Welcome to the latest edition of Resources Update, Piper Alderman's publication designed to keep you up to date with legal developments that affect the Energy and Resources sectors in Australia.

Update on amendments to **Queensland's financial assurance system**

Queensland's Department of Environment and Heritage Protection (DEHP) has recently announced that it will not proceed with the reforms to the financial assurance requirements for environmental authority holders, proposed in the 'Reform of Queensland's financial assurance system' discussion paper (Discussion Paper) that was released for consultation in June.

The Discussion Paper had proposed the introduction of a new alternative 'pooled fund model' for environmental authority holders for mining, petroleum and gas activities in Queensland (Operators), whereby Operators would be required to contribute to a 'pooled fund' to be used to meet any future outstanding rehabilitation costs.

It had been proposed that under the 'pooled fund model', Operators would still estimate their own total rehabilitation liability (as is the case under the current system), but that these estimates would then be multiplied by a contribution rate which included:

- a contribution rate based on the credit rating of the Operator or its parent company
- a fixed contribution rate applicable to all Operators regardless of their or their parent company's credit rating.

This model had been proposed as an alternative to the existing regime, whereby Operators are required to pay up to 100% of the forecast rehabilitation cost for the project for the year in which those costs are forecast to be the highest (less any applied discount), on the basis that it was considered that there was a low likelihood that all Operators would default on their rehabilitation obligations at the same time, and therefore the Government was requiring that Operators provide a greater level of financial assurance than may be required to meet all outstanding commitments.

Following the receipt of feedback obtained through the consultation process, including criticism of the failure to substantiate the basis for the reforms and the proposed method for the calculation of the contribution rates, as-well as concerns that the State would be exposed to additional risk, the Government has announced that it will not be proceeding with the amendments in the form proposed and is developing a further alternative 'negotiated risk evaluated' framework.

While details as to how this further framework will operate have not yet been published, the DEHP has advised that a further consultation process is anticipated to commence in early 2015.

Future updates on this topic will be provided as further information is made available.

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Reminder: **JORC Code 2012 Updates** commenced 1 December 2014

Mining and exploration companies listed on the ASX are reminded that the final date for the transition to the JORC Code 2012 ended on 1 December 2014, from which time all listed entities will be required to ensure that 'Ore Reserves' are supported by Pre- Feasibility or Feasibility level studies, as appropriate, that include application of Modifying Factors.

This means that entities that do not have operating mines and have not produced Pre-Feasibility or Feasibility level studies, will need to downgrade their Ore Reserves to Mineral Resources. Entities with operating mines will also need to downgrade their Ore Reserves unless they have updated their Life of Mine Plans to contain information at Pre-Feasibility or Feasibility level (or have separately produced Pre- Feasibility or Feasibility level studies, as appropriate).

Any material changes to an Ore Reserve on or after 1 December 2013 will also need to comply with the additional disclosure requirements in ASX Listing Rule 5.9 and clauses 4, 5 and 35 of the JORC Code 2012, including, among other things, the publication of a brief summary of the information in the relevant sections of Table 1 of the JORC Code 2012.

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NSW Coal Seam Gas industry - major new developments proposed

On 13 November 2014, the Baird Government announced a new regime for the regulation of Coal Seam Gas exploration in New South Wales. The new NSW 'Gas Plan' will be introduced into Parliament later this month. It will reset the areas available for Coal Seam Gas exploration in New South Wales and provide for a detailed compensation regime for farmers and other community groups adversely affected by Coal Seam Gas operations. ***Lawyer, Bahar Agar*** *and* ***Law Clerk, Christopher Davies*** *provide an overview of the proposed regime.*

Regulatory developments

Whilst the full details of the new regime have not yet been made publically available, the NSW Government has announced the following policies which will form the backbone of the new Gas Plan:

Landholder Compensation

A compensation regime will be introduced for landholders in respect of Coal Seam Gas (CSG) exploration activities conducted on their property. The amount of compensation will be set by the Independent Pricing and Regulatory Tribunal, with media reports speculating that NSW Chief Scientist and Engineer Mary O'Kane will play an important part of this process. The new Gas Plan is also expected to provide landholders a share of any royalties received by the State from any CSG extracted from their property.

