



New South Wales

# Central Coast Drinking Water Catchments Protection Bill 2019

## Explanatory note

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

## Overview of Bill

The objects of this Bill are—

- (a) to protect the Central Coast drinking water catchments from mining and mining-related activities, and
- (b) to prohibit interference with water in those drinking water catchment areas.

## 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 the date of assent to the proposed Act.

**Clause 3** defines certain words and expressions used in the proposed Act. The proposed section defines *protected catchment area* to mean the following—

- (a) land within the Central Coast local government area,
- (b) land within the area of operations of the Central Coast Water Corporation within the meaning of the *Central Coast Water Corporation Act 2006*,
- (c) the area of land subject to the following current and former mining authorisations—
  - (i) exploration licence number EL6514 renewed on and from 24 October 2011,
  - (ii) exploration licence number EL4911 dated October 1995,
  - (iii) authorisation number A405 dated 1995,

- (d) the areas declared by the regulations to be the following—
- (i) the Mangrove Creek Dam catchment area,
  - (ii) the Mangrove Creek Weir catchment area,
  - (iii) the Mardi Dam catchment area,
  - (iv) the Mooney Mooney Dam catchment area,
  - (v) the Ourimbah Creek catchment area,
  - (vi) the Porters Creek catchment area,
  - (vii) the Wyong River catchment area.

**Clause 4** provides for the regulations to declare land where surface water drains to any of those dams to be within those catchment areas. The areas declared by the regulations must not be reduced in size, or the regulations repealed, unless authorised by an Act of Parliament. The clause also provides for the keeping of an inventory of land in protected catchment areas and for the resolution of disputes as to whether or not any particular land is land within a protected catchment area.

**Clause 5** cancels any mining authorisation granted in relation to land in a protected catchment, prohibits the grant or renewal of any such mining authorisation and prohibits the making of any changes to the conditions to which such a mining authorisation is subject.

**Clause 6** cancels any petroleum title granted in relation to land in a protected catchment area, prohibits the grant or renewal of any such petroleum title and prohibits the making of any changes to the conditions to which such a petroleum title is subject.

**Clause 7** provides that a planning approval is not to be given under the *Environmental Planning and Assessment Act 1979* in relation to development for the purposes of prospecting and mining activities on land in a protected catchment area.

**Clause 8** makes it an offence to take or use water, construct or use a water supply work, drainage work or flood work or carry out an activity that interferes with an aquifer on land in a protected catchment area. The proposed offences carry a maximum penalty of 45,500 penalty units in the case of a corporation and imprisonment for 2 years or 10,000 penalty units, or both, in the case of an individual (which is consistent with similar offences in the *Water Management Act 2000*). The offences do not operate if the land concerned is within a part of the State or a water source to which Part 2 or 3 of Chapter 3 of that Act applies.

**Clause 9** deals with proceedings for an offence under the proposed Act.

**Clause 10** enables the Governor to make regulations for the purposes of the proposed Act.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.



New South Wales

# Central Coast Drinking Water Catchments Protection Bill 2019

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<b>The Legislature of New South Wales enacts—</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Central Coast Drinking Water Catchments Protection Act 2019</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Definitions</b>	6
(1) In this Act—	7
<b>mine</b> means to extract material from land for the purpose of recovering minerals or petroleum from the material so extracted or to rehabilitate land (other than a derelict mine site) from which material has been extracted.	8 9 10
<b>mineral</b> has the same meaning as in the <i>Mining Act 1992</i> .	11
<b>Note.</b> The term mineral is defined in the <i>Mining Act 1992</i> as any substance prescribed by the regulations under that Act as a mineral for the purposes of the definition, and includes coal and oil shale, but does not include petroleum.	12 13 14
<b>mining authorisation</b> means any of the following—	15
(a) an exploration licence under the <i>Mining Act 1992</i> granting the holder the right to prospect for minerals on the land specified in the licence,	16 17
(b) an assessment lease under that Act granting the holder the right to prospect for minerals on the land specified in the lease,	18 19
(c) a mining lease under that Act granting the holder the right to prospect on and mine the land specified in the lease, carry out primary treatment operations necessary to separate the mineral or minerals from the material from which they are recovered and carry out any mining purpose on that land,	20 21 22 23
(d) a mineral claim under that Act granting the holder the right to prospect for minerals specified in the claim.	24 25
<b>petroleum</b> means any of the following—	26
(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state,	27 28
(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state,	29 30
(c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following—	31 32
(i) hydrogen sulphide,	33
(ii) nitrogen,	34
(iii) helium,	35
(iv) carbon dioxide,	36
(v) water,	37
(d) any substance referred to in paragraph (a), (b) or (c) that has been returned to a natural reservoir,	38 39
but does not include coal, oil shale or any other mineral.	40
<b>petroleum mining operations</b> means operations carried out in the course of mining for petroleum.	41 42
<b>petroleum prospecting operations</b> means operations carried out in the course of prospecting for petroleum.	43 44
<b>petroleum title</b> means any of the following—	45

