Coal Seam Gas in Victoria – open for business?

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Background

The commercial potential of onshore unconventional gas in Victoria is unknown. Exploration for coal seam gas (CSG) is in its infancy, and there are presently no production operations in existence.

CSG activities in Victoria are governed by the Mineral Resources (Sustainable Development) Act 1990 (Vic) (MRSDA), however shale and tight gas are regulated under the Petroleum Act 1998 (Vic) (Petroleum Act). There are currently 16 mineral exploration licences in Victoria that contemplate CSG. There are various reasons for the lack of development of onshore oil and gas in Victoria but some of the key factors include the following:

- Victoria is situated in close proximity to significant low cost conventional oil and gas resources in Bass Strait (the Gippsland Basin) such that it is a net gas exporter to other states.
- There is great uncertainty with respect to the geological suitability of unconventional natural gas from coal seams.
- In response to community concerns, the current Victorian government in August 2012 imposed a hold on approvals for new CSG exploration licences and hydraulic fracturing (fracking) approvals for all existing mineral and petroleum tenures, and this moratorium has been extended until at least July 2015 (Moratorium).

What is excluded from the Moratorium?

The Moratorium measures do not affect the following:

- Exploration activities approved under existing licences that do not involve fracking, such as surveying or drilling of core samples. Drilling itself is not covered by the Moratorium and exploration companies may be permitted to drill or undertake other earth disturbing activities subject to obtaining appropriate government approvals.
- Any approval processes required for work programs that do not involve fracking.
Length of Moratorium

The Victorian Department of State Development, Business and Innovation (DSDBI) recently confirmed no official date has been set for the lifting of the Moratorium. It is likely the Moratorium will remain in place until the endorsed National Harmonised Regulatory Framework (NHRF) for coal seam gas can be properly considered and responded to by the Victorian government.5

Victorian legislation will also be strengthened to ensure better protection for water resources and a more thorough consideration of mixed land use issues.5 The DSDBI has advised that a community consultation process and series of scientific studies are due to be completed by July 2015.7 A major Victorian water study will be undertaken jointly through the Victorian Minister for Water (The Hon. Peter Walsh MP) and the Federal Minister for Environment (The Hon. Greg Hunt MP) which will involve Geoscience Australia. The study’s ultimate objective is to better understand Victoria’s underground water table and aquifers. Thus, the Moratorium is unlikely to be lifted before the completion of this study and the community consultation process.

The National Harmonised Regulatory Framework Process

The NHRF has now been finalised and Victoria is a signatory to this. The NHRF considers leading practice approaches to the regulation of the CSG industry, including water management and monitoring, well design and integrity, fraccing, chemical use and industry and community engagement. This has involved close examination of the experiences of Queensland, New South Wales and overseas jurisdictions with respect to CSG technology and regulation of onshore gas extraction.5

It is hoped the NHRF will be a foundation for continuous improvement in leading practice for CSG, built on the on-going improvement of scientific data. It does not specifically address tight and shale gas however it is expected that many of the NHRF ‘learnings’ will be applicable to other forms of unconventional gas, particularly with respect to fraccing.

Fraccing in the Victorian context

Fracking is certainly nothing new to Australia and has been practiced in the petroleum industry for more than 40 years. Fracking was last carried out in Victoria in 2009 under the former Labor Government.9 Prior to the Moratorium, there were a total of 23 fraccing operations in the Seaspray area of Gippsland, Victoria.10 The reforms introduced as part of the Moratorium have placed a ban (as is already the case in Queensland) on the use of BTEX chemicals (benzene, toluene, ethylbenzene and xylene) in fraccing.

A practical reason for the Victorian Government’s hold on fraccing activity is to avoid a situation where applications to undertake fraccing are approved by the DSDBI but are later found to be inconsistent with any newly introduced standards (that may be implemented post completion of the regulatory reform process).

It is important to note that fraccing may not necessarily be required in all wells drilled in Victoria given the relevant geology (comprising mainly of porous brown coal deposits). By way of comparison, in Queensland, around 8% of existing wells have been fractured since 2000 and between 10-40% may be in the future.11 The need for fraccing in the CSG context will always depend on the geological setting of the resource. In contrast, the extraction of shale gas and tight gas will normally require fraccing.

