KING&WOOD MALLESONS

CSG Regulatory Review Report

9 October 2017

CSG Regulatory Review

This Regulatory Review Report sets out the findings from KWM's review of new and amended legislation and regulations applicable to coal seam gas ("CSG") activities that have come into effect since 31 August 2012.

The reference date for this report is 25 August 2017.[1]

A Stock Take Report: Coal Seam Gas Legislative Review (**2012 Report**) was originally prepared for the Commonwealth Department of Resources, Energy and Tourism by Norton Rose Fulbright and was finalised on 31 August 2012.

In July 2017, King & Wood Mallesons (**KWM**) was engaged by the Commonwealth Department of Industry, Innovation and Science to identify the new and amended legislation and regulation applicable to coal seam gas (**CSG**) extraction that has been enacted since 31 August 2012.

This KWM Regulatory Review Report sets out high level themes and observations in respect of legislative changes since 31 August 2012 for each jurisdiction.

CSG development activities are regulated by Commonwealth, State and Territory laws in each jurisdiction. This KWM report update identifies and summarises the changes in legislation in each of the jurisdictions, consistent with the 2012 Report.[2]

Exclusions

Readers should be aware that KWM was not engaged to identify or review changes to:

- codes, guidelines, policies, orders;
- departmental composition and administrative arrangements;
- memoranda of understanding, bilateral or other agreements; or
- plans, schemes, factsheets, guidance documentation.

In providing this report, the Department requested that KWM make a high level assessment of the extent to which the legislative change in each jurisdiction appeared on the face of the wording to relate to implementation of leading practices 1 to 5 (**LPs**) set out in the Framework.

Leading practices

The Framework suggests that much of the existing legislation (in force at 31 August 2012) is already consistent with the Framework's recommended LPs, but where existing legislation needs to be changed or adapted, it should proceed in a way that is consistent with these identified LPs. Therefore, the purpose of KWM's high level assessment is to assist in determining whether these legislative reforms have adequately considered the Framework's top five LPs and align with the Framework's proposed risk-based approach to regulation.

For completeness, the LPs 1 to 5 in the Framework are:

- **LP 1**: Undertake a comprehensive environmental impact assessment, including rigorous chemical, health and safety and water risk assessments;
- **LP 2**: Develop and implement comprehensive environmental management plans or strategies which demonstrate that environmental impacts and risks will be as low as reasonably practicable;
- **LP 3**: Apply a hierarchy of risk control measures to all aspects of the project;

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[1] Note to the Department: the reference date for this Regulatory Review Report is 25 August 2017 because this is the date KWM last undertook legislative searches for new and amended legislation in each jurisdiction. However, for completeness, this Regulatory Review Repot identifies key developments in the States and Territories after 25 August 2017 in relation to bans / moratoriums on hydraulic fracking.

[2] Note – consistent with the 2012 Report, this Report does not examine Australian Capital Territory legislation. To prepare this report, KWM undertook a detailed legislative review process in respect of each jurisdiction (except for the Australian Capital Territory).

- **LP 4**: Verify key system elements, including well design, water management and hydraulic fracturing processes, by a suitably qualified person; and
- **LP 5**: Apply strong governance, robust safety practices and high design, construction, operation, maintenance and decommissioning standards for well development.

Benefit of Report

This Report is solely for the benefit of, and may only be relied on by, the Commonwealth of Australia. This Report may not, without prior written consent from King & Wood Mallesons, be relied on by any other person.

We look forward to discussing this report with you.

Yours faithfully

King & Wood Mallesons

Key findings

This Report sets out the key findings from KWM's regulatory review of new and amended legislation and regulations applicable to coal seam gas ("CSG") activities that have come into effect since 31 August 2012.

As noted above, this Report also identifies the extent to which the relevant changes appear to have been influenced by the 'leading practices' 1 to 5 for CSG related activities.

Our key findings relate to Commonwealth, State and Territory legislation, which regulates CSG, as well as other relevant laws that apply in respect of unconventional gas in all jurisdictions.

There has been significant regulatory change in most jurisdictions, in particular in relation to environmental and health and safety requirements. Notably, a number of jurisdictions have imposed moratoriums or bans on hydraulic fracturing (WA, Tasmania, NT and Victoria) – and Victoria has further prohibited exploration for or mining of coal seam gas.

