

4. CONCLUSION

The MRA is the cornerstone legislation for the Queensland mining sector, and its review presents both an opportunity and a reason for caution.

The review of the MRA will require careful analysis of the strengths and weakness of the current legislative regime with a view to making improvements and enhancements.

Whilst the mining sector is, in general, currently experiencing a more favourable period in the mining cycle, changes simply for the sake of change, and the imposition of increased administrative and regulatory requirements and complexity, must be avoided.

The review of the MRA will set the legislative and policy framework for mining in Queensland for the next 10 to 20 years. Care will be needed to ensure a rational and considered approach is adopted for the review, rather than an overly exuberant process which ends up harming, rather than helping, the mining industry in Queensland.

SAFETY OBLIGATIONS UNDER THE *PETROLEUM AND GAS (PRODUCTION AND SAFETY) ACT 2004*

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The *Petroleum and Gas (Production and Safety) Act* 2004 (Qld) ('the Act') and *Petroleum and Gas (Production and Safety) Regulation* 2004 (Qld) (Regulation) came into operation on 31 December 2004. The Act and Regulation together comprise over 800 pages. It is a detailed and complex legislative regime. The purpose of this article is to briefly summarise some of the safety obligations in the Act and Regulation. The summary is not intended to be exhaustive.

1. DEFINITIONS

There are many defined terms in the Act and an understanding of these is necessary to appreciate the safety obligations imposed by the Act. However, this article does not attempt to provide all of the definitions. Although, an explanation of 'operating plant' and 'coal mining-CSG operating plant' is necessary:

- (a) 'Operating plant' is variously defined under the Act and Regulation. It includes:
 - (i) a facility used to explore for, produce or process petroleum;
 - (ii) a pipeline used to transport petroleum or fuel gas;
 - (iii) an LPG storage facility; and/or

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- (iv) a place where an activity is carried out and the activity is associated with the delivery, storage, transport, treatment or use of petroleum or fuel gas.
- (b) A ‘coal mining-CSG operating plant’ is defined in the Act to mean:
 - (i) a facility or pipeline that is, or is part of coal mining operations or an on-site activity under the *Coal Mining Safety and Health Act 1999* (Qld) (‘CMSH Act’); and
 - (ii) the facility or pipeline is used to explore for, extract, produce, process, release or transport coal seam gas under a mineral hydrocarbon mining lease or petroleum lease.

Unless the Act states otherwise, obligations in respect of operating plants also apply to coal mining-CSG operating plants.

2. OPERATOR

The Operator has the bulk of safety obligations under the Act. The Operator for an operating plant is the person in charge of the plant while it is in operation. Alternatively, for an operating plant which is a place or part of a place where certain activities are carried out in relation to petroleum, fuel gas, gas cylinders or LPG, the Operator is the person in overall charge of the activity.

The Operator of a coal mining-CSG operating plant is the relevant Site Senior Executive (SSE) under the CMSH Act.

For an operating plant that is part of the area of a petroleum tenure or a *Petroleum Act 1923* (‘1923 Act’) petroleum tenure, the Operator is the holder of the tenure.

2.1 Operator must make a Safety Management Plan (Plan)

The Act requires an Operator of an operating plant to make, implement and maintain a Plan that complies with the Act. However, an Operator of a coal mining-CSG plant complies with the requirement to have and revise a Plan, if the Operator already has a safety and health management system (**System**) in compliance with the CMSH Act and the System is for, or includes, the operating plant.

Contents of a Plan

The content requirements for a Plan are detailed and extensive. However, a Plan is only required to have the contents prescribed in the Act to the extent that they are appropriate for the plant. Examples of the contents of a Plan include providing details of:

- (i) a ‘formal safety assessment consisting of the systematic assessment of risk and a description of the technical and other measures undertaken, or to be undertaken, to control the identified risk’; and
- (ii) ‘safety standards and standard operating procedures applied, or to be applied, in each stage of the plant’.

In certain circumstances the Operator is required to provide additional content to the Plan and revise the Plan.

