



The South Australian Petroleum Act 2000

— principles and philosophy of best practice regulation

Michael Malavazos (Engineering Regulation Manager, Petroleum Group, Office of Minerals and Energy Resources)

Overview

The SA Petroleum Act had not undergone a major review since it was proclaimed in 1940, and several sectors of the industry and community recognised that this was needed, primarily driven by:

- changes to community expectations, in particular to environmental issues
- a call for a move away from restrictive prescriptive regulation to more objective-based regulation to enable the adoption of ever changing and improving technologies
- competition policy reforms in the upstream sector of the petroleum industry, in particular in the area of exploration and production tenement acreage allocation and management.

The review of the Petroleum Act was initiated in early 1996 with the release of an Issues Paper which set the scene with stakeholders for the process. This was followed by a 'Green Paper' in mid-1997 which outlined the proposed legislative intentions for the new Petroleum Act, and draft legislation which was released for public comment in December 1998. The review of the

Act from 1996 to tabling of the Bill in 1999, and drafting of regulations in 2000, was managed by Michael Malavazos (environmental issues) and John Morton (licensing) from the Petroleum Group. Drafting of the legislation was carried out by Geoffrey Hackett-Jones and Richard Dennis of Parliamentary Counsel. A number of other people also contributed substantially to the review, including Bob Laws, Terry Aust and Joe Zabrowarny of the Petroleum Group.

The philosophy adopted in development of the new legislation was grounded on the understanding that:

- The main area where government intervention is required is where there is an absence of readily identifiable incentives for the industry to voluntarily serve the public interest in the pursuit of economic profit. In the absence of such incentives, the costs of any negative impacts of industry activities such as pollution, land degradation and unsafe practices are likely to be passed onto other sectors of the community. This situation is known as 'market failure' and it is in this situation that government inter-

vention through some form of regulation can be justified.

- The other situation where government can justifiably be involved is in the establishment and allocation of property rights and establishing priorities for overlapping rights. It is considered necessary to have an effective regulatory framework in place which facilitates open and fair competition for such rights and for providing security of title to such rights.

To implement this philosophy, the new legislation has been established on the basis of six key principles, namely, certainty, openness, transparency, flexibility, practicality and efficiency.

Introduction

The long-term viability of the upstream petroleum industry is strongly reliant on:

- Maximising access to land for undertaking exploration and development activities. Fundamental to this is the need to establish and maintain community confidence in both the industry and regulatory regime governing the industry. The regime needs to be responsive to community expectations to attain such confidence. The intent of the new legislation is therefore to improve the confidence of all stakeholders in both the ability of the resource industries to which the new Act pertains to conduct its activities in an ecologically sustainable manner and in the regulatory regime which governs these activities.
 - The allocation and management of secure title to the petroleum and other resources to which the new Act pertains in a manner that will facilitate the effective and efficient realisation of the State's resource assets.
- The new legislation seeks to achieve the above through meeting the following key objectives:
- to protect the natural, cultural, heritage and social aspects of the environment from the risks associated



Redman 1 drill stem test, Otway Basin. (Photo 45902)

with the activities governed by the Act

- to provide for constructive consultation with stakeholders, including effective reporting of industry performance to other stakeholders
- to provide security of title for petroleum, geothermal energy, other resources governed by the Act and pipeline licences, and to allocate and manage those rights in a manner which satisfies the key recommendations of the CoAG-ANZMEC Upstream Issues Working Group¹.

This new legislation governs activities in SA for the exploration and development of the following resources:

- petroleum
- geothermal energy
- gas storage reservoirs and other underground natural resources such as carbon dioxide, coal bed methane and underground coal gasification.

The construction and operation of transmission pipelines in SA for transporting petroleum and other underground natural resources is also governed by the new legislation.

Benefits of the new Act

The major improvements to the old Act which the *Petroleum Act 2000* brings include:

- a more effective means for allocating and managing the rights to petroleum and other natural resources so as to promote and maximise competition.
- an extension to the resources administered by the old Act to include

geothermal energy, coal seam methane and underground gas storage.

- greater security of title of petroleum rights through improved registration procedures and greater flexibility in the types of licences that can be granted.
- a regulatory regime which more effectively and efficiently achieves environment and public safety protection objectives.
- effective public consultation processes for the establishment of environmental objectives.
- a more effective means for ensuring that security of production and supply of natural gas is maintained at a prudent level.
- effective public reporting to provide all stakeholders with sufficient information on industry performance and government decision making.
- a flexible regulatory approach which allows selection of the most appropriate level of regulatory intervention and enforcement for ensuring compliance with the regulatory objectives.
- an appropriate royalty return to the SA community for the transfer of ownership of the resource from the community to the producers.

Regulatory philosophy

The new legislation advocates the philosophy that some form of State regulatory intervention on the private sector is only justified where an industry or individual company within an

industry fails to voluntarily deliver outcomes which do not compromise the public interest.

Outcomes delivered voluntarily by industry which also serve the public interest are considered likely in cases where there are readily identifiable economic incentives for the industry to do so. In other words, where company behaviour would negatively impact on both the public interest and the company's profit, the control of such behaviour can be effectively achieved through company voluntary (self-regulating) initiatives. In this case the market is able to deliver industry outcomes commensurate with the public interest with minimal government regulatory intervention.

