



Queensland

Petroleum and Gas (Production and Safety) Regulation 2004

Regulatory Impact Statement for SL 2004 No. 309

made under the

Petroleum and Gas (Production and Safety) Act 2004

Petroleum Act 1923

1 Title

Petroleum and Gas Regulation 2004

Petroleum Regulation 2004

2 Background

The proposed regulations will provide an effective and efficient regulatory system for the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum, coal seam gas, pipeline and fuel gas industry in Queensland.

The proposed regulations will be made for the new *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923*. The *Petroleum Regulation 1966*, which is the subordinate legislation for the *Petroleum Act 1923*, will be repealed and replaced by the proposed *Petroleum Regulation 2004*.

3 Authorising law

The *Petroleum and Gas Regulation* will be made under section 859 of the *Petroleum and Gas (Production and Safety) Act 2004* and the

Petroleum Regulation will be made under section 149 of the *Petroleum Act 1923*.

4 Policy objectives

The purpose of the *Petroleum and Gas (Production and Safety) Act 2004* is to—

- establish a new competitive petroleum tenure regime;
- encourage responsible land and resource management (including identifying and addressing potential conflict issues);
- establish and maintain best practice management regimes covering safety and other technical activities on tenures; and licences, within industry and in the general community; and
- provide affected parties with rights of consultation, review and appeal, and where applicable compensation.

The *Petroleum and Gas (Production and Safety) Act 2004* regulates petroleum exploration and production activities, pipeline licensing other than distribution, and manages safety and technical matters for the upstream and downstream petroleum industries, and gas consumers. This Act is prospective in its application.

The Act also implements a new coal seam gas regime that provides mechanisms for the efficient and effective management of the State's coal seam gas resources.

The objectives of the coal seam gas regime are to provide clarity of rights and tenure, to deal with safety issues associated with exploring and producing coal seam gas, particularly where the interests of coal explorers and miners need to be considered, and to ensure the future safe and efficient mining of coal seams is not compromised by petroleum exploration and production activities. Within the context of these objectives, it is desired to optimise the utilisation of the State's coal seam gas and coal resources.

During the development of the Act, it became apparent that any interference with the rights enjoyed by holders of petroleum exploration and production tenure over land affected by native title, would trigger the right to negotiate provisions under the *Native Title Act 1993* (Cwlth). Without the retention of the *Petroleum Act 1923*, exploration and production on these tenures would cease until the

native title issues were resolved. The consequences of this would have been a major disruption of supply to domestic and industrial consumers and a potential loss of over \$50 million in royalty annually, until native title was resolved. Accordingly, Government decided to retain the *Petroleum Act 1923*, albeit subject to amendment.

The purpose of the amendments to the *Petroleum Act 1923* through the *Petroleum and Other Legislation Amendment Act 2004* was to ensure that petroleum exploration and production on all existing petroleum tenure continues to be carried out without interruption but subject to a contemporary legislative framework.

Under the *Petroleum Act 1923*, the holder of an authority to prospect (ATP) has an entitlement to the grant of a petroleum lease. In circumstances where the authority to prospect (ATP) was created on or before 23 December 1996, the grant of a petroleum lease over land where native title is held is a pre-existing right-based act (PERBA) under section 24IB of the *Native Title Act 1993* (Cwlth). This means that the grant is not subject to the right to negotiate. The State was concerned not to affect these preexisting rights through repeal of the *Petroleum Act 1923*. Accordingly, the existing rights under the *Petroleum Act 1923* have been preserved with respect to the majority of authorities to prospect granted on or before 23 December 1996. However, the entitlement to a petroleum lease has been removed in circumstances where the grant of that lease would be subject to the coal seam gas regime introduced by the *Petroleum and Gas (Production and Safety) Act 2004*.

In addition, the renewal of authorities to prospect or petroleum leases granted on or before 23 December 1996 or as a consequence of a right to negotiate process are not subject to the right to negotiate providing the requirements of section 26D(1) of the *Native Title Act 1993* (Cwlth) are met. In order to ensure compliance with this section, these tenures will also be retained under the *Petroleum Act 1923*.