Tendering Process

Under the previous regime, applications are made by prospective CSG exploration companies in relation to sites that potentially hold CSG reserves. This process will be replaced under the new Gas Plan by a government tendering process, where specific areas will be offered by the NSW Government for CSG exploration.

At present 60% of the State is subject to CSG exploration licence applications, which will be replaced by the tender process that will cover approximately 15% of the State. As a result of the changes, existing exploration licence applications will be extinguished and any application fees that have been paid under the previous regime will be refunded.

Under the previous regime, a number of small and medium sized exploration enterprises were able to obtain exploration licences, with little or no investment being made subsequent to their issue. To reduce the number of unused licences already issued under the previous regime, a one-off buy-back of petroleum exploration licences will be conducted by the NSW Government. A new 'Use It or Lose It' policy will also be introduced, with licences facing the risk of being cancelled if serious investment commitments are not observed by licence holders.

Community Benefits Fund

The new Gas Plan will establish a Community Benefits Fund for the benefit of local communities that will potentially be affected by CSG extraction operations. CSG companies will be able to make voluntary payments into the fund that will be matched by the State Government. At present the NSW Government is expected to contribute towards the fund at a rate of one dollar for every two dollars contributed by CSG companies.

Safety Standards

More stringent safety standards will be developed by the NSW Government in relation to CSG operations conducted under the new regime. The higher standards that will be implemented under the Gas Plan will address environmental concerns that have been raised by stakeholders in relation to CSG extraction operations in Australia. In particular, licence conditions will be tailored to address particular risks associated with certain areas and types of activities that will be conducted under a licence.

The NSW Government has indicated that the details of the new compliance regime and the areas that will form part of the new tendering process will be made available after the NSW State election, in March 2015. In the meantime, the existing moratorium on further exploration licence applications is expected to remain in place until October 2015.

Background for the New Proposals

The recent announcement by the Baird Government follows a lengthy review of the CSG industry amidst ongoing public scrutiny of the environmental and social impacts of CSG extraction.

The new Gas Plan was announced in response to the final report of NSW Chief Scientist & Engineer Mary O'Kane, who was engaged in February 2013 by the previous NSW Government to conduct an independent review of CSG activities in New South Wales (CSG Report). All 16 of the recommendations made by Ms O'Kane in the CSG Report are to be adopted under the NSW Gas Plan.

Along with the key measures announced by the NSW Government, Ms O'Kane's report addresses a number of other issues that are likely to be addressed under the new regime:

- Insurance and environmental risk coverage for short and long term impacts from CSG – including coverage for landholders, an environmental rehabilitation fund and a scheme to manage legacy issues will all be implemented.
- Land access arrangements to strengthen protections and benefits for affected communities, particularly in developing practical measures for land valuation and compensation for landholders.
- Designated areas for CSG development, as opposed to the current system whereby the whole State is open to CSG, with the exception of certain areas which are restricted - notably residential zones and wine and thoroughbred regions.

- Full cost of "regulation and support of the CSG industry" is to be covered by fees, levies, royalties and taxes taken from the industry.
- A fair and appropriate system to govern compensation for regional communities and councils, in addition to landholders affected by CSG extraction operations, will be developed.
- The creation of a single independent Regulator with geological and geotechnical expertise, and setting up independent advisors on the complex modelling of groundwater systems to provide a clearer view of sedimentary basins.

A number of legislative changes have already been implemented ahead of today's announcement. In particular, the Protection of the *Environment Operations Act 1997* and the *Protection of the Environment Operations (General) Regulation 2009* were amended, positioning the Environment Protection Authority (EPA) to be the lead regulator for environmental and human health impacts of CSG.