1.1. Commonwealth

The significant areas of CSG-related Commonwealth legislative and regulatory reform are:

Topic	Key Development
Environmental approvals	The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) now prohibits any person from taking unauthorised action involving coal seam gas development or large coal mining development with an EPBC Act approval to undertake the action.
Independent Expert Scientific Committee	The Independent Expert Scientific Committee (IESC) has also been formally established under the EPBC Act to provide expert advice to the relevant government officials in respect of proposed CSG or coal mining developments that are likely to have a significant impact on water resources. While the IESC does not approve projects, it plays an important advisory role and will undertake to research and develop standards for the protection of water resources. Reflecting the change in the EPBC Act, the requirement under the *Water Act 2007* (Cth) to undertake an independent expert study to determine the impacts of proposed mining operation on certain groundwater systems has been abolished.
Commission of Inquiry (Coal Seam Gas) (***not confirmed***)	For completeness, we note that on 4 September 2017, the Hon Bob Katter MP introduced a Commission of Inquiry (Coal Seam Gas) Bill 2017 into Commonwealth Parliament. The Bill provides for the establishment of a Commission of Inquiry and invests the Commission of Inquiry with the full powers of a Royal Commission as laid out in the Royal Commissions Act 1902. The Commission of Inquiry, if established, will inquire into the Coal Seam Gas industry (including the negotiating powers of parties involved; impacts on land, water and communities; agreement making and payment for damages and compliance) and report to Parliament. At the date of writing, the Bill has not been voted on by Commonwealth Parliament.

The changes to the Commonwealth regime are aligned with the requirements of LP 1. The legislation is geared towards bolstering environmental impact assessments for CSG related activities – in particular, assessing relevant water risks.

1.2. Queensland

The significant areas of CSG-related legislative and regulatory reform in Queensland are:

Topic	Key Development
GasFields Commission	Establishment of the Queensland GasFields Commission to oversee the onshore petroleum industry (including CSG) and to facilitate better relationships between regional communities, landholders and the onshore gas industry.
New streamlined environmental approval regime	Overhaul of the environmental approval regime for environmentally relevant activities ('ERAs'), including 'resource activities' like CSG projects, such that: • a standard application and assessment process has been introduced to streamline environmental authorities for low-risk ERAs but also to allow for the proper review of significant projects, with uniform and standardised conditions imposed on all authorities relating to similar activities, such as CSG projects; • environmental management plans (which included distinct water management plans), previously required to be maintained as a substantive operating document, are instead incorporated into mandatory information submitted as part of the application process; • any significant (or 'coordinated') projects that require the approval of the Coordinator-General can be approved under a faster and more streamlined approval process (instead of the more comprehensive Environmental Impact Statement process) depending on the scale and extent of such project; and • all applicants for an environmental authority are to be registered as 'suitable operators' (replacing the requirement of holding a registration certificate) before they can lawfully carry out activities under an environmental authority.
Underground water rights	CSG tenure holders can no longer, as part of their rights under exploration / production authorities, take underground water for consumptive purposes (eg. for hydraulic fracturing) – a separate licence under the *Water Act* (Qld) must now be obtained.
Reusing / recycling CSG water	Further changes have been made restricting the management of CSG water – for example, the use of evaporation dams is prohibited under legislation unless it is shown that no other water management technique is feasible. Instead, the Queensland Department of Environment and Heritage Protection now encourages more active use of recycled CSG water for certain approved purposes. This was facilitated by amendments to the *Waste Reduction and Recycling Act 2011* (Qld) and the *Water Supply (Safety and Reliability) Act 2008* (Qld) since 2012 which have been aimed at streamlining and reducing the duplication of regulation in this space. For example, the framework for using waste products for certain approved purposes has been revamped and the CSG-specific provisions in the *Water Supply (Safety and Reliability) Act 2008* (Qld) have been removed to avoid 'doubling up' of regulation.
Overlapping tenure	A new approval and safety regime for overlapping coal and coal seam gas tenures: • The new approval regime does away with the Minister being required to 'pick a winner' when deciding to approve coal mining tenure or coal seam gas tenure in an overlapping area. • Coal miners now have a clear 'right of way' in areas where sole occupancy is required for safe and efficient coal mining operations. This 'right of way' is subject to certain notice requirements (eg. up to 11 years if a CSG production authority has already been granted) and compensation requirements for the holder of the CSG authority. • The exception to this rule is for overlapping tenure in the 'Surat Transitional Area', where coal mining tenure holders cannot commence

