QUEENSLAND: DRAFT COAL SEAM GAS LEGISLATION RELEASED*

Coal Seam Gas in Queensland

Coal seam gas is an important energy resource in Queensland. It has evolved from a discrete exploration target some 30 years ago into a substantial industry in its own right. Production of coal seam gas is now said to constitute approximately 25% of Queensland's gas demand.

The development of an appropriate legal regime to govern coal seam methane extraction has been a lengthy and contentious process. However, coal seam gas issues have proven to be quite complex. Numerous overlying coal and petroleum exploration tenures exist and coal seam gas is the subject of competing demands, with the coal and gas industries having long held opposing viewpoints as to who should have priority for access to this resource. This is in part due to the fact that the two commodities of coal and gas are inextricably linked. Coal cannot be mined without the release of coal seam methane and the gas extraction process could impact upon any later coal mining operation.

After numerous discussion papers and policies, and a process involving stakeholder submissions and an independent panel's report, the Queensland Government finalised its coal seam gas regime and released its policy framework in November 2002. The regime, which seeks to facilitate both coal seam gas exploration and production and efficient and safe coal mining (by addressing issues arising where coal and coal seam gas exploration and production activities occur, or may occur in the same area), moved closer towards implementation in July 2003 when the *Mineral Resources and Other Legislation Amendment Bill* 2003 (the Bill) was released for consultation.

The Bill

While the Bill is primarily focussed at resolving coal tenure conflict issues ie overlapping coal (eg exploration permits, mineral development licences and mining leases) and petroleum (eg authorities to prospect and petroleum leases) tenures, the legislative amendments will also apply to oil shale tenures and to coal infrastructure leases.

The Bill sets out amendments to the *Mineral Resources Act 1989* (MRA) and the *Petroleum Act* 1923 (PA), as well as the 2nd Exposure Draft of the *Petroleum and Gas (Production and Safety) Bill* 2003 and the *Coal Mining Safety and Health Act* 1999. Generally speaking, the rights, obligations and entitlements provided under the amendments to the MRA closely mirror the amendments to the PA.

10 Key Principles

Ten (10) key principles emerge from the legislative framework set out in the Bill:

1. All commercial coal seam gas production will be authorised under a petroleum lease (except for pre-existing mining leases that include the mineral "hydrocarbon"). No further mining leases will be granted with the mineral "hydrocarbon". Mining lease holders will have the right to utilise "incidental coal seam gas" (gas that is released as a necessary result of coal mining *or* gas that is mined to ensure that there is a safe working environment at the mine) on-site only, for purposes related to mining on the lease ('non-commercial' purposes), but not for other purposes.

2. A mining lease cannot be granted over a petroleum lease, and vice versa, without the consent of the prior leaseholder, and unless there is a Ministerially approved coordination

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arrangement and safety and health management system agreed between the lease holder and lease applicant. By disallowing overlapping mining and petroleum leases unless these requirements are met, many of the complicated safety issues associated with overlapping tenures are diminished. That being said, the Bill does propose a number of important amendments to existing safety legislation to accommodate overlapping tenures.

3. Coordination arrangements must remain in place. If a coordination arrangement lapses, the leaseholder cannot undertake any activities on the lease. Similarly, any new holders of an overlapping lease (ie as a result of an assignment or a transfer) must be a party to the coordination arrangement.

4. Where there are overlapping "exploration" tenures of alternative commodities (ie coal and petroleum), some priority is afforded to the first production lease application made.

5. A lease application that overlaps an exploration tenure of the alternative commodity will be subject to a detailed consultation process which considers the relative merits of developing the overlapping resources and the interests of both parties and the State in order to ensure the best resource development outcome.

6. Where a lease application has been made over an alternate exploration tenure, the Minister must decide whether the lease (first applied for) should proceed, or, in limited circumstances, whether there is an underlying alternate (coal/petroleum) resource that should have preference for development (in whole or part), by reference to detailed "CSG assessment criteria". These criteria include:

   - the initial development plan requirements;
   - the legitimate business interests of the parties (such as contractual obligations, infrastructure and mining or other operations);
   - the effect of the proposed lease on the future development of the alternative commodity in the land;
   - the potential to make a coordination arrangement regarding coal mining and petroleum production;
   - the economical and technical viability of the concurrent or coordinated coal mining/petroleum production and the development of coal/petroleum;
   - the extent, nature and value of coal mining/petroleum production and any development of petroleum in the land; and
   - the public interest in coal mining and petroleum production on the land.

7. Lease conditions, including the area, term, development plan and other conditions will be determined to reflect the best resource outcome for the two resources.

8. Mining and petroleum leaseholders must have and comply with an approved development plan. A new plan must be submitted every five years, when a coordination arrangement ends or whenever a significant change in activities is proposed.

9. Exploration tenures can be granted over the tenure area of existing leases of the alternative commodity, however, an authorised activity under the exploration tenure may only be undertaken on the area of the lease with the consent of the leaseholder.

10. Adjacent petroleum leases and mining lease holders must have a "sharing agreement" with regard to any across-boundary petroleum ownership issues and the petroleum or incidental coal seam methane that can be mined or produced. If no agreement is reached, either party may apply to the Land and Resources Tribunal to decide the ownership of the petroleum or

incidental coal seam gas produced, the cost of production and the coordination of production issues, such as the location of holes from the lease boundary.

Interim Arrangements

To ensure that no inappropriate grants of mining or petroleum lease applications are made in areas of particular tenure overlap pending the enactment of the Bill, the Queensland government assented to the *Mineral Resources and Another Act Amendment Bill* 2003 (Qld) (the Interim Act), on 18 September 2003.

The Interim Act inserts a new Part 18A into the MRA and Part 10 into the PA (which closely mirror each other). The principal amendment involves an interim restriction on the Minister from recommending the grant of an overlapping lease application prior to 1 July 2004, unless the existing tenure holder has provided its written consent to the grant. An overlapping lease application is a lease application overlapping land the subject of:

- a production lease (or a mineral development licence) of an alternative commodity; or
- a production tenure application or exploration tenure of an alternative commodity, but only to the extent that there is a demonstrated deposit of that alternative commodity over such land, or within a "buffer area" of 1km around the external boundary of the deposit.

A "demonstrated deposit" is a deposit that the Minister determines has adequate levels of the resource, favourable geological characteristics (in terms of location, quantity and quality) and reasonable prospects for eventual economic production.

The Interim Act should prevent the Queensland Government from being inundated by lease applications seeking to benefit from the priority that is afforded to the first production lease application made (where overlapping exploration tenures of alternative commodities exist). However, the Interim Act does not prevent lease applicants from progressing their application towards grant, it only prevents the actual grant occurring. The Interim Act provides that no compensation is payable to a party affected by the interim restriction, which applies until 1 July 2004 or upon enactment of the Bill (if earlier).

Conclusion

Queensland has huge reserves of coal seam methane which can potentially play an important part in attaining the Queensland government's objective of facilitating the supply of abundant and competitively priced gas, with a view to developing cleaner energy sources. The Bill is a significant and essential step for the coal seam gas industry in Queensland. While a number of areas are still to be clarified and finalised (for example, native title and other transitional arrangements), the Bill provides a clear process for dealing with issues of overlapping coal and petroleum tenures, and optimising the development of each resource.