- (a) an exploration licence under the *Petroleum (Onshore) Act 1991* granting the holder the exclusive right to prospect for petroleum on the land comprised in the licence, 1  
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- (b) an assessment lease under that Act granting the holder the exclusive right to prospect for petroleum and to assess any petroleum deposit on the land comprised in the lease, 4  
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6
- (c) a production lease under that Act granting the holder the exclusive right to conduct petroleum mining operations in and on the land included in the lease, 7  
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- (d) a special prospecting authority under that Act granting the holder the exclusive right to conduct speculative geological, geophysical or geochemical surveys or scientific investigations in relation to petroleum on and in respect of the land comprised in the authority. 9  
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- planning approval** means any of the following— 13
- (a) development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (including consent for State significant development), 14  
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- (b) the modification of any such development consent, 16
- (c) the modification of an approval given under Part 3A of that Act (as continued in force) to carry out a project, 17  
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- (d) an approval within the meaning of Division 5.1 of that Act, 19
- (e) an approval of State significant infrastructure within the meaning of Division 5.2 of that Act, 20  
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- (f) the modification of an approval referred to in paragraph (d) or (e). 22
- prospecting for minerals** means carrying out works on, or removing samples from, land for the purpose of testing the mineral bearing qualities of the land. 23  
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- prospecting for petroleum** means carrying out works on, or removing samples from, land for the purpose of testing the quality and quantity of petroleum in the land and the potential to recover petroleum from the land. 25  
26  
27
- protected catchment area** means any of the following— 28
- (a) land within the Central Coast local government area, 29
- (b) land within the area of operations of the Central Coast Water Corporation within the meaning of the *Central Coast Water Corporation Act 2006*, 30  
31
- (c) the area of land subject to the following current and former mining authorisations— 32  
33
- (i) exploration licence number EL6514 renewed on and from 24 October 2011, 34  
35
- (ii) exploration licence number EL4911 dated October 1995, 36
- (iii) authorisation number A405 dated 1995, 37
- (d) the areas declared by the regulations to be the following— 38
- (i) the Mangrove Creek Dam catchment area, 39
- (ii) the Mangrove Creek Weir catchment area, 40
- (iii) the Mardi Dam catchment area, 41
- (iv) the Mooney Mooney Dam catchment area, 42
- (v) the Ourimbah Creek catchment area, 43
- (vi) the Porters Creek catchment area, 44
- (vii) the Wyong River catchment area. 45
- Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act. 46  
47

(2)	Notes included in this Act do not form part of this Act.	1
<b>4</b>	<b>Protected catchment areas</b>	2
(1)	The Minister must, within 3 months after the date of assent to this Act, recommend to the Governor the making of regulations declaring areas to be the following—	3 4
(a)	the Mangrove Creek Dam catchment area,	5
(b)	the Mangrove Creek Weir catchment area,	6
(c)	the Mardi Dam catchment area,	7
(d)	the Mooney Mooney Dam catchment area,	8
(e)	the Ourimbah Creek catchment area,	9
(f)	the Porters Creek catchment area,	10
(g)	the Wyong River catchment area.	11
(2)	Without limiting the land that can be declared to be within a protected catchment area—	12 13
(a)	the area declared by the regulations to be the Mangrove Creek Dam catchment area must include all land from which surface water drains to that dam, and	14 15
(b)	the area declared by the regulations to be the Mangrove Creek Weir catchment area must include all land from which surface water drains to that weir, and	16 17
(c)	the area declared by the regulations to be the Mardi Dam catchment area must include all land from which surface water drains to that dam, and	18 19
(d)	the area declared by the regulations to be the Mooney Mooney Dam catchment area must include all land from which surface water drains to that dam, and	20 21
(e)	the area declared by the regulations to be the Ourimbah Creek catchment area must include all land from which surface water drains to that creek, and	22 23
(f)	the area declared by the regulations to be the Porters Creek catchment area must include all land from which surface water drains to that creek, and	24 25
(g)	the area declared by the regulations to be the Wyong River catchment area must include all land from which surface water drains to that river.	26 27
(3)	A catchment area declared under this section must not be reduced in size, and a regulation declaring an area of land to be a catchment area must not be repealed, unless authorised by an Act of Parliament.	28 29 30
(4)	The Secretary of the Department of Planning, Industry and Environment is to maintain an inventory of protected catchment areas.	31 32
(5)	The inventory is to contain maps that enable protected catchment areas to be identified and must be made available for public inspection on the Department's website.	33 34 35
(6)	If any dispute arises as to whether or not any particular land is within a protected catchment area, any party to the dispute may apply to the Land and Environment Court for a determination of the matter (in which case the Court has jurisdiction to hear and determine the matter).	36 37 38 39
(7)	Section 10 of the <i>Subordinate Legislation Act 1989</i> does not apply to a regulation made under this section.	40 41
<b>5</b>	<b>Cancellation and prohibition of grant of mining authorisations relating to protected catchment areas</b>	42 43
(1)	Any mining authorisation granted in relation to land in a protected catchment area is cancelled.	44 45

