LEGAL ISSUES EMERGING FROM THE GROWTH OF THE COAL SEAM GAS INDUSTRY IN QUEENSLAND

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The coal seam gas industry in Queensland has expanded rapidly in the last decade from a relatively insignificant energy source to its position today as a reliable supplier of over 25% of Queensland's gas market. This expansion is due to technological advances, greater financial commitment to the industry, reduced costs, environmental advantages and a favourable legislative regime that encourages gas fired power generation.

This paper will outline the legal issues that have emerged from the rapid growth of the CSG industry, the practical implications of the new legislative regime and the legal obstacles that still need to be addressed.

1. INTRODUCTION

The coal seam gas industry in Queensland has been expanding at a rapid rate for the past 10 years. This expansion placed significant pressure on a legislative regime that had been in force for more than 80 years and did not consider the possibility of coal and petroleum tenure overlapping.

It has now been over 1 year since Australia's most comprehensive legislative regime regulating the exploration and production of petroleum came into force. Queensland's new petroleum regime, in the form of the *Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**) and the *Petroleum and Other Legislation Amendment Act 2004,* was long anticipated and was introduced to provide certainty and stability to enable the development of Queensland's significant coal seam gas and coal resources.

Since the new petroleum regime's commencement the CSG industry has continued to expand due to new drilling technologies, greater market opportunities and the encouragement of government through the Queensland 13% gas scheme and green credits. The new petroleum regime is a significant upgrade from the former *Petroleum Act 1923* (1923 Act) which did not contemplate the overlap between coal and petroleum tenure which is inherent in the coal seam gas industry.

There has been much discussion of major parts of the new petroleum regime both before and after its commencement. However, it is not surprising that several important and at times forgotten provisions hide within the 900 odd pages of new legislation.

This paper discusses the important water disposal and landowner compensation provisions and briefly revisits and provides an update on the more talked about areas such as coordination arrangements, relinquishments and potential commercial areas (which are also referred to as PCAs).

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2. PRODUCTION WATER

CSG is extracted by removing water from a coal seam. The removal of the water reduces the pressure in the coal seam and allows the CSG to be released from the cleats[1] (the process is known as dewatering). While no two wells or coal seams behave identically, an average CSG well in the Surat Basin can extract between 140,000 and 470,000 litres of water per day during dewatering and an average CSG well in the Bowen Basin can extract between 80,000 and 160,000 litres a day.

With the rapid expansion in the total number of CSG wells drilled from 72 in 2000-2001 to 167 in 2004-2005[2] there has also been a large increase in the amount of water that is extracted. What is done with this water is an important management issue for the petroleum tenure holder as the on-supply of the water to landowners, industry or town councils can help establish a long term and mutually beneficial relationship.

Water extracted during the course of extracting CSG (or another authorised activity for the tenure) is referred to as "associated water" under the P&G Act. A petroleum tenure holder that is desirous of on-supplying associated water must comply with the provisions of each of the P&G Act, the *Environmental Protection Act 1994* (EP Act) and the *Water Act 2000* (Water Act).

Unlike water extracted by a landowner via a water bore, associated water is considered to be a regulated waste for the purposes of the EP Act.[3] The storage, treatment, processing or disposal of a regulated waste is an "environmentally relevant activity"[4] which requires the person proposing to undertake the activity (the petroleum tenure holder) to apply for and be granted an environmental authority that authorises the activity[5]. The holder of a petroleum tenure that extracts water from a coal seam is required to obtain an environmental authority to allow the holder to dispose of or on-supply the associated water.

It is beyond the scope of this paper to examine the quality of the water extracted or the potential uses that may be made of it. However, the P&G Act and the amendments to the Water Act have established a detailed and comprehensive regime that regulates the on-supply of water from petroleum tenure and imposes obligations on petroleum tenure holders to monitor and make good any impacts that the extraction of water has on underground water reservoirs within the area of the tenure.[6]

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1 Department of Natural Resources, Mines and Water fact sheet M2.