The *Petroleum and Other Legislation Amendment Act (No 2) 2005* (Qld) contains further content requirements for a Plan, dealing with, for example, the interaction between operating plants and contractors in the same vicinity.

2.2 Publication and access to Plan

Whenever a plant is operating, the Operator must keep a copy of the Plan at the plant and it must be open for inspection by anyone to whom the Plan applies. A notice must be displayed conspicuously stating where the Plan is open for inspection.

However, for a coal mining-CSG operating plant, if the Operator complies with the publication and access requirements under the CSMH Act then they are taken to have complied with the Act's publication and access requirements.

2.3 Advice to obligation holders about obligations under Plan

The Operator must ensure that it tells everyone who has an obligation under the Plan that they have an obligation. Obligation holders must be informed within a reasonable period before the Plan requires them to comply with the obligation.

The Operator of a coal mining-CSG operating plant is taken to have complied with this obligation if it complies with the publication and access requirements under the CSMH Act.

2.4 Ensuring compliance with Plan

A person at an operating plant must comply with the safety procedures and obligations under the Plan to the extent that the procedures and obligations apply to the person. The Operator is required to ensure that everyone who has an obligation under the Plan complies with their obligation. If a person is convicted of the offence of failure to comply with the Plan, it may be used as evidence that the Operator committed the offence of failing to ensure that person complied with their obligations under the Plan.

2.5 Appointment of Site Safety Manager (Manager)

To the extent that it is appropriate for the plant, a Plan must include details of each site at the plant for which a Manager is required. If a Plan requires a Manager for a site at the plant, the Operator must appoint an appropriately qualified person as Manager. However, the chief inspector can also direct the Operator to appoint a Manager for a particular site or activity at the plant.

If no one is appointed as the Manager for a site at the operating plant, the Operator is the default Manager.

2.6 Ensuring an acceptable level of risk

Each person at an operating plant, including the Operator, must, to the extent of their duties and responsibilities under the Act or the Plan, take all necessary and reasonable action to ensure no person or property is exposed to more than an acceptable level of risk.

Acceptable level of risk is defined in the Act. Of particular interest, the Act introduces the concept of ‘avoidable risks’.

For an operating plant that is not a coal mining-CSG operating plant, as well as ensuring that an acceptable level of risk is maintained at the operating plant, the Act obliges the Operator not to carry out an activity at the operating plant if the activity creates an unacceptable level of risk to a person or plant at adjacent or overlapping coal mining operations.

2.7 Principal Hazard Management Plan

The Operator of an operating plant that is not a coal mining-CSG operating plant must make a principal hazard management plan (**Hazard Plan**) in the following circumstances:

- (a) where the operating plant is operated in the area of, or adjacent to, a coal or oil shale mining lease; and
- (b) the operation of the operating plant physically affects or may physically affect the safe and efficient mining of coal under the mining lease.

The Operator must make reasonable attempts to consult with the mining lease holder about the Hazard Plan. A Hazard Plan must also be included in the Plan for an operating plant that is not a coal mining-CSG operating plant.

2.8 Reporting incidents

The Operator of an operating plant that is not a coal mining-CSG operating plant, must report designated accidents or incidents to the chief inspector and to the SSE of a neighbouring coal mine if the operating plant is in the area of the coal mine’s mining lease. A designated accident or incident includes an accident that causes a person to suffer an injury causing, or likely to cause, permanent injury to the person’s health.

3. EXECUTIVE SAFETY MANAGER

The Act provides for who is the ‘executive safety manager’ (Executive Manager) for the Plan for an operating plant. For a coal mining-CSG operating plant the Executive Manager is the SSE under the CSMH Act. For an operating plant that is not a coal mining-CSG operating plant the Executive Manager is:

- (a) if the operator is an individual – the operator; or
- (b) the senior managing officer of the corporation or organisation in charge of the operating plant.

For an operating plant that is a part of a petroleum tenure or a 1923 Act petroleum tenure, the Executive Manager is the senior managing officer of the principal tenure holder.

