NSW Legislative Council General Purpose Standing Committee No5 Inquiry concerning coal seam gas: Petroleum (Onshore) Act 1991 (NSW)

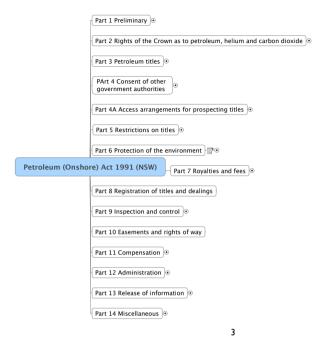
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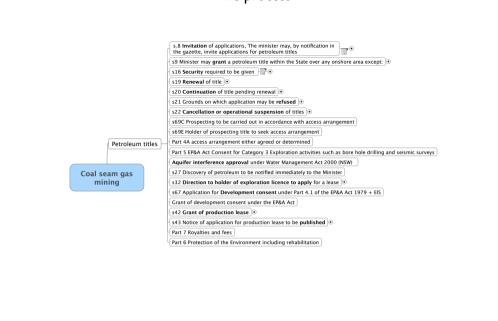
Summary of Submission

- MLPPL submission suggests amendment to the Petroleum (Onshore) Act 1991 (NSW) for the purpose of:
 - ensuring protection and conservation of water in petroleum exploration and production activities
 - establishing a better balance of rights and powers between the landholder and the miner in the Act

Petroleum (Onshore) Act 1991 NSW



Petroleum (Onshore) Act 1991 (NSW) The process



Part I Petroleum (Onshore) Act 1991 (NSW) "Agricultural land" has the meaning given in the Mining Act 1992 (NSW) Schedule 2 WA definition "means land being used for agricultural purposes and includes any land, whether cleared or uncleared, used by a person for the grazing of stock in the ordinary course of management of the land of that person where the land so used for grazing forms the whole of part of the land owned or occupied by that person." Cultivated Land Replace or define Cultivated Land Environment Insert a definition of Environment Operations Act 1997 (NSW) Environment Insert a definition of Environment Operations Act 1997 (NSW) Include water in the definition of Land as defined in the Contaminated Land Management Act 1997 (NSW). "Land includes water on or below the surface of land and the bed of such water" WA definition of land in the Mining Act includes water Part 1 Preliminary s3 Definitions Land Currently no definition of rehabilitate. Insert a definition Rehabilitate means to restore to original or better condition. Petroleum (Onshore) Act Currently no definition. Insert a definition 1991 (NSW) "Restricted Areas are defined in s72 of the Act" Insert a definition of water as defined in the Contaminated Land Management Act 1997 (NSW). Water has the meaning given in the Contaminated Land Management Act 1997 (NSW). 5

Part 3 Petroleum (Onshore) Act 1991 (NSW) Pre application notification by Government to Landholders s8 Invitation of applications Invitation by notification in the gazette Applicant to directly notify landholders that making the application Water catchment areas water catchment areas significant of petroleum titles Minister to gazette "no go zones" significant groundwater basins urban and town zones + significant buffers for future development (s9(5) Notification of grant or refusal ____Minister to notify landholders of the grant or refusal and provide a copy of the title Supporting documentation to applications be made publicly available as is the case for planning applications old[75H(3)] ss13, 14, 15, 16 Supporting information for applications Misleading or false information to allow for refusal of applications and be penalised s20 Continuation of title pending renewal Time limit placed on continuation pending renewal of 6 months Part 3 Petroleum Titles s20A Waiver of minor procedural breaches delete or amend to reflect title Petroleum (Onshore) Act 1991 (NSW) Allow for objections to renewal and additional grounds for rejection failed to satisfy Ministers standards previous breaches of title, Act, regulations or law s21(c) Grounds on which an application may be refused add additional grounds for the minister to refuse to grant renewal for environmental considerations for protection and conservation s22(1) Cancellation or suspension add additional grounds for the minister to cancel/suspend for environmental grounds No pilot studies under other than PPL conditions as otherwise can produce on cultivated land s71