Several developments have also made in respect of land access rights for private landholders affected by CSG extraction activities. On 28 March 2014 the NSW Government announced the 'Agreed Principles of Land Access' that was signed by a consortium of CSG extraction companies, detailing the general principles that will apply in obtaining land access rights for future CSG extraction operations The principles include:

- the recognition of the freedom for landholders to agree or disagree with the conduct of CSG operations on their land
- an agreement to uphold a landholder's decision and to not support attempts by third party groups to interfere with any agreed operations.

A Draft Bill is currently being prepared to implement the NSW Gas Plan, which will be introduced into the Parliament later this month before going into recess for the year.

The *Petroleum (Onshore) Amendment (NSW Gas Plan) Bill 2014*, which will extinguish the 16 existing CSG applications lodged under the previous regime, has already been introduced into the NSW Parliament today.

Piper Alderman will keep a watching brief on the CSG industry and advise interested parties of any developments.

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Amendments to **Emissions Reduction Fund**

On 31 October 2014, the Senate passed the Government's proposed bill to amend the *Carbon Credits (Carbon Faming Initiative) Act 2011* (Act) (with amendments).
As discussed in our April edition of Resources Update, the *Carbon Farming Initiative Amendment Bill 2014* (Bill), forms part of the Government's "Direct Action" policy, the centrepiece of which is the $2.55bn emissions reduction fund (ERF). As part of the ERF, a 'Clean Energy Regulator' (Regulator) will be established who will, among other things, be responsible for conducting reverse auctions and/or tenders for 'eligible offset projects' and will enter into contracts to purchase the Australian carbon credit units (ACCU's) generated from the 'eligible offset projects' that provide the greatest reduction in emissions at the lowest cost (known as carbon abatement contracts).

Amendments to the Bill made during the Senate process and negotiations between the Government and independent senator Nick Xenopohon and the Palmer United Party, among other things:

- provide that, in general, a carbon abatement contract will not have a term of longer than 7 years
- provide the proposed Emissions Reductions Assurance Committee (ERAC) with greater power, by ensuring that the Minister cannot make certain determinations, including varying the methodology for calculating the net amount of carbon dioxide equivalent for a reporting period, if ERAC has advised that the determination does not comply with one or more offset integrity standards
- delay the introduction of the arrangements for 'designated large facilities' until 1 July 2016, from which date they will be required to monitor their greenhouse gas emissions and ensure that their net emissions do not exceed a specified 'baseline' number .

The amended Bill has received some criticism that it does not sufficiently address concerns raised with the original form of the Bill, including by not providing a sufficient incentive for Australia's largest emitters to reduce their emissions and that the arrangements will not enable the Government to achieve its targeted reduction levels, being the reduction of carbon emissions by 5 percent by 2020 (of 2000 levels).

However, as the method for calculating 'baseline numbers' for large facilities and the associated penalties for non-compliance have not yet been published, the practical effect of the amended Act remains uncertain. Accordingly, it's possible that, in light of the recently announced agreement between China and the U.S.A regarding their own targeted emission reductions, the Government may seek to implement more aggressive reduction targets than have previously been mooted. Further updates will be provided once these details become available.

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In other news...

South Australia rejects permanent ban on hydraulic stimulation in favour of enquiry

The South Australian Parliament has rejected a private member Bill from Mark Parnell, *The Petroleum and Geothermal Energy (Hydraulic Fracturing) Amendment Bill* 2014 (SA), which had sought to amend the *Petroleum and Geothermal Energy Act 2000 No. 60* (SA) by imposing a two year state-wide moratorium on hydraulic fracture stimulation for gas. At the end of the two year period hydraulic fracture stimulation was to be banned on farmland and other 'designated zones', including conservation land and residential land.