5 Legislative intent

The policy objectives of the *Petroleum and Gas (Production and Safety) Act 2004* and the amended *Petroleum Act 1923* are supported by the new regulations, which will provide detailed requirements for matters such as reports and information, notices, records and samples, fees, rents and royalties, decommissioning pipelines, plugging and abandoning wells, filling of shot holes, establishment of the petroleum

register and safety and technical matters. The specific sections of the Acts and proposed fees and rents are shown in Tables 1, 2 and 3. A copy of the draft *Petroleum and Gas Regulation 2004* and *Petroleum Regulation 2004*, which includes the fee and rent schedules is attached.

Table 1—Prescribed Fees

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
37(e)	—	Application fee for an authority to prospect	1 000
61(b)	25I(b)	Application fee to amend work program	400
79(6)(a)	74J(2)(c)	Fee to accompany proposed later work program for an authority to prospect.	400
82(1)(j)(i)	25M(1)(j)(i)	Application fee for renewal of an authority to prospect	500
89(4)	—	Application fee for a potential commercial area	800
93(2)(b)	—	Application fee to extend term of declaration of a potential commercial area	400
104(h)	—	Application fee to divide an authority to prospect.	500
118(e) and 128(2)(a)	—	Application fee for petroleum lease	1 000
159(6)(a)	74P(2)(c)	Fee to accompany proposed later development plan for a petroleum lease.	400
162(1)(h)(i)	amendment of section 45, inserted (2A)(d)(i)	Application fee for renewal of a petroleum lease.	500

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
172(h)	—	Application fee to divide a petroleum lease.	500
177(c)	—	Application fee for a data acquisition authority.	300
191(c)	—	Application fee for a water monitoring authority.	300
203(3)(c)	—	Application fee to amend a water monitoring authority. . . .	300
213(2)(c)	—	Fee to accompany a claim for stored petroleum or prescribed storage gas	400
235(2)(c)(ii) (amended by POLA Bill 2004)	—	Fee to accompany request for Ministerial approval of a proposed coordination arrangement	400
288(3)(d)	75P(2)(d)	Fee for transfer of a water observation bore or water supply bore to a landowner . . .	150
289(b)	75Q(b)	Fee for transfer of a petroleum well to the holder of a geothermal exploration permit or a mining tenement	150
290(b)	—	Fee for transfer of a water observation bore to the holder of another petroleum tenure or water monitoring authority. . . .	150
—	75Q(2)(d)	Fee for transfer of water observation bore to 1923 Act petroleum tenure holder	150
372(1)(h)	77T(1)(h)	Application fee for amendment of relinquishment condition . . .	400
395(2)(e)	—	Application fee for a survey licence.	300

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
409(h)	—	Application fee for a pipeline licence.	1 000
420(3)(c)	—	Fee to accompany the notice of completion of a pipeline.	500
445(h)	—	Application fee for a petroleum facility licence	1 000
464(c)	—	Application fee for a permission to enter an area to construct or operate a pipeline or petroleum facility licence	500
475(c)	—	Application fee to amend a licence.	400
480(d)(i)	—	Application fee for renewal of a licence.	500
550(1)(b)	76C(1)(b)	Fee for provision of open-file information (Fixed fee per CD or DVD)	115
550(1)(b)	76C(1)(b)	Fee for provision of open-file information (Fixed fee per tape cartridge)	230
566(c)	80F(c)	Fee for a copy of the standard Departmental (MERLIN) Public Tenure Enquiry Report .	9.30
566(c)	80F(c)	Fee for an investigative search of the register (Amounts are the same as for the Land Title Regulation 1994)	45.60
571(3)	80H(3)	Fee for indication of proposed permitted dealing	100
572(2)(c)(iii)	80L(2)(c)(iii)	Application fee for approval of a dealing	100