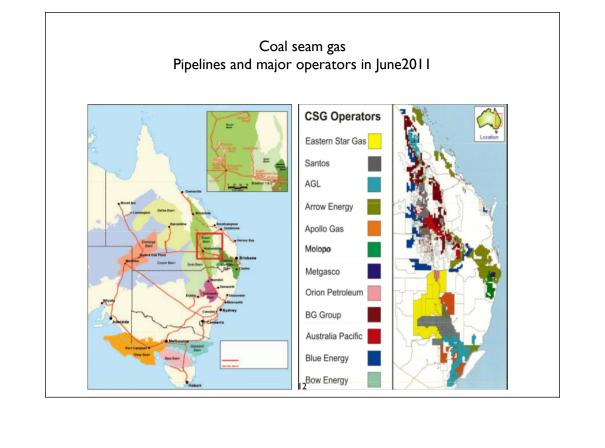
Part 4A Petroleum (Onshore) Act 1991 (NSW) Ensure that access arrangement term extends for so long as the miner has a petroleum title over the land s69A(1) Application of Part Amend to provide prospecting and mining operations to be carried out in accordance s69C(1) Prospecting to be carried out in accordance with access arrangement determination of and preservation of water Enable rapid response and not reliance on a third party, govt, to react provision of a security in favour of the landholder because project specific vehicles are wound up and environmental damage may not show up for some time Provisions of a performance guarantee in favour of the landholder provision of environmental protection insurance provision of environmental protection insurance requirement that baseline data be taken on the property by independent experts and they determine on joing monitoring and mitigation of the property by independent experts and they determine on joing monitoring and mitigation mining ceases, rehabilitation measures, requirements according to miner's planned activities and undertake that monitoring, to be engaged by the larchiboter and paid for by the miner, and if not survey of property and all existing improvements, structures, features Part 4A Access agronomist Arrangements for prospecting titles hydrogeologist hydrochemist out of the security provided by the miner Extend to include doctor s69D(1) Matter for which access environmental scientist Petroleum (Onshore) access arrangement to be in the form of an umbrella agreement with overlying protections applicable and sub agreements for each approval sought by the miner [a similar framework to that provided in the legislation] Act 1991 (NSW) provided in the legislation] require the miner to provide the landholder with all information that provides to the govt. landholder must be made aware of what the miner is planning for example a copy of the miner's work program and annual reports Mr Moore knows that the only person who will now buy his land is the Miner, total loss of land value. Just and equitable compensation for all losses of the landholder including loss of total land value Ensure landholder always able to receive expert advice paid for by the miner to enable to landholder to protect the value in the property, protect the water, conserve the environment results of false or misleading information provided by miner are unenforceable contain a concurrent breach provision such that a breach of the Act, the regulations, the law or environmental law or any approval is a breach of the AA and enables denial of access until remedied 7

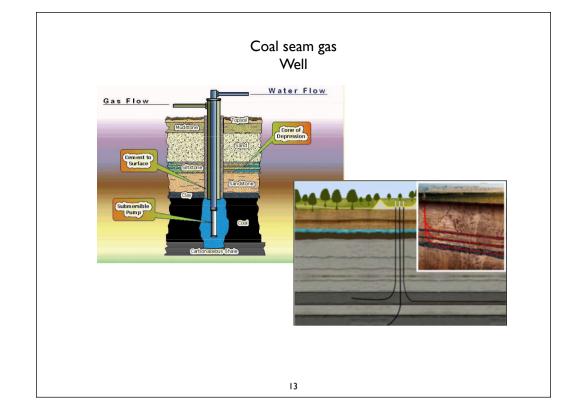
Part 4A Petroleum (Onshore) Act 1991 (NSW) NSW MC be replaced with APPEA as the appropriate peak body Prospecting area defined and referred to as the area on page 1 Shown on the map-restricted areas often NOT carved out s72(2) Current NSW Minerals Council template cl2.1 "access ... in the prospecting area" Any template must be evenly cast, if not swung in favour of the weaker party, the landholder s72(2) s69D(1A) and (2A) QLD legislation recognises that all reasonable legal fees should be covers QLD Govt also recognises that there are a number of other professionals fees which should be covered by the miner including accounting and valuation fees Not just "legal fees in obtain initial advice" but all legal fees QLD govt has begun providing landholders with legal aid non means tested to assist in negotiation of LAA's Landholders time should also be compensated for their time, everybody else is All specialists time should be paid by miner Petroleum (Onshore) Act 1991 (NSW) s69D(4) denial of access for contravention of Act, regulations, petroleum title for contravention the landholder is in a significantly vulnerable position vis a vis resources, knowledge, expertise in mining s69I(2)(b) legal representation in arbitration process the access arrangement is long term, will involve continual interaction between the parties, will significantly affect the activities of the landholder, and should be accorded significant resources and attention allow the landholder as of right, legal representation regulations or Act should set out circumstances when access should be refused including as Schmidt J in Brown provides "inadequate protection of the property" and include inadequate protection of the landholders rights under the Act [ie restricted areas not protected] and cultivated land not conserved and aquifers endangered Arbitrators may refuse access but anecdotally as-sume only in exceptional cir-cumstances s69N(2) and 69L(1)(a) guidance to arbitrators on when can refuse access