3.1 General obligations

In summary, an Executive Manager's obligations include, ensuring that:

- (a) the plant has standard operating procedures, emergency response procedures and any other information necessary for its safe operation; and
- (b) that everyone working at the plant is appropriately trained and training records are kept for at least 5 years.

3.2 Requirement to lodge Annual Safety Report (Safety Report)

The Executive Manager of an operating plant is required to lodge with the Department of Natural Resources and Mines on or before 1 September each year, a Safety Report for the preceding financial year. The Safety Report must comply with the content requirements specified in the Act. These include:

- (a) if the operations may have affected future safe and efficient mining of coal, the nature of any hazards or potential hazards to the future safe and efficient mining of coal or oil shale in the area (additional details about the hazards are also required); and
- (b) the mechanism for implementing, monitoring and reviewing and auditing safety policies and Plans.

The Executive Manager cannot use as a defence in proceedings for failure to lodge a Safety Report, the excuse that the lodging of the Safety Report or information it contains might tend to incriminate the Executive Manager. Although, evidence directly or indirectly derived from the report or information that it contains that might tend to incriminate the Executive Manager is not admissible in evidence against anyone, except in proceedings for an offence for which the falsity or misleading nature of the answer is relevant.

3.3 Requirement to provide others with Safety Report

A Safety Report must provide information about the mechanism for implementing, monitoring, reviewing and auditing safety policies and Plans. Once the Executive Manager lodges a Safety Report containing this information they must also provide 'the relevant tenement holder' with information, including, the nature of any hazard or potential hazard to the future safe and efficient mining of coal or oil shale in the area.

The relevant tenement holder is defined as the holder of any coal or oil shale exploration tenement, where the safe and efficient mining of coal or oil shale may have been affected by the operation of the operating plant.

This requirement is problematic. As a result of amendments by the *Petroleum and Other Legislation Amendment Act 2004* (Qld), it appears that errors occurred in the re-numbering of the relevant subsections. Prior to amendment, the Executive Manager was required to provide the Safety Report to a tenement holder only if the operating plant was in the area of a coal or oil shale exploration tenement and if the Safety Report provided the details of the nature of any hazards etc. In addition, the Executive Manager only had to provide details of the nature of any hazards in the

Safety Report if the operations may have affected the future safe and efficient mining of coal. It is likely that this error will be rectified by future amendments to the Act.

3.4 Ensuring an acceptable level of risk

The Executive Manager is obliged to ensure an acceptable level of risk.

4. SITE SAFETY MANAGER

A Manager's obligations include, in summary, ensuring that:

- (a) appropriate inductions are carried out;
- (b) people on site comply with standard operating procedures, emergency response procedures and other measures necessary for the safety of the site and the person; and
- (c) relevant staff are trained in first aid, emergency and other general safety procedures.

The Manager must also ensure an acceptable level of risk.

5. BREACHES OF P&G ACT AND PENALTIES

5.1 Owners and executive officers

The owner of an operating plant is required to ensure that the Operator of the plant has the necessary competencies to operate the plant.

Executive officers of a corporation are also required to ensure that the corporation complies with the Act. If a corporation commits an offence against a provision of the Act, each of its executive officers commits an offence, namely, the offence of failing to ensure the corporation complies.

5.2 Maximum penalties

Breach of the provisions of the Act relating to Plan's and other safety obligations resulting in death, grievous bodily harm (**GBH**), bodily harm or serious property damage will increase the maximum penalty for a breach simpliciter set out in the relevant provision. For certain breaches the maximum penalties are currently:

- (a) If multiple deaths or GBH occurred: \$375,000 (individual); \$1,875,000 (corporation) or 3 years imprisonment.
- (b) If one death or GBH occurred: \$225,000 (individual); \$1,125,000 (corporation) or 2 years imprisonment.
- (c) If a person is exposed to a substance likely to cause death or GBH: \$75,000 (individual); \$375,000 (corporation) or 1 year's imprisonment.
- (d) If bodily harm occurred: \$75,000 (individual); \$375,000 (corporation) or 1 year's imprisonment.

- (d) If serious property damage occurred: \$75,000 (individual); \$375,000 (corporation) or 6 months imprisonment.