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
576(1)(c)	amendment of section 21; amendment of section 52, inserted (1A)(c)(i)	Application fee for surrender of a petroleum authority	400
595(3)	—	Late fee for failure to lodge a royalty return	83.60
602(2)	—	Interest on unpaid royalty or additional royalty (annual)	15%
622(2)(c)	—	Application to approve quality of fuel gas	250
731(1)(c)	—	Application fee for copy of documentation in the gas work licence register	10
318DC(h) (MRA)	—	Application fee required when making an application for amendment of relinquishment condition.	400
318DI(4) (MRA)	—	Late fee for application made less than six months before the end of the term of the lease . . .	500
318DM(2)(b) (MRA)	—	Fee for additional requirements for making consolidation applications under s 299.	500
318EB(6)(a) (MRA)	—	Fee to lodge a proposed later development plan for a mining lease	400
758 (2)(b) (MRA) (in P&G)	—	Fee to lodge a proposed initial development plan for the lease.	400
726	—	Application fee for gas work licence.	50

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
726	—	Annual fee for gas work licence	50
726	—	Replacement fee for gas work licence.	50
726	—	Late fee for gas work licence . .	50
727	—	Application fee for gas work authorisation (Appliances)	100
727	—	Annual fee for gas work authorisation (Appliances)	100
727	—	Application fee for gas work authorisation (Motor Fuel Installation).	100
727	—	Annual fee for gas work authorisation (Motor Fuel Installation).	100
727	—	Application fee for gas work authorisation (Servicing)	250
727	—	Annual fee for gas work authorisation (Servicing)	250
727	—	Application fee for gas work authorisation (Appliance Certifier).	100
727	—	Annual fee for gas work authorisation (Appliance Certifier).	100
727	—	Application fee for gas work authorisation (Hydrocarbon Refrigerant)	100
727	—	Annual fee for gas work authorisation (Hydrocarbon Refrigerant)	100
727	—	Application fee for gas work authorisation (Major Project) . .	1 500

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
727	—	Annual fee for gas work authorisation (Major Project) . .	1 500
897(4)(c)	—	Fee to lodge a proposed later development plan for a converted petroleum lease	400

Table 2— Audit and Inspection Fee

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Entity (Industry Sector)	Proposed Fee^a \$
859	149	Driller of a petroleum well (Drilling activities)	80 000
859	149	Petroleum Lease Holder (Petroleum production)	260 000
859	149	Petroleum processing facility (certain petroleum processing facilities)	40 000 (estimate)
859	149	Pipeline licence holder licensed under P&G Act (Pipelines) . . .	175 000
859	149	Distribution authority (Pipelines licensed under Gas Supply Act)	640 000
859	149	Owner of a LPG Supply Network (LP Gas Industry) . . .	800 000
859	149	Any gas user who consumers more than 100TJ/yr of gas at one location (Major Gas Users)	40 000 (estimate)

^a Note—Proposed fee distributed across the Entity

Table 3—Annual Rents and licences fees

P&G Bill 2004	Amended PA 1923 by POLA Bill 2004	Description	Proposed Fee \$
75(1)(b)	74M	Annual Rent - Authority to prospect (per Block)	50
155(1)(b)	46	Annual Rent - Petroleum Lease (per km ²)	100
184A	—	Annual Rent - Data acquisition authority (per Block)	50
202A	—	Annual Rent - Water monitoring authority (per Block)	25
227(3)	—	Annual Storage Rent (per km ²)	100
423	—	Annual Licence Fee - Point-to-Point Pipeline Licence (per km)	100
423	—	Annual Licence Fee - Area Pipeline Licence (per km)	25
454	—	Annual Licence Fee - Petroleum Facility Licence (per km ²) (min. \$2000)	1 000

6 Consistency with authorising law

Both the *Petroleum and Gas Regulation 2004* and the *Petroleum Regulation 2004* are consistent with the objectives of the principal Acts and other relevant legislation.

7 Consistency with other legislation

The proposed regulation does not conflict with any other legislation.

8 Options and alternatives

The policy objectives of the principal Acts can only be lawfully implemented through subordinate legislation.

The RIS evaluates two possible alternatives under both the *Petroleum and Gas (Production and Safety) Act 2004* and the amended *Petroleum Act 1923*. The first considers the introduction of regulations

to impose fees, royalty rate, rent and reporting requirements. The second considers the costs and benefits of not implementing the proposed Regulations.

There are two main issues that will result in a cost to the community.