Parts 5 - 6 Petroleum (Onshore) Act 1991 (NSW) Prescribe catchment areas for urban and town water supplies, and significant basins such as MDB and GAB as exempt areas s70(4) Exempted Areas Provide a better definition of cultivated land No case law on what constitutes cultivated land s71 Restrictions on rights of holders of leases over Extend so that no mining operations in exploration as well as production on cultivated land cultivated land use Mining Act definition "agricultural land" and even better the WA mining Act definition LEC should determine what is cultivated land and on the merits Part 5 Restrictions on titles Access arrangement practices ___NSWMC version does not carve out the restricted areas This section applies in any circumstance within the restricted zones, but miners do not request consent if on another's land s72 Restrictions on rights of title holders on other land Petroleum (Onshore) advise landholders to obtain independent legal advice Act 1991 (NSW) advise the landholder of rights under s71 and 72 and sign off on that advice remove s72(2) providing that the consent is irrevocable Make publicly available the Minister's actual considerations s74(1) Need to protect natural resources to be taken into account expand this section to allow the Minister to carry out agricultural and water impact studies Part 6 Protection of the s75 inclusion of conditions for protecting the environment include water or amend definition of land to include water Amend the Mine Subsidence Compensation Act 1961 (NSW) to allow for compensation for subsidence from csg /petroleum mining s76 Rehabilitation of area damaged by operations 9

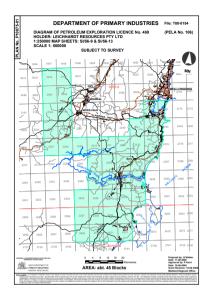
Parts 7 - 8 Petroleum (Onshore) Act 1991 (NSW) use the royalty to employ more people to police the industry conduct water impact studies rehabilitate an polluted or contaminated areas pay for economic analysis of cost benefit of csg as well as fugitive emissions study Part 7 Royalties and fees S85 Royalty Charge the 10% royalty straight up assist landholders in their negotiation of access arrangements by providing them with free legal aid can then issue fewer titles have funding to increase the transparency will discourage speculative mining s95(1) Records of titles record with the Registrar General the petroleum title on the register of land titles Petroleum (Onshore) Part 8 Registration of titles and dealings Act 1991 (NSW) make records of titles free of charge amend this section to ensure that any loss in land value no rights until compensation paid or agreed as in the mining Act s107 Compensation compensation for damage to all land not just the surface, so if the aquifer is damaged, compensation should be payable compensation for loss of or damage to water on the basis that paid on an ongoing basis at water trading rates and runs with the land Part 11 Compensation s109 Measure of compensation

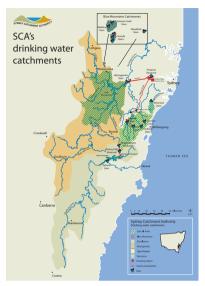
Parts 13 - 14 Petroleum (Onshore) Act 1991 (NSW) information should be released and available to the public immediately particularly the work program and any reporting on the work program or changes to the work program. The landholder should have a right to know what the miners are intending to do on its land Currently information which is disclosed to the Minister is not released from between 2 [if no opinion/conclusion drawn] and 5 [if a conclusion is drawn] years Part 13 Release of information s129 Notice to be given of cause of danger Petroleum (Onshore) Act 1991(NSW) Currently if a landholder "cannot be found after diligent inquiry" the miner may enter the landholder's property and "the operations may be carried out or the works erected without the consent of the landholder" (i) without a court order; (ii) only pursuant to the conditions one would see in an access arrangement where the landholder's property is protected, cultivated land is preserved, restricted areas are protected, aquifers protected Part 14 Miscellaneous s134B Consents of landholders (iii) only after compensation paid into a trust held for the benefit of the landholder 11





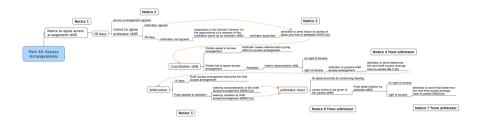
Petroleum (Onshore) Act 1991 (NSW) PEL 469 and the Sydney catchment area





Petroleum (Onshore) Act 1991 (NSW)(**POA**) Part 4A Access Arrangement

 Procedure involves a number of steps starting with negotiation, proceeding to conciliation then arbitration and finally appeal to the LEC



 Part 4A of the Petroleum (Onshore) Act concerns the procedure and some of the content of the access arrangement



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This presentation represents a brief summary of the law as at December 2011 relating to CSG legislation. It should not be relied upon as definitive, complete or conclusive. It is not legal advice.