2 Queensland Government Mining Journal, Vol 103 No 1221 December 2005.

3 "Regulated waste" is defined very broadly under the EP Act and effectively means any non-domestic by-product of another activity (or material surplus to another activity) which has one of the properties set out in schedule 7 of the *Environmental Protection Regulation 1998* (which includes chlorates, arsenic, boron and acid or alkaline solutions) and whether or not the material has value. The EPA and DNRMW have taken the view that water extracted from coal seams during the extraction of CSG is considered a regulated waste.

4 Schedule 2 part 37 EP Act.

5 S426(1) EP Act states that a person must not carry out a petroleum activity that is a level 1 environmentally relevant activity (the disposal of a regulated waste is a level 1 activity under part 75b, schedule 1 of the *Environmental Protection Regulation 1998)* unless the person holds, or is acting under an environmental authority (petroleum activities) for the petroleum activity. Maximum penalty for a corporation — $150,000.

6 Chapter 2, Part 4 P&G Act, Chapter 2 Part 9 P&G Act, s206A of the Water Act 2000.

The P&G Act grants the holder of petroleum tenure the right to extract associated water providing the extraction happens during the course of or results from the carrying out of an authorised activity for the tenure[7]. The P&G Act prohibits a petroleum tenure holder from drilling a water bore which is not for the purposes of an authorised activity. Once the water is extracted, the holder may use the water for the holder's authorised activities or on-supply the associated water to the owner or occupier of land within the area of the tenure or land that adjourns land in the area of the tenure provided the owner of the joining land is the same owner of the land within the area of the tenure.[8] However, the associated water on-supplied can only be used by the owner or occupier of the land for stock or domestic purposes.

The Water Act was amended with the introduction of the P&G Act to enable a petroleum tenure holder to apply for a water licence to on-supply associated water for all other purposes that are not expressly authorised under the P&G Act.

Probably the most notable amendment to the Water Act was the inclusion of a regime which acknowledges that the extraction of associated water may impact on land owners' ability to extract water from the same aquifer. The Water Act places conditions on a water licence granted to a petroleum tenure holder requiring the tenure holder to supply stated volumes of water to persons who have applied for, but have been refused, a water licence to take underground water because of the petroleum tenure holder's activities (known as the priority group).[9]

Once the water licence is granted, the petroleum tenure holder can on-supply the water but must not charge a fee to the recipient of the water unless the petroleum tenure holder is registered as a water service provider under the Water Act.[10]

In addition to the Water Act acknowledging that persons within the area of an aquifer where petroleum activities are taking place may be refused water as a result of the petroleum activities, the P&G Act places a general obligation on petroleum tenure holders to ensure that they:[11]

(a) undertake restoration measures to restore the supply of water to the owner of the bore; or

(b) compensate the owner of the bore for being affected by the dewatering.

This "make good" obligation as it is referred to in the P&G Act is not restricted to the area of the petroleum tenure or the property on which the petroleum activities are being undertaken. The make good obligation includes the extent of the underground aquifer that the petroleum tenure holder is dewatering. Any bores that have been unduly affected as a result of these activities must be made good by the petroleum tenure holder.

A bore is considered to be unduly affected if the drop in the level of water in the bore because of the exercise of the water rights for a petroleum tenure is more than a trigger threshold for the

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7 s185(1) P&G Act.

8 s186 P&G Act.

9 s214(2)(g).

10 s370 Water Act 2000.

11 s250(1) of the P&G Act imposes the make good obligation on any existing Water Act bore that is *unduly affected* by a petroleum tenure holders activities.

aquifer set by the Chief Executive of the Department of Natural Resources, Mines and Water (NRMW).[12]

The aquifer from which a petroleum tenure holder is dewatering may be a significantly large area. The broad obligation to make good affected bores places a significant burden on the petroleum tenure holder to identify and monitor bores within the aquifer that may be affected by the petroleum tenure holder's activities.

In order to ascertain if bores within the aquifer will be unduly affected the petroleum tenure holder may request that the Chief Executive of NRMW set a trigger threshold for the aquifer from which they are dewatering.[13] This trigger threshold will be the water level drop in the aquifer that the Chief Executive considers will be a level that causes a significant reduction in the maximum pumping rate for the bores in the area affected.

In fixing the trigger level, the Chief Executive must consider the permeability and geology of the aquifers and the water levels in the aquifers. The petroleum tenure holder must be given a reasonable opportunity to make submissions about the trigger threshold proposed by the Chief Executive.

