(a) In the 1997 Order schedule 1 formula, "r" is defined as 90c or such other amount as the Board considers just and equitable in the circumstances of the case. The Coal Compensation Board sought to use 90 cents in the original coal compensation determination. The effect of the Court of Appeal decision and the Consent Order is that 7/8ths of the actual royalty payable under a mining lease is the starting point for calculating "r" rather than 90 cents. For periods up to 30 June 2004, in the case of open cut mines where the mining lease requires payment of a super royalty, the royalty is generally \$2.20 per tonne and in the case of other mines the royalty is generally \$1.70 per tonne. From 1 July 2004, a new royalty system applies in New South Wales and the royalty is 5%, 6% or 7% of the value of coal extracted depending on the method of coal mining used.

(b) Front end payments paid pursuant to mining lease conditions have to be included in the compensation calculation as a just and equitable adjustment.

(c) The effect of directions 3 and 5 above is to accept a weighted average cost of capital (WACC) formula which does not take account of dividend imputation (known as the Officer line 1 WACC) with a cash flow that does not take account of dividend imputation (known as the Officer line 1 cash flow). The two components are therefore matched.

(d) The adjustments to the base discount rate remain. They are used based on the Tribunal finding that actual production from coal mining is asymmetrical and that making adjustments to the base discount rate is the appropriate way of taking account of that asymmetry. There is an agreed qualification to the adjustments which maintains the numerical effect of the different WACC formula which took account of dividend imputation (known as the Officer line 2 WACC) previously used by the Board.

NEW ROYALTY SYSTEM FOR COAL IN NEW SOUTH WALES*

The *Mining Amendment (Royalties) Regulation 2004* changed the base rate of royalty for coal from \$1.70 per tonne to 7% of the value of coal recovered by open cut mining, 6% of the value of coal recovered by underground mining and 5% of the value of coal recovered by deep underground mining with effect from 1 July 2004.

For the above purpose, deep underground mining means mining carried out at a mine in which coal situated at a depth of 400 metres or more is extracted by means other than open cut methods. Open cut mining means mining carried out at a mine in which coal is extracted by open cut methods. Underground mining is defined as mining (other than deep underground mining) carried out at a mine in which coal is extracted other than by open cut methods.

If coal is recovered by the holder of a mining lease by more than one method of mining or if there is a dispute as to the method by which coal was recovered, then the Minister may determine how it was recovered and may determine what value of coal was recovered by what method.

The Minister has made a determination dated 25 June 2004 which has been published in the *Government Gazette* which sets out the manner in which the value of coal is to be calculated.

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* Tony Wassaf, Partner, Allens Arthur Robinson.

The value is to be determined as assessable revenue less allowable deductions during a royalty period. Assessable revenue during a royalty period includes the total price paid or payable for export coal disposed of by the leaseholder being an amount calculated using the free on board (fob) price rate on the basis of invoices or other records provided it is on an arm's length basis plus the amount of any foreign exchange gains in connection with the disposal of coal plus the total price paid or payable for domestic coal on the basis of invoices or other records provided that it is on an arm's length basis plus the amount of any royalty recovered or recoverable from a customer if not otherwise included in the price plus revenue determined by an authorised officer as arm's length basis revenue where the disposal was not on an arm's length basis less any interest received in respect of coal sold on an extended credit basis plus any reconciliation required from earlier royalty returns.

Allowable deductions during a royalty period include the following items exclusive of GST: beneficiation costs ($3.50 per tonne for cycle of full washing, $2 per tonne for simple washing process and 50c per tonne for crushing and screening but not washing), cost of transport to washery when remote (ie further than 3km) from mining lease, cost of transport to train loader when remote from product stockpile, cost of transport from the mine stockpile to the port or end user, cost of ship loading and other port charges, demurrage costs, despatch or other bonuses, coal research levy, mine subsidence levy, Commonwealth levy for long service leave, mines rescue levy, bank commissions incurred in relation to issuing letters of credit for export shipment, ocean freight and insurance for cif sales, export credit insurance, any irrecoverable amount such as bad debts on coal sales and such other charges as may be determined by an authorised officer.

Each of these items is dealt with in more detail in Schedule B to the determination.

QUEENSLAND

QUEENSLAND PARLIAMENT INTRODUCES *PETROLEUM AND OTHER LEGISLATION AMENDMENT BILL*[*]

On 18 August 2004, the Hon Stephen Robertson MP introduced to Queensland Parliament the second significant piece of legislation in several months to impact on the Queensland petroleum and gas industries. The *Petroleum and Other Legislation Amendment Bill 2004* (POLA Bill) amends the *Petroleum and Gas (Production and Safety) Bill 2004* (P&G Bill) and the *Petroleum Act 1923* (1923 Act). Regular readers of the recent developments section will be aware of the introduction of the P&G Bill into Queensland Parliament earlier this year.

The purposes of the POLA Bill are threefold. First, the POLA Bill ensures that holders of exploration tenure granted before 23 December 1996 will continue to enjoy the right to grant of a petroleum lease under the 1923 Act. As the grant of a petroleum lease under the 1923 Act is considered “a pre-existing rights based act” under the *Native Title Act 1993*, the POLA Bill will enable some ATP holders to continue to enjoy the right to grant of a petroleum lease without the requirement to undergo native title processes.

Secondly, to ensure conformity between the new petroleum and gas regime of the P&G Bill and those tenures continuing under the 1923 Act, the POLA Bill amends the 1923 Act to introduce

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[*] Tony Nunan, Partner, Hopgood and Ganim.