Topic	Key Development
	coal mining activities until 1 July 2030. The new overlapping tenure safety regime requires overlapping tenure holders to develop joint safety plans (aka. 'joint interaction management plans').
Competing land use	A new competing land use framework that looks at more broadly managing the impacts of resource activities (ie. CSG) on areas of regional interest (eg. environmental land, priority agricultural land, strategic cropping land and priority urban land). Previously the focus was purely on managing the impacts of resource activities on strategic cropping land. However, certain activities will be exempt where the holder of the CSG tenure has already entered into (and complied with) a conduct and compensation agreement with the landowner, and the activity is not likely to have a significant impact on the priority agricultural area or strategic cropping area (as relevant) or land that is not owned by the relevant landowner.

The changes to the Queensland regime remain broadly consistent with LPs 1, 2 and 5. Although there has been a recent emphasis on reducing 'redtape' or 'greentape' in areas where there is perceived duplication of regulation (for example, the reuse and recycling of CSG water was previously covered by 3 Acts and now it is dealt with by 2 Acts).

1.3. New South Wales

The significant areas of CSG-related legislative and regulatory reform in New South Wales are:

Topic	Key Development
Environmental approvals	The regime now prescribes additional procedures with respect to the grant of a lease or licence for the purposes of mining or exploration. For example, new and detailed matters must be considered by relevant authorities when determining an application and a range of conditions may be imposed upon a grant of lease or licence. The *Protection of the Environment Operations Act 1997* (NSW) has also been amended to provide for the enforcement of gas and other petroleum legislation, including investigations undertaken by the Environmental Protection Authority and the use of enforceable undertakings and environment protection notices in respect of petroleum activities.
Water management	The *Water Management Act 2000* (NSW) now requires persons who take water in the course of carrying out mining activities to hold an access licence authorising the taking of that water. Mining activities include mining and mineral or petroleum exploration.
Health and safety	The New South Wales health and safety regime applicable to CSG activities has been overhauled. The new *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) has replaced the former Schedule of Requirements (NSW). The Act imposes obligations on operators of mine and petroleum sites and regulates the conduct of high risk activity. The new regime imposes health and safety duties on persons involved in the conduct of CSG activities and also provides for the enforcement of those duties and associated requirements.
Hydraulic fracturing	For completeness, we note that the New South Wales Government has introduced exclusion zones for CSG activities in residential and industrial areas. All new coal seam gas exploration and production activity is banned within 2 kilometres of existing and future residential zones or rural village land. Coal seam gas activity has also been banned within the areas identified as the Upper Hunter equine and viticulture critical industry clusters.

The changes to the New South Wales regime appear to align with the requirements of LPs 1 and 5. The new health and safety regime requires persons to implement robust safety practices and ensures strong governance structures have been implemented with respect to CSG activities.

1.4. Victoria

There has been sweeping legislative reform in Victoria with respect to CSG activities. The significant areas of CSG-related legislative and regulatory reform in Victoria are:

Topic	Key Development
Prohibition of exploration for, or mining of, coal seam gas	The *Mineral Resources (Sustainable Development) Act 1990* (Vic) now provides that it is an offence to carry out exploration for, or mining of, coal seam gas. To the extent an application for an exploration licence, mining licence or retention licence relates to coal seam gas, the application will be ineffective. There is also a moratorium on petroleum exploration and production.
Hydraulic fracturing	The *Mineral Resources (Sustainable Development) Act 1990* (Vic) prohibits the holder of an exploration licence, mining licence or retention licence from carrying out any hydraulic fracturing on any land in the course of carrying out any exploration or mining under the licence.
Health and safety	The *Occupational Health and Safety Regulations 2017* (Vic) have been amended to provide for the imposition of health and safety requirements with respect to mines, including by imposing obligations on mine operators and associated safety requirements.

1.5. Western Australia

The significant areas of CSG-related legislative and regulatory reform in Western Australia are:

Topic	Key Development
Harmonisation of requirements for petroleum and pipeline activities	Western Australia has enacted several new instruments to harmonise safety, environment and other requirements in respect of petroleum and pipeline activities. The new regime replaces the Schedule of Requirements (WA). Various obligations are imposed on title holders, including with respect to risk management, monitoring and reporting. For example, environmental management plans for petroleum and pipeline activities must now detail any environmental management requirements that apply to the activity under legislation, international conventions or agreements, or applicable codes of practice.
Hydraulic fracturing	On 5 September 2017, the Western Australian Parliament imposed a ban on hydraulic fracturing for existing and future petroleum sites in the South-West, Peel and Perth metropolitan regions. A moratorium has also been placed on the use of hydraulic fracturing during exploration or production throughout Western Australia. The moratorium and ban will remain in place until an independent scientific inquiry determines whether hydraulic fracturing will be permitted in future.