The P&G Act does not provide any detail on how the Chief Executive will obtain the information necessary to determine the trigger level, nor how the Chief Executive will determine the nature and extent of the aquifer.[14] However, the Chief Executive may ask the petroleum tenure holder to give the Chief Executive documents or information the Chief Executive reasonably requires to fix the trigger threshold.[15]

If the trigger threshold is reached and the landholder is no longer able to use the bore for the purpose or to the potential that it was used prior to CSG extraction, then the petroleum tenure holder must "make good" the bore.

The new petroleum regime gives the petroleum tenure holder two options to make good a bore which has been unduly affected by the petroleum activities.[16]

First, the petroleum tenure holder may undertake restoration measures to ensure that the bore will no longer have an impaired capacity. This may be done by deepening the bore or by providing the landowner with an alternative and equivalent supply of water. Second, the petroleum tenure holder may pay reasonable compensation for the loss of value of the owner's land on which the bore is located; the loss of use the owner has made, or may make, of water from the existing bore; or any cost or loss the owner suffers that is caused by the impaired capacity of the bore.

The inclusion of the make good obligation places significant scientific and factual obligations on the Chief Executive in order to determine trigger thresholds for aquifers. Such a requirement is burdensome on the Chief Executive and NRMW as it is required to set a trigger threshold for

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12 ss246 and 253 P&G Act.
13 s253 P&G Act.
14 s254(2)(a) and (b) P&G Act.
15 s254(2)(C) P&G Act.
16 s250(1) P& G Act.

every aquifer from which a petroleum tenure holder is extracting water.[17] While there is no specific obligation on the Chief Executive to prepare a trigger threshold for each aquifer, every petroleum tenure holder must prepare and lodge an underground water impact report which states the trigger threshold determined by the Chief Executive for aquifers in the area affected by the activities of the petroleum tenure holder.[18] The only way a petroleum tenure holder can obtain this information is by requesting the Chief Executive to set a trigger level for the aquifer.[19]

A petroleum tenure holder must lodge an underground water impact report for the aquifer from which they are dewatering by the date by which the petroleum tenure holder is first required to lodge a royalty return for petroleum production on their lease or in the case of an ATP, 20 business days after the end of the first year of petroleum testing. The report must detail:[20]

(a) the trigger threshold (determined by the Chief Executive) for aquifers in the area affected by the dewatering;
(b) an underground water flow model;
(c) the area of aquifers predicted to be affected;
(d) the bores within the area that may be affected;
(e) an estimate of when each bore will become affected;
(f) details of a monitoring program; and
(g) other information and matters prescribed under regulation.

The petroleum tenure holder is then required to monitor the aquifer and review the predicted effect that their activities will have on the underground water impact report to demonstrate that the report continues to be appropriate.

While the new CSG regime has introduced novel and burdensome provisions regarding the production of water from CSG wells, we are yet to see how these provisions will be implemented in practice. With the continued expansion of the CSG industry and the greater impacts that petroleum production may have on underground water aquifers it is likely that these provisions will place significant long term monitoring obligations on both the petroleum tenure holder and the Chief Executive.

3. COORDINATION ARRANGEMENTS

Probably one of the most discussed and published topics of the new coal seam gas regime is the coordination arrangement. The purpose of this paper is not to provide a review of the legislative provisions which give rise to coordination arrangements,[21] but rather to provide some practical considerations for negotiating coordination arrangements and to provide an update on recent developments.

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17 s253(2) P&G Act.
18 s257(1)(a) P&G Act.
19 s253(2)(a) P&G Act.
20 s257(1) P&G Act.
21 The legislation regime that gives rise to coordination arrangements was discussed in *Coordination Agreements for Coal Seam Gas*, McGann [2005] AMPLA Yearbook 380 and *A Conceptual Comparison Between Unitisation Under Australian Petroleum Legislation and Coordination under the Petroleum and Gas (Production and Safety) Act 2004*, Grover, (2005)24 ARELJ 331.

