

While this matter can presumably be dealt with in the forthcoming, more expansive legislative regime, those seeking exploration permits under the exploration legislation may, in the interim, be reluctant to devote extensive resources, while there is no clear picture about how their exploration efforts are to be rewarded (or at least protected against late-coming freeloaders).

Conclusion

The enactment of the Geothermal Exploration Act is welcomed. Its impact will be enhanced by moving rapidly to introduction of the full exploration, development and exploitation regime.

QUEENSLAND PARLIAMENT INTRODUCES *PETROLEUM AND GAS (PRODUCTION AND SAFETY) BILL**

The Queensland Parliament recently introduced a long awaited Bill which completely rewrites the Queensland legislation regulating the petroleum and gas industries. However, industry has not seen the last of the existing *Petroleum Act 1923*.

The *Petroleum and Gas (Production and Safety) Bill 2004* represents a significant evolution of the laws regulating the petroleum and gas industries in Queensland. The new Bill is substantial – approximately seven times the size of the existing legislation and over 650 pages in length.

However, the new Bill will not completely replace the existing *Petroleum Act 1923*. For native title reasons, the government has flagged its intention to retain the *Petroleum Act 1923* so that existing petroleum tenement holders do not lose crucial existing rights which currently allow them to effectively bypass delays associated with native title. It is not currently totally clear how the *Petroleum Act 1923* and the new Bill will interact and what shape the *Petroleum Act 1923* will take in the future, as it is intended that a further Bill will be introduced into Parliament before 30 June 2004 amending the *Petroleum Act 1923*.

Both Bills, together representing the future petroleum and gas regime, will be debated jointly in Parliament later this year. Some of the key features of the Bill are set out below.

Coal Seam Gas Regime

One of the main catalysts for the introduction of the new Bill has been Queensland's blossoming coal seam gas (CSG) industry. Not surprisingly, an entire chapter of the Bill is dedicated to this topic, and a further corresponding chapter is inserted into the *Mineral Resources Act 1989*.

The principle features of the regime are:

- Rights to commercially produce CSG will be way of petroleum leases, although coal and oil shale mining leases will have the right to "incidental CSG" necessarily extracted as part of safe mining practices.
- Petroleum leases can only be granted over existing coal or oil shale mining leases, and vice-versa, if the existing lease holder enters into a "coordination arrangement" with the person seeking the overlapping lease. There is an obligation on the parties to "make reasonable attempts" to reach such a coordination arrangement, but a person cannot be compelled to do so.
- A petroleum lease can be granted over an area of land that is subject to a coal or oil shale exploration tenement without necessarily obtaining the prior consent of the holder of that exploration title. However, the applicant for the petroleum lease in such circumstances will

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need to justify why their lease is an appropriate use of the resources in area and the holders of the exploration titles have the opportunity to make submissions as to why the coal or oil shale resources should be given preference.

Exploration Tenements

Authorities to Prospect (ATPs) will now only be granted by way of a competitive tender process, with the criteria for awarding an ATP being based upon an applicant's ability to undertake the exploration, as opposed to a cash bid process.

Petroleum Leases

Whilst in principle an ATP holder still has a "right" to be granted a petroleum lease, the reality is the criteria under the Bill which must be satisfied in order to access that right is much more extensive – it includes obtaining approval of an initial development plan, satisfying the Minister that the person has the ability to manage the petroleum exploration and production, and that production will commence within two years of the lease grant or the petroleum for the lease is already contracted for sale.

Provision will be made for the agreement of "coordination arrangements" between adjacent lease holders, with such agreements to govern the sharing of petroleum obtained from the one reservoir. There will be the ability for the Land and Resources Tribunal to determine the terms of such coordination arrangements if the parties cannot agree themselves.

Other Mining Tenements

The existing *Petroleum Act 1923* and the *Mineral Resources Act* barely acknowledge that the other exists, which has lead to uncertainty of rights in some cases. The Bill therefore takes the opportunity to provide clarification of the relationship between petroleum tenements and mining tenements for minerals other than coal or oil shale as well.

Effectively, whilst the Minister has the power to grant a petroleum authority over a mining lease, the holder of the petroleum authority may not exercise any rights under the petroleum lease in respect of the "overlap" unless it has reached an agreement with the mining lease holder. The reverse situation applies where a person is seeking a mining tenement over an existing petroleum lease.

Rights under overlapping petroleum and mining exploration tenements are able to be exercised if an agreement with the other tenement holder has been reached or if the exercise of exploration rights does not adversely affect the ability of the existing tenement holder continuing to exercise their exploration rights as well.

Natural Underground Reservoirs

The Bill recognises that petroleum leases can be granted now in respect of the evaluation, development and use of natural underground reservoirs for petroleum storage. The Bill also contains provisions regulating third party access to natural underground reservoirs for the purpose of storing petroleum, placing an obligation on a lease holder or an existing user of such a reservoir to negotiate in good faith with a third party who wishes to use the reservoir for the storage of its petroleum.

Water

The Bill provides a petroleum tenement holder with the right to take and interfere with underground water if that interference happens in the course of carrying out authorised activities under the petroleum tenement (eg, the drilling of wells). The petroleum tenement holder has a

right to use such underground water for purposes associated with its authorised activities under the petroleum lease, and may also allow the water to be used for domestic and stock purposes by the owners of properties over which the tenement falls. However, the petroleum tenement holder does not otherwise have any commercial rights to use such water.

The Bill also contains provisions requiring petroleum tenement holders to "make good" or compensate existing users of underground water if the petroleum activities unduly affect such users.

Safety

The new Bill includes substantially revised safety provisions. The rationale for the change is that existing regulation has not been updated to take account of recent policy approaches to managing safety.

The now-preferred legislative approach to safety, as followed in this Bill and already employed in Queensland legislation covering safety in the mining, building and construction, and electricity industries, has an outcome or performance-based approach. Generally, it combines broad obligations applying to all petroleum and gas operating plants with specific hazard-based regulations which set out how specific risks should be managed.

The cornerstone of the proposals is the Safety Management Plan. All operating plants will be required to have a comprehensive Safety Management Plan, and the operator or person in charge will be responsible for making, implementing and maintaining the plan.

Land Owner Compensation

The land owner compensation provisions have been substantially rewritten so that they now essentially align with the heads of compensation available under the *Mineral Resources Act*. The adoption of a uniform land owner compensation regime for the resources industry will no doubt be welcomed, especially by those industry participants who may be engaged both in coal or oil shale mining and CSG production.

The Verdict

Industry participants will need to invest some time to ensure they comply with the comprehensive provisions of the Bill. However, overall the Bill should be welcomed by industry as it provides a level of legislative certainty which was slowly evaporating under the existing, but outdated, *Petroleum Act 1923*.

INDIGENOUS CULTURAL HERITAGE LEGISLATION COMMENCES*

Queensland's new regime for the protection of indigenous cultural heritage commenced on 16 April 2004, when the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* were proclaimed into force. The commencement of the two Acts (which are essentially identical) signifies the beginning of a more comprehensive regime for the recognition, protection and conservation of indigenous cultural heritage in Queensland, replacing the existing legislation. An overview of some of the more significant provisions of the new Acts has been provided in a recent prior volume of this Journal.¹

Now that the new Acts are operating, project developers (including those in the mining industry) will need to give consideration to the following:

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¹ Stuart Watson, "New Aboriginal and Torres Strait Islander Cultural Heritage Legislation Proposed for Queensland" (2003) 22 ARELJ 413.