NATIONAL HARMONISED REGULATORY FRAMEWORK FOR NATURAL GAS FROM COAL SEAMS

STATE AND TERRITORY FOURTH ANNUAL IMPLEMENTATION UPDATE ON THE NATIONAL HARMONISED REGULATORY FRAMEWORK FOR NATURAL GAS FROM COAL SEAMS

December 2016
BACKGROUND

At the 31 May 2013 meeting, the COAG Energy Council’s predecessor, the Standing Council on Energy and Resources (SCER) endorsed the National Harmonised Regulatory Framework for Natural Gas from Coal Seams (the Framework). SCER agreed that the Framework should not be a static document and noted that it will be updated on a continuing basis by jurisdictions. Accordingly, states and territories (States) report to the COAG Energy Council on their implementation of the Framework on an annual basis.

To ensure that the Framework is current with leading practice across Australia, the States were asked to make suggestions on how the Framework could be improved. These suggestions are included in the update. The States have also been asked to provide updates on achievements and challenges in harmonising their regulations over the previous 12 months and plans for harmonising legislation related to coal seam gas (CSG) and other unconventional gas sources in the year ahead. Work being currently undertaken by the States will inform the review of the Framework being led by the Australian Government as part of the COAG Energy Council’s Gas Supply Strategy Implementation Plan for Collaborative Actions (Collaborative Action 11).

The Framework delivers on a commitment by Australian governments to put in place a suite of leading practice principles, provide guidance to regulators in managing development of CSG and ensure regulatory regimes are robust, consistent and transparent across all Australian jurisdictions. The Framework focuses on four key operational areas of CSG, which cover the lifecycle of development: well integrity, water management and monitoring, hydraulic fracturing and chemical use.

The Framework acknowledges that CSG is, and will continue to be into the future, an important component of eastern Australia’s domestic gas supply. It also acknowledges that as the Queensland liquefied natural gas (LNG) projects commence production and exports in 2015 the industry will contribute substantial export income to Australia’s economy and is already creating jobs and business opportunities in rural and regional areas.

INTRODUCTION

The 2016 annual State and Territory report on the implementation of the Framework provides updates from each jurisdiction. It highlights major achievements and challenges of the previous 12 months.

The major developments related to coal seam and other unconventional gas include:

1. On 1 March 2016 changes came into effect in NSW that brought the Mining Act 1992 and the Petroleum (Onshore) Act 1991 into closer alignment (following legislation enacted in October 2015) in matters to do with the administration of titles and compliance and enforcement.

2. On 30 August 2016, the Victorian Government responded to the December 2015 report of the Parliamentary inquiry into onshore unconventional gas in Victoria by announcing a ban on hydraulic fracturing and unconventional gas exploration and an extension of the moratorium on the onshore conventional gas exploration until 30
June 2020. On 22 November 2016, the Victorian Government introduced a Bill into Parliament to give effect to these measures in legislation.

3. On 14 September 2016, the Northern Territory government announced a moratorium on, and a scientific inquiry into, hydraulic fracturing.


5. The South Australian Parliamentary *Inquiry into Unconventional Gas (Fracking) in the State’s South East* published its final report on 29 November 2016. It recommended fracture stimulation not proceed without a social licence. Not all CSG requires fracture stimulation.

6. Western Australia’s Parliamentary *Inquiry into the Implications for Western Australia of Hydraulic Fracturing for Unconventional Gas* was completed and the final report published in November 2015. In March 2016, the WA Government responded to 12 recommendations made by the inquiry, has accepted in part ten recommendations and has endorsed a fact-based approach to production.

7. The COAG Energy Council Gas Supply Strategy Implementation Plan for Collaborative Actions was agreed (with the exception of Victoria) at the Council’s August 2016 meeting.

NEW SOUTH WALES

The NSW Government had requested the Independent Pricing and Regulatory Tribunal (IPART), as part of the NSW Gas Plan, to recommend benchmark compensation rates for landholders in NSW who are hosting CSG developments. The IPART Final Report was released in December 2015. IPART developed a spreadsheet model to help landholders estimate benchmark compensation rates based on information specific to their own circumstances. The IPART report also recommended that gas companies provide payments and/or in-kind benefits to landholders to share the benefits of gas development.