In the absence of such economic incentives the costs of any negative impacts of industry activities — referred to as externalities — are likely to be passed onto other sectors of the community. Externalities include land, air and water pollution, land degradation, misinformation and human exploitation. This situation is known as 'market failure' and it is in this situation that government intervention through some form of regulation is justified.

In the context of the new legislation, the effective management of the natural resources for which a company is licensed to exploit is considered to be an outcome which can be more efficiently achieved by the company through its own initiatives as driven by its profit motive. That is, through this motive alone, a company will seek to adopt appropriate practices and technologies to develop and produce the natural resource to an economically optimal level. It is considered that only in rare cases will government intervention be needed in the management of the natural resources. Therefore, other than for one section in the new Act where the government can force the cessation of operations of irresponsible or incompetent licensees, the new legislation does not prescribe in detail on any issue pertaining to resource management.

Environment protection, public safety and the legal rights of other stakeholders are areas which are most vulnerable to market failure and are therefore in need of government intervention. It is in these areas that the new legislation is predominantly focused. To ensure that competition policy reform initiatives are achieved, the new legislation also



Tirrawarra oilfield satellite, Cooper Basin (Photo 43356)

provides a regulatory regime which facilitates open and fair competition for the rights to the resources.

The areas of market failure described above, and the allocation and management of the resource rights, have been addressed in this new legislation on the basis of the six key principles discussed below.

Principles of new regulatory regime

Integral to the 1995 recommendation of the council of the Organisation for Economic Cooperation and Development (OECD) on regulatory reform² is the need for member country governments to develop, implement, evaluate and review regulations on the basis of a set of guiding principles pertinent to their specific economic, social and political environments and values. The OECD provides a framework comprising a series of checklist questions³ upon which these principles can be established. In essence, the checklist advocates the need for the regulatory review process to:

- clearly identify and understand the intent of the regulatory regime and the regulatory objectives and their attainability
- justify the regulatory intervention, i.e. question whether other alternatives can be adopted to achieve the same objectives
- ensure that the regulatory regime is lawful in terms of the law of the land and the constitutional setting, with particular attention to equality and



Moomba gas and liquids processing plant, Cooper Basin. (Photo 43803)

fairness in the treatment of the legal rights of all stakeholders

- ensure openness and transparency in the regulatory decision-making processes
- adopt the most efficient regulatory regime possible in terms of compliance costs to both the industry and government and also in terms of distributional effects across society at large
- ensure efficient and effective enforcement of compliance to the regulatory objectives.

By embracing the OECD recommendation and other issues and concerns raised by industry and non-industry stakeholder submissions received on the Issues Paper, Green Paper and public exposure draft of the Bill, the following best practice regulatory principles were adopted for development of this legislation. These principles are also reflected in other industry legislation⁴.

Certainty

The rights conferred by licences are certain and will not be subject to unreasonable change or challenge. The regulatory objectives and obligations under the regulatory regime are uniform, clear and predictable to all licensees.

Openness

Decision-making processes are not exclusive and the legal rights of all stakeholders are not unfairly compromised. This entails the need for fair and equitable processes for the:

- allocation of title rights
- managing of rights of other land owners with overlapping land rights
- managing of rights of title holders to access land for the exploration and development of regulated resources
- provision of access to natural resources governed by this legislation where surface access within the licence area may be restricted by the sensitivity of the natural environment or other previously established rights
- stakeholder consultation on the establishment of environmental protection objectives
- appeal rights to those affected by decisions made under the legislation.

Transparency

The objects and intent of the regulatory regime are clearly communicated and understood by all stakeholders. Stakeholders are also provided with the opportunity to input into development of these objects and intent.

The decision-making processes are visible and comprehensible to all stakeholders, and industry performance in terms of compliance with the regulatory objectives is apparent to all stakeholders.

Flexibility

There is sufficient flexibility in the types of licences that can be granted so as to more adequately reflect the purpose of the activities to be undertaken and the stage of development of the resource under the licence.

The level of intervention (including enforcement) needed to ensure compliance is determined on the basis of the individual company being regulated and the outcomes needed to be achieved.

Practicality

The regulatory objectives are achievable and measurable.

Efficiency

The compliance costs imposed on both government and the company by the regulatory requirements are minimised and justified. Distributional effects across society of company negative externalities is minimised and companies remain liable for the costs of such externalities. An appropriate rent is paid to the SA community from the value realised from the exploitation of its natural resources.

For further information contact Michael Malavazos (ph. 08 8463 3245).

¹ Upstream Issues Working Group Report to CoAG and ANZMEC, December 1998.

² Recommendation of the Council of the OECD: *Council Recommendation* (<http://www.oecd.org/puma/regref/pubs/rco95/rcmmend.htm>)

³ Recommendation of the Council of the OECD: *Appendix 2: Background Note to the OECD Reference Checklist for Regulatory Decision-Making* (<http://www.oecd.org/puma/regref/pubs/rco95/backgr.htm>)

⁴ Australian Manufacturing Council, 1993. *The Environmental Challenge: Best Practice Environmental Regulation*, June.