Reforms and the future for CSG in Victoria

Since the commencement of the Moratorium, the Victorian Government has introduced reforms including a review of the regulatory arrangements against the leading practices (LPs) in the NHRF. The current Victorian legislative framework does not fully meet all of the 18 NHRF LPs (which have been devised to mitigate the potential impacts associated with the development of onshore gas and build a national regulatory regime for the industry). For example, the Victorian Government’s review of the current regulatory arrangements indicates that environmental management plans attached to work plans for CSG exploration and development do not specifically cover environmental risks or specific requirements for fraccing operations as is recommended under the LPs in the NHRF.12

The Gas Market Taskforce was established in December 2012 to provide policy options to the Victorian Government on improving the operation and efficiency of the eastern Australian gas market, amongst other matters. Importantly, the Gas Market Taskforce Final Report (Taskforce Report), released in October 2013, has made the following key recommendations to the Victorian Government with respect to Victoria’s onshore gas industry:

• That it proactively support the development of the onshore industry in Victoria to create a safe and efficient onshore industry, underpinned by leading practice regulation and community engagement;

• Remove the holds on the issuing of new exploration licences for CSG and fraccing, subject to a
package of reforms being adopted, including leading practice regulation, community engagement, information and science to underpin the management of the onshore gas industry in Victoria;¹³

- Take immediate action to implement the 18 NHRF LPs into its regulatory regime. In the short term this may mean addressing the LP requirements by way of conditions attached to (exploration and production) licences or work plans. In the longer term, this will require amendments to both the MRSDA and Petroleum Act (and associated regulations);
- Appoint a Gas Commissioner to engage and consult with landholders and communities with respect to unconventional gas development (prior to removal of the Moratorium);
- Develop a comprehensive water science (involving undertaking detailed baseline assessments of water resources in areas that may be prospective for unconventional gas) and water licensing program; and
- Create incentives for the industry to explore and develop onshore gas such as allowing a ‘royalty holiday’ to reduce project costs.

The overall reform process will be influenced by the recommendations of the Taskforce Report and the DSDBI are requesting public feedback on the Report until the end of March 2014. From April 2014, the Victorian Government will commence a 12 month community consultation process across Victoria to seek community feedback from key stakeholders. The terms of reference for this community consultation process will focus on issues such as the findings of the Taskforce Report; the ability of the existing agricultural industry to co-exist with a possible onshore gas industry; and a better understanding of fracking and its impacts.¹⁴ A report on the consultation process will be publically released in July 2015.

The Taskforce Report¹⁵ notes the Victorian Government has already flagged further ways to improve its regulatory framework for onshore gas by:

- Amending the regulations to the MRSDA to improve their applicability to CSG operations;
- Creating guidelines to assist industry to meet its obligations for CSG and fracking (which will also be applicable to activities under the Petroleum Act). These are currently being drafted by the DSDBI. There are currently no specific requirements related to fracking (such as process monitoring and quality control; public disclosure of chemicals used; and independent monitoring of impacts);
- Extending and enhancing arrangements to enable better coordination between regulatory agencies;¹⁶
- Requiring well operations management plans for CSG operations to align with those that apply to the petroleum industry including formal environmental management plans for all onshore gas exploration (currently only required at the development stage for CSG); and
- Requiring industry to undertake baseline and ongoing environmental monitoring and reporting during the life of operations.

Further and more generally, the Victorian Government is in the process of implementing its ‘responses’ to the Victorian Parliament’s Economic Development and Infrastructure Committee inquiry into the greenfields mineral exploration and project development in Victoria (Inquiry). With respect to CSG, in response to the Inquiry’s recommendations, the Victorian Government has or will (amongst other matters):

- Through the DSDBI, continue a program of broad community engagement in those regions subject to coal seam gas exploration (the level of engagement being determined when exploration and development licences are assessed). The Government intends to revise its policy with regard to what it expects and requires of industry in undertaking appropriate community engagement;
- Provide clearer and more accessible information on the DSDBI website to support the public’s understanding of the nature and scale of any proposed exploration activities; and
- Establish Minerals Development Victoria within DSDBI to provide a single point of entry for project proponents to initiate dealings with government, gain information on approvals, and assess applications for referrals to other agencies.¹⁷

Way forward for Victoria

It is ‘business as usual’ for all existing CSG licences, notwithstanding the restriction on fracking activities. With respect to the grant of new CSG tenure, it is disappointingly clear that not much will happen in this space until after July 2015.
Going forward, a fair degree of community consultation, scientific research, administrative reform, and legislative amendment is to be undertaken by the Victorian Government before the Moratorium can be lifted. It is expected that the Government will not wait until the minerals and petroleum legislation is amended before lifting the Moratorium (as this could take some time) and it may take up the Taskforce Report’s recommendation to place special conditions on licences or work plans, as an interim measure, to align Victorian requirements with the 18 LPs under the NHRF. However, the DSDBI has advised that there are no immediate plans to make changes to existing licences and that any variations to licences are unlikely to be considered until after completion of the community consultation process and the scientific research study.

The Victorian Government announced in late 2013 that it would like all Victorians to read the Taskforce Report and feedback is able to be provided to the DSDBI up until the end of March 2014. This is the first step in the consultation process to provide opportunities for industry players and community to make submissions on the future development of onshore gas in Victoria.

It is doubtful whether the reform process will be sufficiently complete by mid-2015 to enable the Government to lift the Moratorium. The next Victorian State election is to be held on 29 November 2014 and, pending the outcome, this may slow the on-going reforms now in progress.

It is, perhaps frustratingly, a case of ‘watch this space’.

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