The Strategic Release Framework for petroleum and coal exploration was enacted in December 2015. Through the framework, an Advisory Body is responsible for recommending to the Minister for Industry, Resources and Energy any new areas to be released for exploration. The Advisory Body will only consider an area for release after an initial assessment of environmental, social and economic factors and community consultation has been undertaken.

On 1 March 2016 changes came into effect that brought the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* into closer alignment (following legislation enacted in October 2015) in matters to do with the administration of titles and compliance and enforcement.

The effect of the changes is to create greater consistency for the administration of exploration, assessment and production titles across all resource types. The changes also harmonised compliance and enforcement provisions between the Petroleum (Onshore) Act
and the Mining Act by providing a wider range of tools to support enforcement of best practice regulatory standards.

The framework for the Community Benefits Fund came into effect in July 2016. Gas companies in NSW can apply to the Minister for Industry, Resources and Energy to establish an authorised local Community Benefits Fund covering the local area in which they are undertaking gas exploration or production.

Community Benefits Funds are to benefit the local community where gas exploration and production occurs. The other objectives of the Community Benefits Fund are to ensure that:

- lasting and mutually beneficial relationships are developed between gas companies and the communities in which they operate;
- local communities are involved in decisions to fund projects in the local communities;
- funding decisions promote community development projects that support local and social enterprise, are transparent and there is accountability for these decisions; and
- efficient, effective and transparent governance and administration arrangements are in place for the Fund.

The NSW Government has committed that for every $2 paid by a gas producer (that holds a petroleum title) into an authorised Fund, the company will receive a $1 rebate on its gas royalties, up to a maximum of 10% of the royalty due in each year. Individuals, organisations or enterprises that seek to deliver local and social community development initiatives in the areas of health, education, environment, economic development and heritage and sport, arts and culture are eligible to apply for funding grants. The Government has appointed the Rural Assistance Authority to administer the Fund.

The NSW Division of Resources and Energy and Geoscience Australia are undertaking environmental research in the Camden region to provide a clearer understanding of any environmental impacts caused by CSG. The Camden environmental monitoring project will use various technologies to measure any seismic activity or potential ground subsidence within the Camden Gas Project area and surrounding region.

In August 2015, the NSW and Commonwealth Governments jointly announced a 3 year investment of $3 million to support expansion of the Gas Industry Social and Environmental Research Alliance (GISERA) into NSW. The establishment of GISERA in NSW responds to Recommendation 12 of the NSW Chief Scientist’s Final Report. The NSW Regional Research Advisory Committee (NSW RRAC) held its first meeting in May 2016. The NSW RRAC will advise on science direction and gaps and technical issues, set the annual budget and approve research projects and provide reporting on performance against key performance indicators. In 2016, the NSW RRAC approved eight projects in NSW and one project that covers NSW and Queensland.

**NORTHERN TERRITORY**

There is currently no CSG exploration activity or applications pending within the Northern Territory (NT). Coal sequences have been identified at depth in the south-east of the Territory, in the area of the Simpson Desert and there is a likelihood companies will be looking to undertake exploration of CSG in the future.
The Hawke (2014) inquiry determined that the NT laws were sufficient for the current level of oil and gas activities in the NT, however recommended legislation be reviewed.

A review of the NT Petroleum Act has commenced and will take into account all unconventional exploration including CSG.

On 4 July 2016 new Environment Regulations were introduced following full public consultation.

The Northern Territory Water Act 2011 is currently being reviewed and as such CSG Water Management impacts will also be considered.

On 14 September 2016 the Chief Minister of the Northern Territory, the Hon Michael Gunner MLA, announced a moratorium on, and a scientific inquiry into, Hydraulic Fracturing of Unconventional Onshore Reservoirs in the Northern Territory (the Inquiry). The moratorium will remain in place until the government has considered the findings of the Inquiry.

QUEENSLAND

There are a number of reforms and initiatives underway within Queensland that will affect CSG explorers and producers in various capacities.

Queensland is developing the Queensland Gas Supply and Demand Action Plan (Gas Action Plan) to address the economic and societal challenges facing the sector. The Gas Action Plan’s vision is for the Queensland gas sector to maximise its potential and be internationally competitive, balance the needs of landholders, local communities and traditional owners while ensuring environmental safeguards are maintained.

