- Full cost of “regulation and support of the CSG industry” is to be covered by fees, levies, royalties and taxes taken from the industry.
- A fair and appropriate system to govern compensation for regional communities and councils, in addition to landholders affected by CSG extraction operations, will be developed.
- The creation of a single independent Regulator with geological and geotechnical expertise, and setting up independent advisors on the complex modelling of groundwater systems to provide a clearer view of sedimentary basins.

A number of legislative changes have already been implemented ahead of today’s announcement. In particular, the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (General) Regulation 2009* were amended, positioning the Environment Protection Authority (EPA) to be the lead regulator for environmental and human health impacts of CSG.

Several developments have also made in respect of land access rights for private landholders affected by CSG extraction activities. On 28 March 2014 the NSW Government announced the ‘Agreed Principles of Land Access’ that was signed by a consortium of CSG extraction companies, detailing the general principles that will apply in obtaining land access rights for future CSG extraction operations. The principles include:

- the recognition of the freedom for landholders to agree or disagree with the conduct of CSG operations on their land
- an agreement to uphold a landholder’s decision and to not support attempts by third party groups to interfere with any agreed operations.

A Draft Bill is currently being prepared to implement the NSW Gas Plan, which will be introduced into the Parliament later this month before going into recess for the year. The *Petroleum (Onshore) Amendment (NSW Gas Plan) Bill 2014*, which will extinguish the 16 existing CSG applications lodged under the previous regime, has already been introduced into the NSW Parliament today.