The coordination arrangement is a product of the P&G act's focus on consultation and agreement to ensure, if it is commercially and technically feasible to do so, that petroleum leases and coal mining leases can co-exist in order to optimise the commercial production of coal, oil shale and petroleum resources in a safe and efficient way.[22]

There are six types of coordination arrangements described in the P&G act and the *Mineral Resources Act 1989* (MRA):

- **Co-extensive reservoir production** – this type of coordination arrangement is required where production of petroleum from the co-extensive reservoir impacts on an adjacent petroleum lease or mining lease.[23]

- **Overlapping leases** – this is undoubtedly the most discussed and common form of coordination arrangement. A production tenure for coal cannot be granted within the area of a production tenure petroleum (and vice versa), under any circumstance, unless a coordination arrangement is entered into.[24]

- **Production lease application within the area of an exploration tenement** – this is a voluntary application to provide for the coordinated production of petroleum and coal from overlapping tenures and will normally be entered into to allow the grant of production tenure in the future.[25]

- **Co-ordinated petroleum production** – these coordination arrangements are similar to the unitisation agreement which is common in the petroleum industry. It provides for coordination of petroleum production from more than one natural underground reservoir for more than one lease.[26]

- **Subleasing** – two persons who propose to obtain a lease may enter into a coordination arrangement for the orderly production of petroleum from more than one natural underground reservoir or the carrying out of an authorised activity for any of the leases by any party to the arrangement.[27]

- **Pipeline over tenure** – two persons may also enter into a coordination arrangement where one of the parties to the arrangement is to be granted a pipeline license to transport petroleum or prescribe storage gas on land subject to a petroleum lease.[28]

Despite the numerous situations in which a coordination arrangement may be agreed and the compulsory requirement for a coordination arrangement in order for a pl or ml to be granted over a production tenure of the other resource, only two coordination arrangements have been approved by the minister to date. In order to further encourage parties to enter into coordination

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22 s295(h) P&G Act.
23 s114 of the P&G Act and s318CQ of the MRA.
24 s350 of the P&G Act and s318CB of the MRA.
25 s321 P&G Act and s318AP MRA.
26 s324(2)(b) and s121(2)(b) P&G Act.
27 s234(3)(c)(i) P&G Act.
28 s234(3)(c)(ii) P&G Act.

arrangements for petroleum and gas production and coal mining and to help explain the process, NRMW have released draft guidelines for the preparation of coordination arrangements.[29]

The P&G Act and the draft NRMW guidelines provide the framework and guidance for petroleum tenure holders and coal miners to enter into coordination arrangements but the driver for both parties is commercially and technically orientated.

Practical experience in the negotiation and drafting of coordination arrangements has identified a number of commercial and technical factors that need to be discussed by petroleum and coal tenure holders prior to entering into a coordination arrangement. These include:

- what seam(s) will both tenure holders be targeting and will the coal extraction be by way of open cut or underground mining;
- what timing do the parties intend for the extraction of their resource of interest;
- which tenure holder was first in time and what are the commercial drivers for that party to consent to the grant of another tenure within the area of its current production tenure;
- what are the safety issues that need to be considered by both parties and what is the likelihood that a coordinated safety management system can be agreed;
- which party will be responsible for compensation and rehabilitation obligations within the area covered by the coordination arrangement; and
- is it commercially and technically feasible for the parties to enter into coordinated production.

There has been relatively little activity with respect to coordination arrangements in Queensland in the first year and a half since the commencement of the new petroleum regime, however, it is likely that over time both coal seam gas producers and coal miners will take advantage of the flexibility that these arrangements bring in enabling co-production from the same area.

4. LAND OWNER COMPENSATION

4.1 New Compensation Provisions

Less than 2 years after the first comprehensive and authoritative judicial statement in 80 years on the operation of the compensation provisions for petroleum in Queensland in the *Sullivan* case,[30] the P&G Act and the amendments to the 1923 Act introduced a new and clear landowner compensation regime.[31] This was achieved by making the compensation provisions, particularly in

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29 The Department have released the draft guidelines to select industry bodies including the Australian Coal Seam Gas Council and the Queensland Resources Council. The author understands that the Department will be releasing the draft guidelines for public consultation on the Departmental website <www.nrm.qld.gov.au> in the near future.

30 *Sullivan v Oil Company of Australia Ltd & Anor* [2003] QCA 570 (03/1334). Among other things, the court of appeal held that injurious affection is not a head of compensation payable to landowners under the 1923 Act.