The changes to the WA regime appear to align with the requirements of LP 5. The new health and safety regime requires persons to implement robust safety practices and ensures strong governance structures have been implemented with respect to CSG activities.

1.6. Tasmania

The significant areas of CSG-related legislative and regulatory reform in Tasmania are as follows:

Topic	Key Development
Applications and approvals	There are several new requirements under Tasmanian law in respect of applications for a licence or lease for exploration or production activities (including CSG exploration or production). Applicants must develop an appropriate program of work or a mining plan and associated conditions may be imposed any licence or lease that is granted under the scheme.

Topic	Key Development
	Related enforcement and compliance measures can now be taken under the *Environmental Management and Pollution Control (Environmental Infringement Notice) Regulations 2016* (Tas) and the *Land Use Planning and Approvals Act 1993* (Tas).
Health and safety	The health and safety regime in Tasmania has undergone significant reform and now imposes specific requirements with respect to mines and mining operations through the *Mines Work Health and Safety (Supplementary Requirements) Act 2012* (Tas) and associated regulations. For example, mine operators must develop a safety management system for the mine that is commensurate with the nature, size and complexity of the mine and mining operations, and associated risks.
Hydraulic fracturing	In 2014, the Tasmanian Government imposed a 1 year moratorium on hydraulic fracturing in Tasmania to enable a review into fracturing in the State. In 2015, the moratorium was extended until March 2020.

The changes to the Tasmanian regime appear to be aligned with the requirements of LP 3 and LP 5. The new health and safety regime requires persons to implement robust safety practices and ensures strong governance structures have been implemented with respect to CSG activities. The compliance and enforcement mechanisms in the legislation appear geared towards ensuring risk controls measures are implemented for relevant projects.

1.7. South Australia

The significant areas of CSG-related legislative and regulatory reform in South Australia are:

Topic	Key Development
Environmental assessment	South Australia is transitioning to a new planning and development regime on a staggered basis. This new regime incorporates special provisions relating to mining tenements, which already exist under current South Australian legislation.
Health and safety	The new health and safety regime imposes both general and specific requirements on mine operators and persons associated with mining activities. Requirements relating to construction work and the licensing of major hazard facilities may also apply.

The changes to the South Australian regime appear to align with the requirements of LP 5. The new health and safety regime requires persons to implement robust safety practices and ensures strong governance structures have been implemented with respect to CSG related activities.

1.8. Northern Territory

The significant areas of CSG-related legislative and regulatory reform in the Northern Territory are as follows:

Topic	Key Development
Environmental assessment and management	The NT Environment Protection Authority is now responsible for assessing proposed actions (including CSG related activities) and authorising the preparation of a public environmental report or an environmental impact statement (as required). If an environment impact statement has been prepared, an environmental report will be provided to the Minister for Environment, who may comment on the report and, in turn, provide a copy of the report to the responsible portfolio Minister. The responsible Minister must consider the report and make a decision on the proposed activity. Interest holders are also required to submit environment management plans for any regulated activity, including hydraulic fracturing, drilling or construction and operation of a well, pipeline or other facility. New legislation has also been enacted to ensure that environmental risks are

Topic	Key Development
	assessment, treated and appropriately managed.
Hydraulic fracturing	In September 2016, the NT Government put a moratorium on hydraulic fracturing of onshore unconventional reservoirs including the use of hydraulic fracturing for exploration, extraction, production and including Diagnostic Fracture Injection Testing. The NT Government subsequently announced an independent Scientific Inquiry into Hydraulic Fracturing of Onshore Unconventional Reservoirs in the Northern Territory. The moratorium will remain place during the Inquiry and until the NT Government has decided whether or not hydraulic fracturing will be banned in the Northern Territory. The scope of the Schedule of Requirements (NT) has also been amended to prohibit the use of BTEX compounds in hydraulic fracturing fluids. The Schedule no longer contains environmental management requirements in respect of petroleum activities.

The changes to the Northern Territory regime are aligned with the requirements of LP 1. The legislation is geared towards bolstering environmental impact assessments for CSG related activities – in particular, assessing relevant water risks.