

SOUTH AUSTRALIA

PETROLEUM BILL 1999 (S.A.)*

South Australia is expected to have a new *Petroleum Act* very shortly.

The *Petroleum Bill 1999 (S.A.)* was introduced into the South Australian State Parliament in November 1999. As at 9 June 2000, the Bill had passed through the House of Assembly with some Opposition amendments, had been read in the Legislative Council and was due for debate in Committee toward the end of June. It is hoped that assent will be received before Parliament rises in the current session.

The Bill is the result of a lengthy process of Government papers and stakeholder consultation from 1996.

The approach to and content of the Bill is quite different from most other petroleum legislation in Australia.

The Bill adopts what is described as an “objectives-based” approach. The Bill is intended to provide a framework which departs from detailed legislative prescription and concentrates more on setting policy objectives against which to test stakeholders’ performance. Examination of the Bill in its current form reveals that the Government’s stated approach is most apparent in the provisions relating to the environment and safety.

This framework requires stakeholders to establish management systems to achieve the desired legislative objectives. This is to be contrasted with the current Act which demands particular isolated outputs for compliance rather than longer term sustainable outcomes. Under a new Act the licensee will be required to audit its practices against the objectives set and report results to Government.

The Bill also attempts to establish a “one stop shop” for stakeholders. This is to be accomplished via understandings reached between the Department of Primary Industries, Natural Resources and Regional Development on the one hand and other relevant departments such as Environment, Heritage and Aboriginal Affairs and Planning S.A. on the other.

Important differences from the existing legislation introduced in the Bill include:

- The introduction of retention licences, modelled on retention leases under the *Petroleum Submerged Lands Act 1967 (Cth)* (“PSLA”).
- The introduction of minor licences such as an associated facilities licence, speculative survey licence and pipeline survey licence.
- The introduction of a “commerciality” criterion, particularly as a qualification for the grant of a production licence. To date, the Government has not indicated what objective tests it will use to assess commerciality (such as those published in guidelines issued under the PSLA). This is of some concern to industry.

* Michael Durrant, Kelly & Co., Adelaide.

- A new restriction on the area of production licences. Area will now be calculated by reference to proved plus probable reserves, rather than proved plus probable plus possible.
- Reference to discoveries of geothermal energy as “regulated resources” covered by the Bill.
- Imposing Producer responsibility for security of supply.
- The separation of activities into low supervision and high supervision, the former attracting less regulation but the latter requiring compliance with more onerous obligations and being subject to more Government scrutiny and approvals.
- Introduction of a dealing approval and registration process for which failure to achieve will render a dealing ineffective.

It is also worth noting that:

- In relation to licence grants, the Bill does not contain an alternative to the right to negotiate process established under the *Native Title Act* 1993 (Cth). This is in contrast to the *Mining Act* 1971 (SA), which contains a State alternative in Part 9B, allowing grant of titles but no operations which would affect native title until authorised. A Bill to replicate Part 9B of the *Mining Act* within the petroleum legislation was circulated for public discussion in 1998 but has since been withdrawn. It is understood that the Government intends to incorporate a State-based alternative scheme in the petroleum legislation at some later time.
- Notwithstanding the Natural Gas Pipelines Access legislation and Part IIIA of the *Trade Practices Act* 1974 (Cth), the Bill addresses third party access to pipelines: a pipeline licence holder may be required to transport a regulated substance on terms imposed by the Minister.

The Bill is expected to be the subject of a more detailed examination and comparison at the forthcoming AMPLA Annual Conference at Fremantle in July 2000.