31 *Hansard* – Tuesday 28 September 2004. Mr Seeney MLA noted: I am particularly pleased that the landowner compensation provisions have been substantially rewritten so that they now essentially align with the principles of compensation under the Mineral Resources Act. It was clearly ludicrous to have a

defining what is a compensable effect, aligned with the compensation provisions of the MRA.[32] The most obvious effect of this alignment was the endorsement that injurious affection is a head of compensation payable on petroleum activities. The legislature clearly wanted to apply the same compensation provisions to petroleum as those that apply under the MRA, such as injurious affection.

With the rapid expansion of the CSG industry in Queensland there has been an increase in compensable events which result from the overlap of petroleum exploration or production and private land. Despite the expansion, there have been only six matters that have been referred to the Land and Resources Tribunal (LRT) for determination since the commencement of the new compensation provisions on 31 December 2006.[33] Of these cases, two were applications to strike out compensation proceedings by the landowner,[34] two were applications by the petroleum tenure holder to have compensation determined under the former compensation provisions of the 1923 Act and two were applications for determinations of compensation under the P&G Act. So what do these decisions tell us about the new compensation regime?

Put simply, not much that we didn't already know.

First, and not surprisingly, petroleum producers prefer that compensation be determined under the former provisions of the 1923 Act which, as was noted by the Court of Appeal in *Sullivan*, did not allow for a claim for injurious affection. In *Re Queensland Gas Company Ltd v Apel*[35] the LRT was asked to determine if an application to the tribunal to determine compensation prior to the commencement of the new CSG regime amounted to a right to compensation under the old compensation provisions of the 1923 Act. Koppenol P found that an application to determine compensation amounted to an inchoate or contingent right to compensation and was no longer only a prospect or hope of compensation[36] (as is the case prior to the petroleum tenure holder entering upon the land or applying to the LRT). As a result of the decision, if an application to determine compensation was made prior to the commencement of the new regime then the compensation payable for activities contemplated under the application must be determined under the old provisions, even if those activities take place after the commencement of the P&G Act on 31 December 2004.

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different set of compensation provisions under the Mineral Resources Act and the Petroleum Act. The fact that they have been brought into alignment will put an end to a lot of confusion that has existed in the landholding community when they are confronted with the possibility of explorers exploring on their land. The new process provides for a uniform compensation regime for both the petroleum and mining industries and is far more comprehensive than what existed under the old Petroleum Act. What existed under the old Petroleum Act was clearly outdated and clearly unable to take account of the activities that are now part and parcel not only of exploring for petroleum and gas but also of producing petroleum and gas.

32 Explanatory Note of the *Petroleum and Gas (Production and Safety) Bill* 2004 [at page 131].

33 *Re Tipperary Oil & Gas (Australia) Pty Ltd & Shelton* [2005] QLRT 13 ; *Re Tipperary Oil & Gas (Australia) Pty Ltd & Shelton* [2005] QLRT 17; *Tipperary Oil & Gas (Australia) Pty Ltd & Ors v Shelton* [2005] QLRT 145; *Re Queensland Gas Company Ltd & C.A. Apel* [2005] QLRT 25; *Re Tipperary Oil & Gas (Australia) Pty Ltd & S.R. Guthrie* [2005] QLRT 69; *Re Tipperary Oil & Gas (Australia) Pty Ltd & J.M. Guthrie* [2005] QLRT 70.

34 *Re Tipperary Oil & Gas (Australia) Pty Ltd & Shelton* [2005] QLRT 13 ; *Re Tipperary Oil & Gas (Australia) Pty Ltd & Shelton* [2005] QLRT 17.

35 [2005] QLRT 25.

36 2005] QLRT 25 at 10.

Koppenol P reinforced this view in *Tipperary Oil & Gas (Australia) Pty Ltd & Ors v Shelton*[37] where he noted:[38]

> If Parliament had intended that the former compensation regime would only apply to cases where a compensable activity (such as the construction of a road or the drilling of a well) had occurred prior to 31 December 2004, it would surely have been a simple task to have drafted the section accordingly. That was not done and I am unable to see why any such limitation should be placed upon the broad terms which were actually chosen.

