CORRS IN BRIEF

MARCH 2011

REVIEW OF OVERLAPPING COAL AND COAL SEAM GAS TENURE

Mines and Petroleum Legislation Amendment Bill 2011

The State has issued a consultation paper and draft bill proposing amendments to the *Petroleum and Gas (Production and Safety) Act 2004* (**PGA**), *Petroleum Act 1923* (**PA**) and the *Mineral Resources Act 1989* (**MRA**) to address principally issues arising out of the overlap of coal, oil shale and coal seam gas tenures.

One of the main aims of the bill is to balance the need for long-term certainty of access to coal seam gas (**CSG**) reserves for CSG to LNG projects with the competing requirements of coal miners not to have coal reserve or resource areas sterilised for coal production for long periods of time.

The principal ways in which the bill seeks to address this balance are:

(a) tightening the form of reserves certification for applying for a petroleum lease;

(b) strengthening the conditions for grant of a petroleum lease where production will not occur within 2 years of grant;

(c) introducing time limits within which a preference decision for coal or petroleum production must be made; and

(d) introducing a type of petroleum retention licence to preserve coal seam gas reserves for longer term production.

These principal features are discussed in more detail below.

APPLICATION FOR PETROLEUM LEASE

To address concerns that petroleum leases have in the past been applied for without the requisite knowledge of reserves accompanying the application, an application for a petroleum lease made after the amendments take effect will not have been properly made and may accordingly be rejected if it does not include:

evidence of certification by an entity (that DEEDI is satisfied is independent and appropriately qualified to certify petroleum resources and reserves) that there are resources and reserves of petroleum in the area of the application which meet the benchmarks prescribed under the regulations to the PGA. There is no indication that those benchmarks are to be changed from their current levels.

To address concerns by coal proponents that the grant of petroleum leases where production is proposed to be delayed after grant, has the potential to exclude or "sterilise" an area from coal exploration and production for unreasonable periods of time, amendments are proposed to the conditions to be satisfied before a petroleum lease can be granted.

In particular where application is to be made for a petroleum lease in respect of which there will be a delay in production beyond two years from the date of grant and that production is earmarked for an export LNG plant, then where there is an overlapping coal or oil shale mining tenement such a petroleum lease could not be granted unless the consent of the coal or oil shale mining tenement holder is obtained or a coordination arrangement has been entered into between the petroleum lease applicant and the overlapping tenure holder .

The new condition for grant would appear to apply to applications made before the amendments take effect but not yet decided at their commencement.

This new condition does not apply where a preference decision is to be made by the Minister under the overlap provisions of chapter 3 of the PGA.

However it appears that this condition would apply where the overlapping coal or oil shale tenure holder did not require a preference decision.

OVERLAPPING TENURE PROVISIONS

There is to be a simplification of the manner in which production lease applications over overlapping tenures are made and the specification of time limits for making preference decisions.

'Split' applications over overlap and non-overlap areas or over areas held under different tenures by different parties will no longer be required. One application may be made

However to the extent the application relates to an area where there is an overlapping tenure for the other resource then the relevant provisions of Chapter 3 of the PGA or part 7 AA of the MRA (as applicable) will apply in deciding the application.

An applicant for a production lease over the area of an overlapping exploration tenement for the other resource will not only have to give to the overlapping exploration tenement holder (**Explorer**) a copy of the application but also a summary of the rights, entitlements and obligations under Chapter 3 Part 2 Division 1 of the PGA or part 7AA division 2 of the MRA (as applicable) of both the production lease applicant and the Explorer in relation to the application.

A copy of the notice which the production lease applicant is required to give to DEEDI within four months after making the application as to the course and outcome of consultation with the overlapping Explorer, will have to be provided to the Explorer.

The amendments will introduce specific time periods within which steps must be taken to either determine a production lease application or consider whether a preference decision is to be made where this is sought by the Explorer provided the Explorer confirms it wants a preference determination within new specified timeframes.

Further where the parties fail to reach agreement and the Explorer wants a preference decision then it may still be up to 12 months from the date the production lease application was made, before the matter is referred to the Land Court for its recommendations.

In all cases, the Minister will be required to make a preference decision within six months after the Land Court makes its recommendations.

EXPLORATION ACTIVITIES ON A PRODUCTION LEASE

Each of the PGA and MRA presently restricts the holder of an exploration tenement for one resource from carrying out exploration activities within the area of a production lease for the other resource unless the production lease holder has agreed in writing.

It is proposed to require the production lease holder to give a statement of reasons for not agreeing and to give a copy of those reasons to DEEDI.

The consultation paper states that the intent of this amendment is to address the unreasonable or unjustified withholding of consent. However there are no mechanisms proposed for reviewing the reasons for refusal such as allowing the Minister to override a refusal if found to be unreasonable nor is there any basic statutory obligation on the production holder not to unreasonably withhold its consent.

CREATION OF A NEW PETROLEUM EXPLORATION TENURE

A new form of exploration tenure as an intermediate step between an ATP and a petroleum lease is to be introduced.

The intent is to allow coal seam gas (**CSG**) producers to preserve future production acreage for LNG export production without "locking out" coal or oil shale development through "banking" resources and reserves under petroleum leases.

