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by industry as it provides a level of legislative certainty which was slowly evaporating under the existing, but outdated, *Petroleum Act 1923*.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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* Ben Zillmann, Senior Associate, Allens Arthur Robinson.

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

- Companies need to be aware of their "duty of care" obligations and ensure that they have appropriate measures in place which allow them to demonstrate that they have taken all reasonable and practical measures to ensure their activities do not harm Aboriginal cultural heritage. In some cases, this obligation may be met by complying with the guidelines (see below), or by complying with a Cultural Heritage Management Plan (CHMP). Decisions will need to be made as to whether there is value in voluntarily negotiating CHMPs (ie, even where it is not mandatory to do so) or seeking the Minister's approval of project-specific transitional guidelines, in order to provide certainty in respect of duty of care obligations.
- Companies scheduling new major projects need to plan early for a CHMP negotiation process and factor this into their project timetables. CHMPs will be mandatory for most major projects in Queensland in the future and the process to achieve a finalised CHMP could conceivably take up to 10 months. The process is comparable to a “right to negotiate” process in respect of native title.
- It must be remembered that cultural heritage can be an issue even where native title has been extinguished. Therefore, cultural heritage will be a relevant consideration for every project.

One of the key new features of the new legislation is the introduction of the "duty of care" obligation on persons carrying out activities generally to take reasonable and practical measures to ensure that cultural heritage is not harmed. The Acts provide for the Minister to develop "cultural heritage duty of care guidelines" to provide guidance as to what measures are appropriate to ensure that cultural heritage is not harmed. When the Acts were proclaimed into force, the Minister released guidelines in relation to Aboriginal cultural heritage.

The guidelines divide activities into five categories, ranging from activities which involve no surface disturbance, through to activities in areas which have been previously the subject of significant ground disturbance, through to activities which will cause additional surface disturbance. In essence, if the activity falls within categories 1 to 4 (ie it is not an activity "causing additional surface disturbance"), the guidelines recognise that it is unlikely the activity will harm Aboriginal cultural heritage and the activity may proceed without the need to conduct any further cultural heritage assessments. However, if an item of cultural heritage is encountered during the activity, it must not be interfered with unless the person reaches an agreement with the relevant Aboriginal parties or the interference is in accordance with an approved CHMP.

If an activity is a "category 5" activity causing additional surface disturbance, the activity is one which is regarded as posing a risk of harm to Aboriginal cultural heritage and the guidelines recommend that the activities should not proceed without a further cultural heritage assessment (typically an evaluation involving a cultural heritage survey in consultation with Aboriginal parties).

Importantly, the guidelines do not provide any authorisation for actual interference with Aboriginal cultural heritage – for this to happen, a person either requires an agreement with the relevant Aboriginal parties or an approved CHMP.

It is important to note that it is not compulsory to comply with the guidelines. However, compliance with the guidelines is deemed to satisfy a person's duty of care obligation under the Act and this certainty is likely to be attractive to project proponents where they are not in a position of being able to rely upon an existing CHMP or agreement with the relevant Aboriginal party.