A Discussion Paper outlining 29 reform ideas around gas supply and strengthening the sector’s social licence to operate was made available for public consultation during November and December 2016. The Discussion Paper also aimed to generate discussion about gas and what needed to be included in the final Gas Action Plan.

The final Gas Action Plan is scheduled for release in mid-2017. It will provide a holistic and focused plan for Queensland in light of the current industry challenges. It will also be informed by the findings of the many state and federal initiatives.

The Gas Action Plan is being developed by the Department of Natural Resources and Mines in conjunction with the Department of Water and Energy Supply. More information is available at: www.dnrm.qld.gov.au.

In July 2016, the Queensland Government released the inaugural exploration forward plan – the Annual Exploration Program 2016-17 (AEP). The AEP identifies areas to be released for petroleum and gas, minerals and coal exploration for the current financial year via a competitive tendering process. It outlines two sub-blocks (approximately 451 square kilometres) for petroleum and gas exploration near Surat and Injune, which were released for tender on 11 November 2016.
The Surat Basin and Southern Bowen Basin, within which the two exploration areas have been released, are now the state’s primary gas development areas. The basins are serviced by existing infrastructure, with gas pipelines available to support domestic and international markets.


The Mineral and Energy Resources (Common Provisions) Act 2014 (MERCP Act) commenced on 27 September 2016. The MERCP Act applies a consistent restricted land framework for all resource authority types, including petroleum and gas tenures for the first time. The new restricted land framework will apply to petroleum and gas resource authorities applied for and granted after the MERCP Act commenced.

Resource companies who hold an exploration or production resource authority will require the written consent of the landholder before entering land within 200 metres of a permanent building used for a residence or a business or for community, sporting or recreational purposes. Written consent will also be required where seeking to enter land within 50 metres of a cemetery or key agricultural infrastructure such as a principal stockyard, dam, or artesian well. A restricted land distance of 50 metres applies for all other resource authority types (e.g. water monitoring authority or data acquisition authority). There is no obligation on the landholder to give consent.

The MERCP Act also includes a new framework for the management of overlapping coal and coal seam gas resource authorities, which will provide greater flexibility for cooperative arrangements.

The Water Reform and Other Legislation Amendment Act 2014 commenced on 6 December 2016. It amends the way that petroleum explorers and producers can access non-associated water, such as taking water to use for hydraulic fracturing. To date, petroleum tenure holders have had an automatic right to take water for petroleum production, subject to make good obligations under the Water Act 2000. The Act includes a two year transition period, and a five year period for Surat Basin petroleum tenures, after which petroleum explorers and producers will be required to obtain an authorisation under the Water Act 2000 to take non-associated water, except where there is an exemption.

The Water Reform and Other Legislation Amendment Act 2014 also includes changes to Chapter 3 of the Water Act 2000 extending underground water management framework to include certain mining activities. The reforms provide a statutory basis to ensure groundwater impacts from mining activities are ‘made good’. These changes will mean petroleum and mining proponents will be treated equally. Both will be able to take associated water as of right on their tenures, subject to compliance with obligations in Chapter 3 of the Water Act 2000, including make good obligations. Associated water is water as a result of depressurising a coal seam to extract the resource or dewatering an aquifer to establish safe operating conditions for a mine, for example. Some additional improvements were made to the framework, including identifying that a bore may be
impaired by increased gasification as well as by a reduction in water levels, and requires the petroleum tenure holder to meet a landholders’ costs in obtaining hydrogeological advice when negotiating a make good agreement.

SOUTH AUSTRALIA

Upstream petroleum and geothermal energy exploration, development, production and transport in South Australia are regulated under the Petroleum and Geothermal Energy Act 2000 (PGE Act) and associated regulations. The PGE Act features an objective based regulatory regime which applies leading practice and promotes constant improvement.

Under the SA regulatory regime, only after potential risks to social, natural and economic environments during all phases of petroleum operations are robustly addressed, and effective risk mitigation strategies are implemented, are any upstream petroleum operations approved pursuant to the PGE Act. This approvals process involves considerable research and includes an important element of stakeholder consultation which requires the petroleum license holder to demonstrate to State Government regulators that:

- All risks that will adversely affect other users of the land will be avoided; and
- All concerns from potentially affected stakeholders (including land owners, enterprises, cultural heritage and native title groups, community groups, and other Government departments) have been adequately addressed.

