***Gas Pipeline Planning and Safety (Miscellaneous Amendments) Act* 2002**

The *Gas Pipeline Planning and Safety (Miscellaneous Amendments) Act* 2002 (Tas) entered into force following Royal Assent on 5 December 2002. This Act amends the *Gas Pipelines Act* 2000, the *Land Acquisition Act* 1993, the *Land Use Planning and Approvals Act* 1993 (LUPAA) and the *Water Management Act* 1999. The Act is an attempt to deal with the difficult problem of monitoring and managing future developments in the use of land along high pressure gas transmission pipeline routes. The *Gas Pipelines Act* 2000 already provides for a 20 metre easement in the vicinity of gas pipelines. The Act also provides for a planning corridor, or attenuation zone. Applications for sensitive developments within the attenuation zone must be referred by councils to the pipeline operator for advice prior to approval. It was noted in the second reading speech to the new Act (House of Assembly Hansard, Tuesday 19 November 2002 - Part 2 - Pages 28 – 99) that this scheme did not integrate well with the existing Resource Management Planning System, and provided insufficient clarity and certainty for landowners, councils and the pipeline operator. Furthermore, landowners came to perceive that a pipeline operator would act as the de facto planning authority.

The aim of the Amendment Act is to create a more refined three-tiered planning process for uses or developments in areas adjacent to gas transmission pipelines that distinguishes between:

- uses or developments that do not require a planning permit under LUPAA, are defined as exempt uses or developments;
- uses or developments that are defined as permitted or discretionary, and that require a planning permit under LUPAA; and
- uses or developments that would require amendments to a planning - or re-zoning - before a permit could be considered. (extracted from the second reading speech)

ARBITRATION - THE SUBMISSION AND REFERENCE - POWER OF COURT TO STAY - GENERALLY - FACTORS RELEVANT TO EXERCISE OF POWER TO STAY[*].

***Origin Energy Resources Limited v Benaris International NV & Anor; Woodside Energy Limited v Benaris International NV & Anor* [2002] TASSC 50 (14 August 2002)**

(Supreme Court of Tasmania; Slicer J*)*

This matter involves a complex contractual (farmin) dispute between Origin Energy Resources Ltd (Origin), Benaris International NV (Benaris) and Woodside Energy Ltd (Woodside) concerning the farmin terms for the exploration and testing for and development of natural gas and petroleum in the Bass Strait. Origin applied to the Supreme Court of Tasmania for an order restraining Benaris from terminating the contract. Woodside has a subsidiary contract with Origin and will be affected by the outcome of the dispute between Origin and Benaris. Woodside has commenced separate proceedings against the other parties to protect its interests.

The proceedings in issue concern an application by Benaris to stay the proceedings instituted by Origin. The basis for the application by Benaris is that the contract provides for determination of

[*] Dianne Nicol.

contractual disputes by arbitration. Benaris also made an application for the proceedings by Woodside to be stayed pending the determination of the dispute between Origin and Benaris. The arbitration clause requires determination of contractual disputes under the farmin agreement by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Arbitration Centre. The clause also states that the applicable law is the Singapore *International Arbitration Act* Cap 143A. The contract also has a clause providing that it is to be governed by the law of Tasmania and that the parties agree to submit to the non-exclusive jurisdiction of the Tasmanian courts (clause 11).

The contract that forms the subject of the dispute is a farmin agreement between Benaris and Origin pursuant to which an 80% interest in the permit was transferred to Origin in 1998. The further farmin agreement between Origin and Woodside requires Woodside to carry out seismic and drilling operations in return for Woodside obtaining a 50% interest in the permit.

Slicer J described the nature of the dispute in paragraph 3 of is judgment. Apparently Origin carried out drilling operations on the commitment well but Benaris alleged that Origin failed to perform its obligations and thus earn the interest. Ultimately Benaris served notice on Origin alleging material breach of the farmin agreement, entitling Benaris to terminate and have reassigned the 80% interest in the permit notwithstanding the work performed to date.

