

## Mining, Energy & Resources Alert

July 2013

### Coal Seam Gas

#### National harmonised regulatory framework for natural gas from coal seams

As a result of community concern about coal seam gas exploration and extraction, in December 2011, the Standing Council on Energy and Resources (**SCER**), on behalf of all Australian governments, agreed to develop and implement a harmonised framework for coal seam gas to address key areas of community concern based on four main themes:

- water management;
- multiple land use framework;
- best practice standards; and
- sustainability and co-existence.

The aim of the harmonised framework is to generate greater public confidence in the effective regulation of the industry while supporting the commercial extraction of coal seam gas.

On 14 December 2012, a draft *National Harmonised Regulatory Framework for Coal Seam Gas* was provided to the SCER for consideration and was released for public consultation. 55 public submissions were received in response to the draft Framework.

On 31 May 2013, the Standing Council on Energy and Resources endorsed the *National Harmonised Regulatory Framework for Natural Gas from Coal Seams (Framework)*. [Click here](#) to view the Framework.

The Framework is a guidance and reference tool for Australian federal, state and territory government regulators for the Coal Seam Gas (**CSG**) industry. Its purpose is to provide a suite of national and global leading practices to consider and implement in the assessment and ongoing regulation of proposed CSG projects. The Framework also acts as a guide to industry on what leading practice regulation is, providing greater certainty and consistency for CSG operators.

The Framework provides guidance on what constitutes leading practice in the core areas of:

- well integrity;
- water management and monitoring;
- hydraulic fracturing; and
- chemical use.

A total of 18 leading practices have been identified to mitigate the potential impacts associated with the development of natural gas from coal seams and build a robust national regulatory regime for the industry.

The Framework will provide a foundation for continued improvement in operational leading practice, built on improved science and data. While its primary purpose is to be a guidance document for governments, the Framework aims to benefit the community and industry by providing increased levels of consistency, certainty and transparency in the management of natural gas from coal seams in Australia.

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## New water trigger introduced under the EPBC Act for CSG and large coal mining developments

On 13 March 2013, the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (Cth) was introduced into the Australian Parliament. The purpose of the Bill is to:

- create a new matter of national environmental significance for coal seam gas and large coal mining developments which will have or are likely to have a significant impact on a water resource; and
- establish penalties and offences to prohibit such action without approval.

The Bill also includes a number of transitional provisions, including provisions to establish that the proposed amendments will not apply to coal seam gas and large coal mining developments:

- that have already been approved under the EPBC Act;
- where there is in force a decision that the action is not a controlled action for the purposes of the EPBC Act;
- where there is in force a decision that the action is not a controlled action for the purposes of the EPBC Act because the Minister believes the action will be undertaken in a particular manner;
- where the Minister has informed the proponent of the decision the Minister proposes to make in relation to the action and the Minister has obtained advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (**IESC**) in relation to the action;
- where the action was authorised by a prior environmental authorisation that continues to be in force and no further specific environmental authorisation was necessary to allow the action to be taken lawfully.

On 14 March 2013, the Bill was referred to the Senate Standing Committee on Environment and Communications Legislation for inquiry and report. As part of the inquiry the Committee received 235 written submissions from the public and held two public hearings in relation to the Bill.

On 13 May 2013, the Committee released its Report setting out the findings of the inquiry. To view the report [click here](#).

The Report states:

*"3.20 ... the committee considers that the bill is necessary. The committee is persuaded not only by the evidence submitted by peak environmental bodies such as ANEDO but also by the large number of submissions received that were critical of the current arrangements. These submissions demonstrate a lack of confidence in the community that the current regulatory arrangements for the protection of water resources are adequate."*

The Committee made the following two recommendations:

- that the Commonwealth Government consider whether simplified IESC advices in all cases should be published for the information of interested persons; and
- that the Bill, as amended by the House of Representatives, be passed by the Senate.

The Bill was passed by the Senate on 19 June 2013 and received Assent on 21 June 2013. The Act has commenced.

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## Environment Protection Licence for CSG Activities and Wind Farms

A new Regulation has been made which amends the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**) and certain regulations to include:

- 'Coal seam gas exploration, assessment and production activities' (**CSG Activities**); and
- 'Electricity Works (Wind Farms)' – being the generation of electricity by wind turbines (**Wind Farms**),

as 'Scheduled Activities' in Schedule 1 to the POEO Act. [Click here](#) to see the Regulation.