The first issue concerns the setting of fees and rents and the quantum of the fees and rents applied by the Regulations. The second issue concerns the requirements for the submission of reports and notices by relevant tenure, licence and authority holders about authorised activities under the Acts.

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* authorise and require that prescribed fees and rents are to be paid, in most cases, by relevant tenure, licence and authority holders. Therefore, the Regulations have been drafted to quantify the various fees and rents.

The second issue is the prescription of reports and notices and their content requirements. Most of the reports and notices are currently provided to the Government by industry and the Regulations clarify the minimum content requirements and other details about their lodgement.

8.1 Option 1—Make Regulations

8.1.1 Impact on Industry

The Regulations do impose costs on the industries, however there are benefits for industry in relation to the costs. The benefits of the Regulations are that they provide a structured environment for the State to administer the relevant industries and provide an exclusive right for industry to access resources.

The current annual cost to industry in fees and rents is approximately \$2.9 million plus approximately \$53 million in royalty payments. The proposed Regulations will result in an estimated annual cost of \$8.65 million plus approximately \$53 million in royalty payments. The additional \$5.75 million are costs currently being incurred by the Government, and ultimately by the whole community.

The benefits for Industry in regulating these reports and notices are that the State receives and records particular information related to

authorised activities and that this information can be used by the Industry to access this information after prescribed confidentiality periods have expired. The access to the information benefits the industry in that information is made available for use in the future exploration and development of petroleum resources in the State.

The overall benefit of this option for the Industry is considered to be a relative low to medium positive, based on an average of a high positive of having exclusive right to access the petroleum resource and a low negative of having to pay the prescribed fees and rent.

8.1.2 Impact on Community

Though exploration and development of the State's petroleum resources benefits all Queenslanders, the activities are undertaken for profit by industry, and as such, it is appropriate that the industry bear the full cost to the State of making the resources available. For this reason the proposed fees are calculated on full cost recovery basis for an optimum number of full time equivalent staff and are benchmarked against comparable fees from other Australian States and the Northern Territory.

The benefit for the whole community in regulating these reports and notices are that particular information related to authorised activities is collected by the State and that this information can be used to improve resource management decisions, increase the body of knowledge of the State's resources for the benefit of the whole community through greater investment in and return from petroleum activities.

The overall benefit of this option for the community is considered to be a relative high positive, based on not having to incur the indirect costs of the Government administering the Industry, and in Industry accessing the resources, the community would enjoy the supply of petroleum and resultant energy and payment of royalty.

8.1.3 Impact on Government

The Regulations do impose costs on the industries, however there are benefits for the Government in relation to the costs. The benefits of the Regulations are that they provide a structured environment for the State to administer the relevant industries, assist in conjunction with

the authorising Acts for the State to manage the State's petroleum resources, and provide a return to the State on the petroleum produced.

The benefits for the State in regulating reports and notices are that the State receives and records particular information related to authorised activities and that this information can be used by the State to improve resource management decisions made by the State, increase the body of knowledge of the State's resources for services of the State.

The overall benefit of this option for the Government is considered to be a relative high positive, based on having contemporary subordinate legislation to administer the Industry.

8.2 Option 2—No Regulations

An alternative is to not make Regulations. This is a 'do nothing' option, allowing the Acts to operate without regulatory support. This would mean that fees, royalty rate, rents and reporting and notice requirements would not be prescribed.

8.2.1 Impact on Industry

The relevant industries would not bear the cost associated with the benefit of accessing the petroleum resources.

The overall benefit of this option for the Industry is considered to be a relative high to medium positive as it would have then annual cost of approximately \$61.65 million in annual revenue, including \$53 million in royalty payments, and that report and notice requirements are not specified.

8.2.2 Impact on Community

The whole community would bear the cost associated with the administration of the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923*.

The overall benefit of this option for the community is considered to be a relative low negative as it would not benefit from annual revenue.

8.2.3 Impact on Government

The State could not lawfully impose a royalty. This would deprive the State, and consequently the whole community, of approximately \$61.65 million in annual revenue, including \$53 million in royalty payments.

With regard to reports and notices, if the information is not required, no future benefit to the State, or the industry, can be realised from the previously acquired information.