The new tenure is a retention declaration which will be in addition to the existing interim licence of a potential commercial area (**PCA**).

A retention declaration may be sought in respect of part or the whole of an area of an ATP.

The retention declaration (**RD**) may be for a term of up to 15 years.

In applying for an RD the applicant would need to produce an independent reserves certification by an appropriately qualified entity showing the area contains reserves or resources to the same extent that would be required if making a petroleum lease application.

The applicant must produce evidence that the resources and reserves are the subject of a contract or other arrangement for the long-term supply of coal seam gas for processing into liquefied natural gas for shipping to overseas markets (**a CSG-LNG Contract**).

Any application for an RD must also include:

(a) an overview of the activities proposed to be carried out under the RD (proposed **program of work**);

(b) a table in a form to be set out in the regulations which would show for each year of the CSG-LNG Contract, all existing or proposed petroleum tenures from which CSG would be supplied to fulfil the CSG-LNG Contract and the quantity of CSG that would be supplied from each tenure; and

(c) the proposed schedule for transition from the ATP to a petroleum lease or petroleum leases.

A declaration can only be sought in respect of an area which has not and never has been subject of a PCA.

The Minister can only declare an RD if satisfied that the declaration is likely to optimise the resources in the area in the best interests of the State, having regard to the public interest and that the area to be declared is no more than is needed to cover the maximum extent of the natural underground reservoir the subject of the application.

Furthermore the area declared cannot be more than 75 sub-blocks and must form a single parcel of land.

If an RD is made for a term of less than 15 years then renewals may be sought but only up to a maximum period of 15 years from the original making of the declaration.

However if in accordance with the tenure overlap provisions of the Mineral Resources Act a coal or oil shale mining lease is granted over the RD area while it is in force then the Minister may on the application of the ATP holder extend the term of the RD for a period that ends no later than two years after the mining lease or any renewal of the mining lease ends.

The RD has the same status as an ATP for the purposes of the overlapping tenure provisions of the PGA and MRA so that if a coal or oil shale mining lease is granted over the area then a petroleum lease could not be obtained without there being a coordination arrangement with the mining lease holder.

The RD area remains part of the area of the ATP and is subject to the terms of the ATP.

The proposed program of work for the RD becomes an additional part of the existing work program for the ATP.

There will be an annual reporting obligation to DEEDI relating to the activities carried out under the proposed program of work and progress in meeting the proposed schedule for transition to petroleum leases.

Parties who have made an application for a PCA or petroleum lease which is undecided as at the date the amendments commence will be able to convert that application into an application for an RD by giving notice within 3 months of the commencement.

RELINQUISHMENT REQUIREMENTS FOR ATP

For the purposes of determining whether the relinquishment condition of an ATP has been met it is proposed that any area taken for a petroleum lease will be able to be counted towards meeting the relinquishment requirements.

However this will only be the case if the ATP holder has specifically requested that those areas be taken into account and this ability will only apply in respect of meeting relinquishment requirements after the date the amendments take effect and only in respect of petroleum leases granted after the amendments take effect.

Any previous loss of area of an ATP for a petroleum lease cannot be taken into account.

The consultation paper states that an RD area would also be able to be counted towards meeting the relinquishment requirements.

However the draft legislative changes indicate that this is only the case where the area of the RD is relinquished by the tenement holder. The creation of the RD area is not of itself counted as a relinquishment of part of the ATP.

Further it is proposed to remove the existing right to count the relinquishment of a PCA as part of the area of an ATP relinquished to meet the relinquishment condition.

The reason stated for this is that as the PCA area is not yet commercial it is consistent with the intent to reward the prospect of production. It is only if the area of the PCA becomes part of a petroleum lease that it could be counted towards the relinquishment requirement if so nominated by the holder.

The area of an RD which is relinquished could be counted towards the relinquishment requirement because as an RD is a means of retaining a commercial resource, this is consistent with the intent to reward exploration and encourage production.

POLICIES, GUIDELINES AND CONDITIONS

The consultation paper also puts forward proposals for and invites submissions on non-legislative means of addressing petroleum and coal and oil shale mining tenure overlaps through the creation of policies and guidelines and the imposition by the Minister of special conditions on particular CSG production leases pursuant to the Minister's existing statutory powers under the PGA.

With regard to the proposal of placing special conditions on CSG production tenures the consultation paper indicates that this may be considered in order to address the concerns of a

number of coal mining components relating to the following matters:

(a) the current right of veto of a petroleum lease holder over a request from a coal exploration tenement holder to undertake exploration within the area of the petroleum lease;

(b) the potential right of veto of the petroleum lease holder over a coal mining lease application particularly if production under the petroleum lease is to be delayed; and

(c) the potential for CSG infrastructure to sterilise coal resources in the future.

The consultation paper notes that the imposition of specific conditions on CSG related petroleum leases could potentially provide greater support for the application of the legislation, increase certainty for industry participants and allay some concerns regarding the potential for CSG infrastructure to sterilise coal resources in the future.

To achieve this it would be necessary to establish a policy on the type of conditions that could be imposed and when it would be appropriate to use such an approach.

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