PARLIAMENT INCREASES CSG ROYALTIES AND MINING PENALTIES

On 25 October 2012, the NSW Parliament passed the *Petroleum (Onshore) Amendment (Royalties and Penalties) Bill 2012* (Bill).

The Bill will bring a close to the 'royalty holiday' for petroleum production and significantly increase penalties for breaches of the *Mining Act 1992* (NSW) (Mining Act) and the *Petroleum (Onshore) Act 1991* (NSW) (PO Act). The Bill will also confer jurisdiction on the Land and Environment Court to hear proceedings for offences under the PO Act.

ROYALTIES TO BE PAID BY PRODUCERS

To encourage and stimulate investment in the petroleum industry in New South Wales, a 'royalty holiday' was established under the PO Act whereby petroleum producers were exempted from paying royalties for the first five years of production. After this period, the royalty amount increased incrementally to 10 per cent of the value of the petroleum produced over the next five years.

In light of projections for coal seam gas (CSG) production in the State to exceed $1 billion annually by 2025 and the growth of the industry, the Bill has removed the royalty concessions to increase revenue to the State. From 1 January 2013, royalty payments will apply to all current and future production leases commencing when production starts. The royalty amount will be 10 per cent of the value of the petroleum produced.

These amendments will bring the PO Act into line with the royalty regime for coal mining under the Mining Act.

INCREASE IN PENALTIES FOR OFFENCES

The other purpose of the Bill is to strengthen the enforcement and compliance framework for exploration and mining activities by substantially increasing penalties under the PO Act and the Mining Act. For example, the Bill will increase the maximum penalties for corporations for:

- Prospecting, except in accordance with a petroleum title under the PO Act or an authorisation under the Mining Act, from $22,000 to $550,000;
- Mining, except in accordance with a petroleum title under the PO Act or an authorisation under the Mining Act, from $110,000 to $1.1 million;
- Unauthorised carrying out of mining purposes under the Mining Act from $110,000 to $1.1 million;
- Contravention of:
  - a condition of a petroleum title under the PO Act relating to environmental management; or
  - an environmental condition of an authorisation or a mining lease under the Mining Act;

  from $110,000 to $1.1 million; and
- Contravention of any other condition of:
  - a petroleum title under the PO Act; or
  - an authorisation or a mining lease under the Mining Act;

  from $22,000 to $220,000.

The purpose of these amendments is to recognise the serious nature of these offences and the potential for significant environmental harm. The penalties are also consistent with the penalties for similar offences under other environmental legislation, such as the Protection of the *Environment Operations Act 1997* (NSW) (POEO Act).

ROLE OF THE LAND AND ENVIRONMENT COURT

The Bill will also give jurisdiction to the Land and Environment Court to hear prosecutions for offences under the PO Act. Section 378H of the Mining Act already gives the Court similar jurisdiction in respect of offences under that Act.

Generally, criminal enforcement proceedings for offences may only be brought by the relevant Government regulator.

However, in some circumstances, environmental legislation allows other persons to bring criminal proceedings with the leave of the Court and in situations where the regulator has declined to bring such proceedings (see, for instance, POEO Act, sections 217 and 219).

Although criminal proceedings may only be available to other persons in limited circumstances, under section 253 of the POEO Act, any person may bring proceedings to restrain a breach (or a threatened or apprehended breach) of *any other* Act if the breach is causing or is likely to cause harm to the environment.

If there is a threatened breach of the PO Act or the Mining Act, which would likely cause harm to the environment, third parties may be able to bring proceedings to restrain that breach from occurring. Therefore, despite the fact that the PO Act and the Mining Act do not contain open standing provisions like section 123 of the *Environmental Planning and Assessment Act 1979* (NSW) and section 252 of the POEO Act, these amendments may, in practical terms, provide objectors with standing to bring proceedings for actual or apprehended breaches of the PO Act.

IMPLICATIONS

In September 2012, the NSW Government released the Strategic Regional Land Use Policy (Policy) which aims to provide greater protection for valuable agricultural land and water resources from the impacts of mining and CSG proposals. The reforms introduced by the Policy are likely to increase the complexity of the development approval process and delay the delivery of projects and gas supply to the State. Our Corrs In Brief dated September 2012 provides further details of the Policy. Click here to read this In Brief.

The Bill is no doubt designed to complement the Policy through increasing maximum penalties aimed at deterring CSG producers and miners of approved projects from breaching the PO Act and Mining Act. While this may have been the intention of Parliament, as explained above, the Bill may also lead to further civil enforcement actions under the PO Act and the Mining Act.

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