In considering whether the proceedings instituted by Origin should be stayed, Slicer J noted that section 7 of the *Corporations Act* 2001(Cth) requires a court to stay proceedings where they involve determination of a matter that is capable of being settled by arbitration pursuant to an arbitration agreement. Slicer J also referred to the *Commercial Arbitration Act* 1986 (Tas) and concluded that its general purport was similar to the Commonwealth legislation, although it is expressed in discretionary terms. His Honour noted at paragraph 29:

> A court ought not decline to refer a matter for arbitration unless it is satisfied that there is good reason to permit the issue to be litigated in the court.

Slicer J ordered that the stay should be granted in respect of the matters between Origin and Benaris that are capable of resolution by arbitration. However, he refused to stay the Woodside proceedings. His Honour noted that the outcome of the arbitration proceedings between Origin and Benaris might automatically determine Woodside's interest in the exploration permit, but concluded that this outcome is not inevitable and that certain rights claimed by Woodside are not dependent on it.

In his reasoning His Honour emphasised that determination of the dispute will involve interpretation of terms by reference to industry practice and experience and the application of technical expertise, experience or specialist knowledge on the part of the fact finder. He added at paragraph 32:

> The parties specifically referred to a specialist tribunal as being the appropriate institution to determine disputation. The oil and gas industry is trans-national and presumably requires some degree of consistency in its operations, terms and methods of ascertaining respective rights and obligations arising within that industry…

In his analysis of the dispute, His Honour concluded that the claimed breach was internal to the contract and did not involve matters external to the text. Hence certain aspects of the matter were susceptible to resolution by arbitration. However, because some of the matters pleaded by Origin did not come within the ambit of an arbitration matter, it may be necessary to impose conditions to ensure that Origin would not be further prejudiced by any delay by Benaris in proceeding with the arbitration. The parties were invited to consider the matters that should be referred to arbitration and those that should be considered by the court.

ARBITRATION - SUBMISSION AS A DEFENCE AND AS A GROUND FOR STAY OF PROCEEDINGS - WHETHER DISPUTE IS A "MATTER AGREED TO BE REFERRED TO ARBITRATION" OR CAPABLE OF ARBITRATION

***Origin Energy Resources Limited v Benaris International NV & Anor* (No 2) [2002] TASSC 104 (22 November 2002)**

(Supreme Court of Tasmania; Slicer J*)*
This case involves the same matter as outlined in the above case note. It arose out of the invitation by Slicer J for the parties to consider conditions that might be imposed resulting from the order to stay the proceedings. Since the parties were unable to reach agreement, Slicer J was required to consider the matter further. His Honour concluded that such matters as the terms of the agreements between Origin and Benaris, performance, international practice, technical issues and the determination of contractual rights and obligations were susceptible to arbitration. However, other matters, particularly equitable issues involving both Origin and Woodside, are the province of the court (see paragraphs 53-56 of Slicer J's judgment).

An application for summary judgment by Woodside is still pending.

VICTORIA

INDUSTRY QUALITY STANDARD DEFINITION AND INTERPRETATION - COMMERCIAL ARBITRATION ACT 1984 (VICTORIA)[*]

***Qenos Pty Ltd v Mobil Oil Australia Pty Ltd (No1)* [2002] VSC 379**

Background facts

Qenos Pty Ltd ("**Qenos**") made an application to the Supreme Court of Victoria seeking leave (pursuant to section 38(4) of the *Commercial Arbitration Act* 1984 (Victoria)) to appeal against an interim arbitration award made on 12 June 2002.

The arbitration arose out of a dispute which had arisen between Qenos and Mobil Oil Australia Pty Ltd ("**Mobil**") with respect to the purchase by Mobil's Altona oil refinery of certain chemical coproducts produced by Qenos at its petrochemical manufacturing plant.

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