The overall benefit of this option for the Government is considered to be a relative low negative as it would not recover annual revenue, not increasing the knowledge of the State's resources, and not having contemporary subordinate legislation to administer the Industry.

9 Benefits and costs of implementing the proposed regulations

The underlying philosophy of the legislation is that development of the State's petroleum resources should be for the benefit of all the people of Queensland, not only petroleum companies.

With this in mind, the principal Acts introduce a number of new, innovative features, such as provisions about making exploration and production tenure available through a tender process, Australia's first comprehensive coal seam gas regime, underground storage of petroleum, the ability to have reserves of petroleum that are not yet economic to develop declared as potential commercial areas, comprehensive safety and technical matters that are enabling rather than prescriptive, expanded heads of compensation for landholders, monitoring of the effect of petroleum activities on landholders water bores and obligations to make good supply.

Though these initiatives will deliver benefits to the petroleum industry, as well people affected by petroleum activities on their land and more generally the people of Queensland, there will be increased cost to industry in complying with the new legislation. These increased costs are both through increased fees and charges, and internal cost to industry of compliance with such things as reporting.

Under the *Petroleum Act 1923*, few fees and charges were levied. Current costs to the State in administering the *Petroleum Act 1923* are in the order of \$3 million annually. This is addressed in the proposed

regulations through a comprehensive suite of fees, which are based on the cost to the State of managing the petroleum tenure. Though this is a significant increase on the cost to industry, the fees have been benchmarked against the other States and the Northern Territory to ensure they are competitive.

No increase in the royalty rate of 10% of the value of petroleum at the wellhead is proposed. The royalty, which is the capital payment to the people of Queensland for depletion of this non-renewable resource, is the major source of revenue from the legislation and has delivered an average of \$53 million annually to the State for each of the past 3 financial years.

Royalties are payments to the owner of the resource for the use of that resource. The ownership of petroleum resources in Queensland is vested in the State Government. A main objective of the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* is to ensure an appropriate financial return to the State from the production of petroleum.

In summary, the overall benefit from the Regulations is that the Queensland community would receive a high positive benefit as it would not be bearing the cost of the relevant industries accessing the resources, and in accessing the resources, the community would enjoy the supply of petroleum and resultant energy and payment of royalty. For industry, the overall benefit would be a low to medium positive, based on an average of a high positive of having exclusive right to access the petroleum resource and a low negative of having to pay the prescribed fees and rent.

10 Fundamental legislative principles

The proposed Regulations have been drafted to be consistent with fundamental legislative principles as defined in the *Legislative Standards Act 1992*.

11 Consultation process

The *Petroleum and Gas (Production and Safety) Act 2004* and the amended *Petroleum Act 1923* have been developed through a rigorous process and has incorporated extensive consultation which has

acknowledged the intended approach to the regulatory requirements specified in the Act.

The *Petroleum and Gas (Production and Safety) Bill 2004* and the *Petroleum and Other Legislation Amendment Bill 2004* were introduced into Parliament on 12 May 2004 and 18 August 2004 respectively. These Bills were passed by Parliament on 29 September 2004 and are to commence coincident with the Regulations on 31 December 2004.

The following stakeholders were consulted in the development of the Regulations—

Government

- Business Regulation Reform Unit
- Department of the Premier and Cabinet
- Queensland Treasury

Non-Government

- Australian Coal Seam Gas Council
- Australian Petroleum Production and Exploration Association
- Australian Pipeline Industry Association
- Natural Gas and LPG Associations and Licence Holders
- Queensland Resources Council

It is intended that the draft regulations will be provided to relevant Government agencies and a wide cross-section of non-government stakeholders. The draft Regulations will be placed on the Department of Natural and Mines' website.

12 Conclusion

In order to make the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* workable, Regulations need to be made to prescribe fees, royalty rate, rents and reporting requirements. If no regulations were made for these matters, several changes would need to be made to the Acts, such as the provision of a royalty rate in the primary legislation. This is not a reasonable solution of not addressing these matters by Regulation, given also the complex

legislative processes and timeframes for amending the primary legislation before commencement of the Acts on 31 December 2004.

Consequently, the option of making Regulations is preferred.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Natural Resources and Mines.