As a result, CSG Activities (with limited exceptions) and Wind Farms in NSW are required to hold an Environment Protection Licence (**EPL**) under the POEO Act, and are to be subject to licence fees and conditions.

Transitional arrangements provide that a person who now

requires an EPL, is not required to obtain that EPL (to continue to carry out their activity or development work) until the later of the following:

- 3 months from 28 June 2013 for CSG Activities;
- 9 months from 28 June 2013 for Wind Farms; or
- the EPL application (made before the end of the above applicable period) is finally determined.

The NSW EPA has released the following publications detailing how the new Regulation complies with the State Government's better regulation principles and the results of public consultation in relation to the Regulation:

- "Coal Seam Gas Amendments – Statement of Compliance with Better Regulation Principles". [Click here](#) to view.
- "Better Regulation Statement for Wind Farm Amendments". [Click here](#) to view.

Important matters to be considered with regard to these changes are that:

- the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) provides that an EPL cannot be refused if it is necessary for the carrying out of approved 'State Significant development' (an EPL is also to be 'substantially consistent' with such an approval);
- the provisions of the EP&A Act relating to the consistency of EPLs with 'State Significant development' approvals cease to apply to an EPL after its first review; and
- a person aggrieved by a decision of the EPA in relation to an EPL (including conditions imposed) has a right of appeal to the NSW Land & Environment Court.

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## Exploration

### Federal inquiry into mineral and energy resource exploration

On 27 September 2012, the Australian Government announced an inquiry into the non-financial barriers to mineral and energy resource exploration in Australia. The

purpose of the inquiry is to examine exploration approvals systems and processes, within and across jurisdictions, to assess their effectiveness and efficiency; and to assess areas of regulatory duplication across jurisdictions, costs associated with government processes, and broader economic costs.

On 14 December 2012, the Productivity Commission released an Issues Paper, which identified a number of issues to be considered in the review, including:

- unnecessary regulatory burdens;
- access to land;
- heritage protection;
- environmental protection;
- workforce issues;
- government provision of geological information;
- access to infrastructure;
- occupational health and safety;
- access to capital; and
- resource reserve disclosure by non-ASX companies.

The inquiry will also consider the Exploration Investment and Geoscience (**EIG**) working group's report to the Standing Council on Energy and Resources (**SCER**) on options that may be used to improve Australia's global position for attracting resource exploration investment.

The Commission received 34 submissions in response to the Issues Paper.

On 31 May 2013, the Productivity Commission released a draft report on Mineral and Energy Resource Exploration. To view the draft report [click here](#). The draft report considers issues including:

- the regulatory framework for exploration licensing and approvals;
- land access and managing land use conflicts;
- heritage protection;
- environmental management;
- pre-competitive geosciences information; and
- workforce issues.

The draft report also makes 20 draft recommendations for reform to address non-financial barriers to exploration for mineral and energy resources in Australia.

The public is invited to make written submissions to the Commission in response to the draft report by **15 July**

**2013.** For information about how to make a submission [click here](#).

The final report will be prepared after submissions have been received and will be forwarded to the Australian Government in **September 2013**. The Government will then consider the Commission's recommendations, and its response will be announced as soon as possible after the receipt of the Commission's final report.

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## Mining/Gas Extraction (Waste)

### New Environment Protection (Water Quality) Policy 2012 – Wastewater Lagoons

The South Australian EPA is reviewing the *Environment Protection (Water Quality) Policy 2003* which, in broad terms, regulates wastewater in South Australia.

The new policy (which is currently out for public consultation) specifically applies to tailings dams and other dams holding wastewater. It should therefore be of interest to the energy and resources sector.

The major change in the policy is to move away from a prescriptive numeric-based compliance regime towards a risk-based assessment regime. A number of commentators believe that the existing compliance regime in the 2003 Water Quality Policy is uncommercial and, in some instances, impossible to comply with. For example, the current policy makes it an offence to discharge wastewater into a wastewater storage lagoon and to allow the wastewater to reach a level that is less than 600mm below the maximum carrying capacity of the lagoon.

The new regime will remove this numeric compliance figure and instead create the following obligation.

The operator of the wastewater lagoon must ensure that:

'the contents of the lagoon do not overflow, or reach a level where it is reasonably likely that they will overflow, into any waters or onto land in a place from which they are **reasonably likely** to enter any waters'.

Whilst this risk-based approach creates flexibility for the regulator, it will increase the level of uncertainty about compliance for the operators of wastewater lagoons in South Australia.

We will provide further updates on these new laws in South Australia in future editions.

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