Second, and even less surprising, landowners would generally prefer that compensation be determined under the new compensation provisions of the P&G Act. In the two cases between *Tipperary Oil & Gas (Australia) Pty Ltd & Shelton*[39] the landowner applied to the LRT to strike out the application by the petroleum tenure holder to determine compensation that was made prior to the commencement of the P&G Act. Both applications were dismissed on technical grounds.[40]

Third, while the LRT has made two determinations of compensation under the new provisions of the P&G Act,[41] the decisions give no real guidance as to the applicability of the new provisions including a claim for injurious affection. The determinations of the LRT only applied to compensation for seismic survey work and determined compensation at $357.50[42] and $467.50[43] respectively.

Given the obvious alignment of the compensation provisions of the P&G Act with those of the MRA and the ever increasing expansion of the CSG industry that is likely to trigger compensable events under the P&G Act, it is timely to review recent developments in the landowner compensation provisions of the MRA.

Queensland courts have established a body of case law to guide tenure holders in interpreting the landowner compensation provisions of the MRA.[44] In particular, significant attention has been given to the "heads of compensation" available.[45]The 2004 decision of Koppenol P in *Australian Diatomaceous Earth Pty Ltd and Marsterson*[46] handed down after the Court of Appeal's decision in *Sullivan* has further clarified the compensation provisions of the MRA. The decision in *Marsterson* departs from previous case law.

4.2 Costs of valuation fees and legal expenses

Prior to the decision in *Marsterson*, it was widely considered that the valuation and legal costs accrued by the landowner whilst preparing a compensation claim were recoverable under the

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37 [2005] QLRT 145.
38 [2005] QLRT 145 at 10.
39 [2005] QLRT 13 and [2005] QLRT 17.
40 [2005] QLRT 13 at 7 and [2005] QLRT 17 at 10.
41 s531 P&G Act. See *Tipperary Oil & Gas (Australia) Pty Ltd & S.R. Guthrie* [2005] QLRT 69; *Re Tipperary Oil & Gas (Australia) Pty Ltd & J.M. Guthrie* [2005] QLRT 70.
42 [2005] QLRT 70 at 13.
43 [2005] QLRT 69 at 5.
44 ss279-283.
45 This term is used to describe the compensation provisions found in s281(3)(a)(i) to (v) of the MRA.
46 [2004] QLRT 49.

MRA. However, President Koppenol in *Marsterson* applied similar reasoning to that of the Court of Appeal in *Sullivan* by finding that these items are not recoverable under the MRA.[47] Koppenol P followed his reasoning in *Marsterson* in *Junior Mining (Operations) Pty Ltd (now called Australis Mining Operations Qld Pty Ltd) & Schmidt.*[48] This decision is currently under appeal.

4.3 Discrete Heads of Compensation?

The Land Appeal Court in *Zimmerebner v Hawkins*[49] followed the earlier Land Appeal Court decision of *Wills v Minerva Coal*[50] and held that the heads of compensation available under the MRA are to be collectively taken into account by the court when determining compensation. As an example, a valuer assessing the impact of the grant of a mining lease would not attribute an individual amount to each head of compensation but would arrive at a monetary amount by considering the collective effect of the proposed mining lease giving consideration to all of the heads of compensation.

However, Koppenol P did not follow this approach in *Marsterson* and noted that the separate heads of compensation require a separate monetary attribution.[51] In deciding not to follow the "collective" approach of the Land Appeal Court, Koppenol P cautioned that care must be taken to avoid compensating more than once for a particular component. This finding of the LRT is significant as it is now clear that a party applying for a determination of compensation under the MRA and presumably the P&G Act must specifically address each head of compensation for which it wishes to make a claim in order for the claim to be successful to the greatest possible extent.

It should be noted that the principles espoused by Koppenol P in *Marsterson* have not been tested on appeal and it is therefore a matter for the reader to determine whether these principles should be followed. However, in the author's opinion the principles are soundly based and are consistent with the provisions of the MRA which give rise to the LRT's jurisdiction.

