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Resources Alert

Mines and Energy Legislation Amendment Bill - a ban on oil shale mining in Queensland?

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As the potential decline of the world's oil supplies continues to be framed as a real issue for redress in the coming years, discussion surrounding potential alternatives and related environmental issues becomes increasingly topical.

One such alternative, oil shale, was the recent subject of what was described as *"one of the more significant pieces of legislation we have seen in the (Queensland) parliament for some time."* [1]

The Mines and Energy Legislation Amendment Bill 2008 (Qld) (the **Bill**), passed on 30 October 2008, makes amendments to various pieces of legislation, most importantly the *Mineral Resources Act* 1989 (Qld) (the **MRA**). The amendments place a 20-year moratorium on oil shale mining in the Whitsundays, as well as broadening the public interest test to effectively enable a ban on all future oil shale mining in Queensland.

This newsletter touches briefly on the amendments as they affect the mining and petroleum industries in general.

Oil shale

The production of oil shale is a commercially untested technology that involves the heating of kerogen-intensive sedimentary rock to produce liquid fuel. The production of oil shale is said to have significant environmental impacts, and is estimated to be considerably more carbon intensive than conventional fuel.[2]

The amendments place a 20-year moratorium on the development of the McFarlane oil shale deposit in the Whitsundays in order to:

> *"allow the Queensland Government to consider the impact of a potential oil shale industry in Queensland and to assess the appropriateness and desirability of the use of the state's oil shale resources before those resources are developed."* [3]

The sole existing lease to mine oil shale, which exists in Gladstone, will however continue.

Public interest test

In addition to the specific ban on oil shale mining in the Whitsundays, the amendments introduce a broader public interest test in respect of all mining tenure, one purpose of which has been expressed to be to enable a general ban on oil shale mining in Queensland.

The MRA has always included a power for the State to reject applications for the grant, renewal or variation of mining claims and mining leases on the basis of public interest. The amendments introduce additional powers to reject applications for the grant, renewal or variation of all mining tenements or impose conditions on such in the public interest. The cancellation of prospecting permits will now also be allowed if in the public interest.

The intention of this broadened power is to provide consistency and to:

> *"allow the Queensland Government to make tough decisions in the public interest to protect Queensland's unique environment, support sustainable and responsible industry development and resolve conflict between competing land uses."* [4]

Although the widening of this test may be made with the express intention of enabling the restriction of oil shale mining in Queensland, no definition of 'public interest' is provided, potentially granting a broad power of discretionary refusal to the State and particularly heightening uncertainty for tenement holders in relation to renewal of their rights.

Other amendments

Further notable amendments made by the Bill are:

- a guaranteed assistance package for Collingwood Park landowners whose properties have been affected by subsidence damage;
- the introduction of a common date for rental payments, so that the due date for payment of annual rent for mining claims, mining leases and mineral development licences is now 31 August;
- clarification that a mining tenement may be held by two or more parties as joint tenants or tenants in common. Where an application does not show how co-owners are to hold their interests, they will be recorded as tenants in common and where shares are not specified, equal shares will be registered;
- a similar amendment to the *Petroleum and Gas (Production and Safety) Act* 2004 (Qld) to clarify that a petroleum tenement may be held by multiple parties as joint tenants or tenants in common; and
- the imposition of a restriction on the flaring or venting of incidental coal seam gas, unless it has first been offered to the holder of any overlapping petroleum lease.

If you would like any further information regarding the proposed changes, please contact the Carter Newell Resources team.

1 Queensland, *Parliamentary Debates*, Legislative Assembly, 29 October 2008, 3201 (Ted Malone).

2 Stuart Smith, *Focus on Australian Shale Oil* (2002) International Energy Agency http://www.iea.org/Textbase/work/2002/calgary/Smithdoc.pdf at 5 November 2008.

3 Queensland, *Parliamentary Debates*, Legislative Assembly, 29 October 2008, 2198 (Betty Kiernan)

4 Queensland, *Parliamentary Debates*, Legislative Assembly, 29 October 2008, 3200 (Rachael Nolan)

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