(2)	The Minister administering the <i>Mining Act 1992</i> must not—	1
(a)	grant any mining authorisation in relation to land in a protected catchment area, or	2 3
(b)	renew any mining authorisation in relation to land in a protected catchment area, or	4 5
(c)	amend, omit or impose any condition to which a mining authorisation in relation to land in a protected catchment area is subject.	6 7
(3)	To avoid doubt, this section extends to prohibiting the Minister from granting any mining authorisation of a particular type in relation to land to a person who holds a different type of mining authorisation in relation to that land.	8 9 10
<b>6</b>	<b>Cancellation and prohibition of grant of petroleum titles relating to protected catchment areas</b>	11 12
(1)	Any petroleum title granted in relation to land in a protected catchment area is cancelled.	13 14
(2)	The Minister administering the <i>Petroleum (Onshore) Act 1991</i> must not—	15
(a)	grant any petroleum title in relation to land in a protected catchment area, or	16
(b)	renew any petroleum title in relation to land in a protected catchment area, or	17
(c)	amend, omit or impose any condition to which a petroleum title in relation to land in a protected catchment area is subject.	18 19
(3)	To avoid doubt, this section extends to prohibiting the Minister from granting any petroleum title of a particular type in relation to land to a person who holds a different type of petroleum title in relation to that land.	20 21 22
<b>7</b>	<b>Restrictions on planning approvals</b>	23
(1)	Planning approval cannot be given or granted for any of the following purposes—	24
(a)	prospecting for any mineral on, over or beneath the surface of land in a protected catchment area,	25 26
(b)	mining for any mineral on, over or beneath the surface of land in a protected catchment area,	27 28
(c)	petroleum prospecting operations on, over or beneath the surface of land in a protected catchment area,	29 30
(d)	petroleum mining operations on, over or beneath the surface of land in a protected catchment area.	31 32
(2)	Any planning approval given or granted for any of the purposes specified in subsection (1) before the commencement of this Act is cancelled.	33 34
(3)	Any planning approval that is given or granted in contravention of this section after the commencement of this Act has no effect.	35 36
<b>8</b>	<b>Interference with water</b>	37
(1)	A person must not take or use any water from a water source that is located on land in a protected catchment area.	38 39
	Maximum penalty—	40
(a)	in the case of a corporation, 45,500 penalty units, or	41
(b)	in the case of an individual, imprisonment for 2 years or 10,000 penalty units, or both.	42 43

- (2) A person must not construct or use a water supply work, drainage work or flood work or carry out an aquifer interference activity on land in a protected catchment area. 1  
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 Maximum penalty— 3  
 (a) in the case of a corporation, 45,500 penalty units, or 4  
 (b) in the case of an individual, imprisonment for 2 years or 10,000 penalty units, 5  
 or both. 6
- (3) A person is not guilty of an offence against this section if the person establishes that the act giving rise to the alleged offence was done with lawful authority (other than under a mining authorisation or petroleum title). 7  
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- (4) Subsection (1) does not apply to land in a protected catchment area that is within a part of the State or a water source to which Part 2 or 3 of Chapter 3 of the *Water Management Act 2000* applies. 10  
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- (5) Subsection (2) does not apply to land in a protected catchment area that is within a part of the State or a water source to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies. 13  
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- (6) In this section, *aquifer interference activity*, *drainage work*, *flood work*, *water source* and *water supply work* have the same meanings as in the *Water Management Act 2000*. 16  
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## 9 Nature of proceedings for offences 19

- (1) Proceedings for an offence under this Act may be dealt with— 20  
 (a) summarily before a Local Court, or 21  
 (b) summarily before the Land and Environment Court. 22
- (2) Proceedings for an offence under this Act may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed. 23  
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- (3) Proceedings for an offence under this Act may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer. 26  
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- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. 29  
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- (5) The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established. 34  
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- (6) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence. 37  
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- (7) In this section— 40  
*evidence* of an offence means evidence of any act or omission constituting the offence. 41  
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*relevant authorised officer* means a person prescribed by the regulations as an authorised officer for the purposes of this definition. 43  
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**10 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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<b>Schedule 1</b>	<b>Savings, transitional and other provisions</b>	1
<b>Part 1</b>	<b>General</b>	2
<b>1</b>	<b>Regulations</b>	3
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	4 5
(2)	Any such provision—	6
(a)	may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and	7 8
(b)	has effect despite anything to the contrary in this Schedule.	9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
(4)	Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.	19 20 21