SA is currently undertaking a review of the PGE Act as part of a continuous improvement review cycle to address new issues, administrative matters and potential improvements. This review aims to ensure the PGE Act and relevant regulations continue to be modern, efficient and effective in delivering community expectations for a well-regulated and compliant industry.

Furthermore, South Australia (SA) seeks to undertake an independent review of risks and mitigation measures detailed in environmental reports in the interest of community concerns. An independent review is being undertaken through the state Environment Protection Authority on baseline water quality in the South East of SA; this will inform community debate and augment existing risk assessments.

A Working Group under the SA roundtable for oil and gas development was established to provide guidance on efficient and fit-for-purpose water use in the Cooper-Eromanga basins. The SA Government engaged a third party to undertake a water demand-supply model for oil and gas activities in the Cooper-Eromanga basins extending across SA and Queensland. The model provides a baseline framework to enhance the understanding of the various demands for water from geographical areas and specific operational activities to meet water quality needs. Associated with the demands for water, the model assesses the various water supply sources, including raw aquifer water, co-produced water and recycling/re-use. This allows modelling of a future where water co-produced with oil and/or gas production can be optimally used. Volumes of co-produced water are reported in the SA Energy Resource Division’s Annual Compliance reports.
As mentioned in Queensland’s update, SA is in preliminary discussions with Queensland about harmonising regulations related to exploration and production of deep gas and oil in the Cooper Basin, which spans the states’ borders.

TASMANIA

There have been no new developments in Tasmania, with the moratorium on the use of fracking for the purposes of hydrocarbon resource extraction in place until 2020.

Whilst exploration activities for hydrocarbons are supported by current legislation, fracking is not permitted in exploration or in the development or production phases of a resource project.

During the period of the moratorium the Government will consult with stakeholders and monitor developments in:

- National and international policy relating to fracking, including the regulation of potential environmental and public health impacts and issues of land owner notification, consent and compensation;
- Scientific understanding of fracking and industry practices in other jurisdictions potentially relevant to Tasmania;
- Scientific understanding of environmental and public health issues relating to fracking in other jurisdictions;
- Energy needs and market developments;
- Community attitudes; and,
- Any other relevant matters.

A review into the practice of fracking, and possibility of harmonising legislation, will be conducted before the moratorium expires through a process to be determined by the relevant Minister at the time.

VICTORIA

On 30 August 2016, the Victorian Government announced a permanent ban on all onshore unconventional gas activities, including the exploration and development of CSG and hydraulic fracturing. It also announced an extension of the moratorium on onshore conventional gas activities through to July 2020.

On 22 November 2016 the Victorian Government introduced the Resources Legislation Amendment (Fracking Ban) Bill 2016 which aims to:

- ban the exploration for and mining of coal seam gas;
- ban hydraulic fracturing; and
- extend the moratorium on onshore conventional gas exploration and development to 30 June 2020.

The regulations require full chemical disclosure of any fluids used downhole, assessment of risk to water resources and well integrity. The Department of Mines and Petroleum (DMP) published guidelines in relation to chemical disclosure (2013), environmental risk assessment of chemicals (2013) and groundwater monitoring in the onshore petroleum industry (2016).

Also, the regulations require operators to submit environmental plans for approval which ensure environmental risks are being managed appropriately. Summaries of the environment plan are published by DMP at the time of assessment to ensure the public is well informed of a proposed activity.

DMP has completed and publicly released its Regulatory Framework for Shale and Tight Gas which sets out the regulatory framework for managing on-shore shale and tight gas activities, taking a whole of Government approach.

On 17 November 2015, the Western Australian Environment and Public Affairs Parliamentary Committee handed down its report to its “Inquiry into the Implications for Western Australia of Hydraulic Fracturing for Unconventional Gas”

The Committee provided 51 findings and 12 recommendations. The Western Australian Government formally responded to the report’s 12 recommendations in April 2016.

Also, DMP is continually refining its community engagement strategy to provide communities across the State with information on shale and tight gas.

CONCLUSION

Work being undertaken by the States will inform the review of the Framework being led by the Australian Government as part of the COAG Energy Council’s Gas Supply Strategy Implementation Plan for Collaborative Actions (Collaborative Action 11).