Instead, it has been proposed that a parliamentary enquiry be undertaken into the potential risks and impacts arising from hydraulic fracture stimulation in the South East of South Australia, including the risks of groundwater contamination, impacts on landscape and the effectiveness of the existing legislation and regulation of hydraulic fracture stimulation.

While the avoidance of a State-wide moratorium will no doubt be welcomed by many, the additional costs and uncertainty associated with such a Parliamentary enquiry (if approved by Parliament) may cause further frustration for the oil and gas industry, given the extensive enquiries that have recently been undertaken by other states and peak bodies and the increasing expectation of the extensive gas shortages expected to be faced on the East Coast of Australia.

Queensland Government to partner on strategic infrastructure investments

The Queensland Government has announced that it will seek to partner with major project proponents by investing directly in strategic infrastructure that may be required to progress those projects.
When announcing the State Government's strategy to make short-term, financial investments in rail, port and/or other infrastructure that is required to develop Queensland's Galilee basin, premier Campbell Newman has emphasised the significant number of additional jobs that could be created.

As the first example of the Government's proposed strategy, the Government has announced the entry into an 'Infrastructure Enabling Agreement' with Adani Mining, whereby the Government will assist in the development of Adani's North Galilee Basin Rail Project (NGBR Project), which will connect Adani's $16.5bn thermal coking coal project to the Port of Abbot Point (bypassing the existing narrow gauge Moranbah line).

The announcement follows recent media speculation concerning Adani's ability to obtain the required funding for the project, notwithstanding that the project has already obtained necessary state and Federal environmental approvals.

Northern Territory call for gas pipeline expressions of interest

The Northern Territory Government has called for expressions of interest for the development of gas pipelines between NT and QLD and/ or South Australia.

The formal call for expressions of interest follows the Governments of NT and New South Wales recently signing of a memorandum of understanding for the promotion of a pipeline connecting the NT and eastern state gas markets and the granting of 'major project' status to the proposed pipeline between NT and the east coast gas grid by the NT Government in October.

While some in the industry have questioned the feasibility of such a pipeline, in addition to providing a significant boost to the NT economy, the agreement, in part, demonstrates the NSW Government's increased realisation of the need to proactively address the much anticipated gas shortages that are expected to face NSW as a result of the recent significant standstill on the development of gas projects in NSW.

Potential for Significant Investor Visa changes to increase investment in E&R projects

Australian energy and resource companies requiring additional capital may benefit from the Federal Government's plans to expand Australia's Significant Investor Visa program (SIV). The changes to the SIV regime, as announced in the recently released Industry Innovation and Competitiveness Agenda (Agenda), are designed to "encourage more high net worth individuals to make Australia home and to *better* direct additional foreign investment."

While the mooted changes are primarily focussed on streamlining and enhancing visa processing so as to increase the attractiveness for foreigners investing and settling in Australia, comments by Australia's Trade and Investment Minister, Andrew Robb, suggest that energy and resources companies may benefit from future changes to SIV. Specifically, Mr Robb has been quoted as saying, *"My view is that we should channel investment into areas of relatively higher risk"*.

Currently eligible SIV investments are limited to Commonwealth, State or Territory government bonds, regulated managed funds with a mandate for investing in Australia and direct investment into Australian proprietary companies (Complying Investments), whereby migrant investors are required to invest at least $5m in Complying Investments for a minimum of four years prior to being eligible to apply for a permanent visa.

While the final form of the changes are yet to be announced, it has been proposed that under the amended SIV arrangements, the criteria for a Complying Investment will amended to introduce a 'premium investor visa' concept, whereby a migrant investor will be able to hold a Complying Investment for a shorter 12 month period prior becoming eligible, provided that the aggregate amount of the Complying Investments are for amount of at least $15m. The changes to the Complying Investments are not expected to come into effect until the first half of 2015, with the PIV scheduled to be introduced from 1 July 2015.

Further details regarding the amendments will be provided as they become available.