5. RELINQUISHMENT CONDITIONS AND PCAS

Prior to the commencement of the P&G Act, relinquishment conditions were imposed on an ATP by the ATP instrument which detailed the timing and number of blocks that the holder was required to relinquish during the term. However, the holder of the ATP could apply to the Minister to vary the terms of the ATP instrument to waive a relinquishment condition.[52] It was common for the Minister to approve the variation application if the tenure holder agreed to increase its expenditure in the following year.

The P&G Act and the 1923 Act now impose legislative relinquishment conditions on the holders of ATPs that cannot be reduced by Ministerial approval. The new relinquishment provisions are:

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47 [2004] QLRT 49 at 6.
48 [2004] QLRT 131.
49 (1999) 20 QLCR 11.
50 (27 November 1998, not reported).
51 [2004] QLRT 49 at 5 and 7.
52 s19 1923 Act.

(i) from 31 December 2004 until the end of the current term of an ATP the holder must continue to relinquish in accordance with the relinquishment conditions imposed in the ATP document;[53]

(ii) in addition to paragraph 1, the holder of an ATP must relinquish at least 20% of the total original blocks granted for the ATP;[54] and

(iii) after the first renewal under the new regime the holder must relinquish 8.33% per year of the total original blocks granted for the ATP.[55]

The new relinquishment conditions imposed on ATP holders under the P&G Act and the 1923 Act are intended to make land available for exploration via further tender processes on a regular basis. This is intended to provide opportunities for new explorers with different exploration concepts.[56] As a result of the new provision the entire area of an ATP must be relinquished within 12 years.

The P&G Act acknowledges that the holder of an ATP may not be in a position at the end of the 12 year term of an ATP to apply for a PL but wishes to undertake more detailed production testing of a prospective area. This can be done by applying for and having declared a potential commercial area (PCA).[57] The PCA is not a unique tenure but rather is a declaration made under an ATP that enables the ATP to continue.

Once a PCA is declared, there is no requirement to relinquish blocks within the area of a PCA for up to 15 years.[58] The declaration of a PCA imposes greater obligations on the holder of the ATP. These include the lodgement a commercial viability report to assist the Minister to determine the commercial viability of the proposed area, an evaluation program and additional information regarding the ATP holder's compliance or non compliance with the conditions of the ATP.[59]

The commercial viability report must include among other things estimates of the amount of petroleum in each reservoir, whether it is commercially viable to produce or store petroleum in the area, supporting data and an analysis of the data that supports each opinion.[60]

While there are many benefits for petroleum producers that result from the introduction of PCAs there are a number of drawbacks:

(i) PCAs are not available under the 1923 Act and therefore 1923 Act ATPs must be converted to the P&G Act in order for a PCA to be declared;

(ii) native title must be addressed prior to the conversion of a 1923 Act ATP to the P&G Act; and

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53 s173 1923 Act and s878 P&G Act.
54 s174 1923 Act and s879 P&G Act.
55 s74C 1923 Act and s66(2) P&G Act.
56 Clause 65 Petroleum and Gas (Production and Safety) Bill 2004 Explanatory Memorandum.
57 Chapter 2, Part 1, Division 6 P&G Act.
58 s92(1) P&G Act.
59 s89 P&G Act.
60 s231 P&G Act.

(iii) a PCA is declared at the discretion of the Minister and that will only occur if the Minister is satisfied that the area is no more than is needed and petroleum production or storage in the area is not, and will not soon be, commercially viable, but is likely to become viable within 15 years.

At this time no PCA has been declared in Queensland. However, as an ATP cannot be granted for longer than 12 years it is likely that ATP holders will take advantage of the benefits PCAs provide as the holders' ATPs reach the end of their terms.

6. CONCLUSION

The initial expansion of the coal seam gas industry in Queensland raised a number of legal issues that were not addressed under the former provisions of the 1923 act.

The Queensland government recognised the deficiencies of the 1923 act and passed Australia's most comprehensive legislative regime regulating the exploration and production of petroleum. The P&G Act and the amended 1923 act have provided a regulatory regime that is capable of encouraging the continued expansion of the coal seam gas industry.

However, the depth of the regime and the benefits that it provides to CSG producers and explorers cannot be fully recognised in its short time of operation. CSG producers need to be aware of their obligations under the legislation and realise the potential benefits that it provides in order to best utilise the regime for future development.