Tenure Matters

A column by Sue Slater, Senior Advisor Petroleum, RLMS

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Welcome back. When I have spoken previously about the increased costs of compliance for industry I have been primarily referring to the additional reporting, monitoring and modelling conditions that are now required. The requirements under the *Water Act 2000* are particularly notable here, with modelling costing a significant amount that is often unwarranted by the scale of the activity, although recent changes to the *Water Act 2000* may help ameliorate the impact for some explorers. However, I have not spoken much about the increase in fees, and in some cases this has been astronomical. And just what are we paying for – really? The user pays principle is frequently espoused by government in justifying higher costs, but do we actually get a service commensurate with the cost?

A good example of this is the excessive late fee charged under section 79(6) of the *Petroleum & Gas (Production & Safety) Act 2004*, which is 10 times the prescribed fee for an application made less than 40 business days before the end of the term. Ostensibly, this amount was 'justified' by the additional staff hours that would be required to process the application in a timely manner when the application was submitted within, and not before, that 40 business day period. From the Explanatory Notes[1] provided for the Bill (my emphasis): "*The time for lodgement of a renewal application has been determined with a view to completing the necessary work of assessing, and granting or refusing the application* ***before the expiry of the current term approved for the authority to prospect****. The late lodgement of the renewal application greatly reduces the time for this. To discourage the late lodgement of renewal applications, and to reduce unnecessary increases in the Minister's and administering department's workloads, a late fee significantly greater than the lodgement fee is proposed.*" I doubt that anyone has had a renewal processed before the expiry of the current term whether the renewal application was lodged within or before 40 business days of the end of the term. Some haven't been processed for nearly three years! So the application of an excessive late fee in these circumstances has certainly not been shown to be justified by the results. The cost to industry of the lost opportunities caused by excessive delays in application processing is enormous – and cannot be recouped by industry from government!

[1] https://www.legislation.qld.gov.au/Bills/51PDF/2004/PetGasProSafB04Exp.pdf

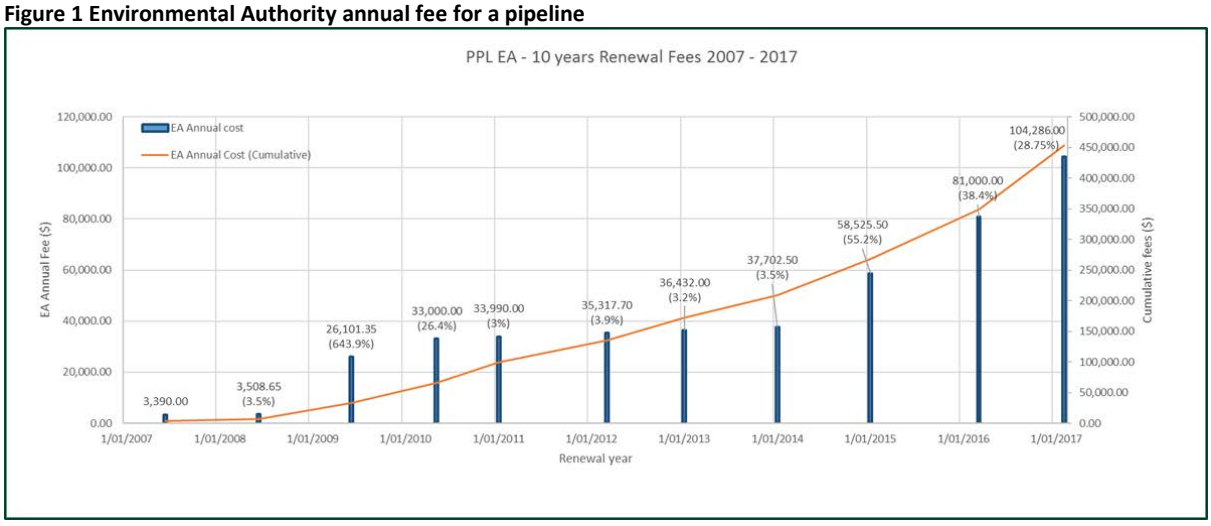
But let's take a look at some of the fee increases that have occurred – in both the *Petroleum & Gas (Production & Safety) Act 2004* and the *Environmental Protection Act 1994*.

Environmental Authority (EA) annual fees

Environmental Authority annual fees have increased since the commencement of the *Environmental Protection Regulation 2008.* Prior to that time, what was then a level 2 activity for petroleum exploration and would now be a standard environmental authority, had zero annual fee The fee at introduction was $500, which has risen incrementally to the current level of $630 (where there are no environmentally relevant activities with an aggregate score). So that is a fairly modest yearly increase.

But when we review annual fees for environmentally relevant activities for which there is an aggregate score we see some spectacular increases. The example[2] below in Figure 1 is for an **unbuilt** pipeline, for which not a sod of earth has been turned. It shows the increase in 10 years from $3,390 to $104,286. This is over a 3000% increase for a pipeline that exists only on paper! But in order to keep the pipeline licence current, the EA must be kept current. What exactly is this for? There is nothing to inspect or audit in this particular case, so how can this fee level be justified? [3]

Figure 1 Environmental Authority annual fee for a pipeline



Petroleum and gas tenure fees

The fees associated with tenure activities, such as applications, renewals, amendments and so on; have increased since the commencement of the *Petroleum & Gas (Production & Safety) Act 2004*. Of course, each fee gets adjusted annually to account for CPI increases, but this does not explain the huge jump in application fees for each of PPLs, ATPs and PLs shown in Figures 2 and 3 in 2010. This is an approximate 200% increase for PPLs and PLs and a more modest, though still significant, approximately 75% for ATPs.

The annual fee for a pipeline has gone from $100 per kilometre of pipeline to $145.50 per kilometre over the same period. So for a pipeline of say 250 kilometres, the annual fee has risen from $25,000 to $36,375. Interestingly section 423 of the Act states that the fee is based on the kilometres of pipeline the subject of the holder's pipeline licence. So if the pipeline is not built, should the fee apply? To date it has.

[2] Diagram courtesy of Ian Bridge, RLMS

[3] Fortunately, to date, the safety and health fee has not been required, since the schedule is based on kilometres of pipeline and not kilometres of pipeline licence.

Figure 2 PPL application fees

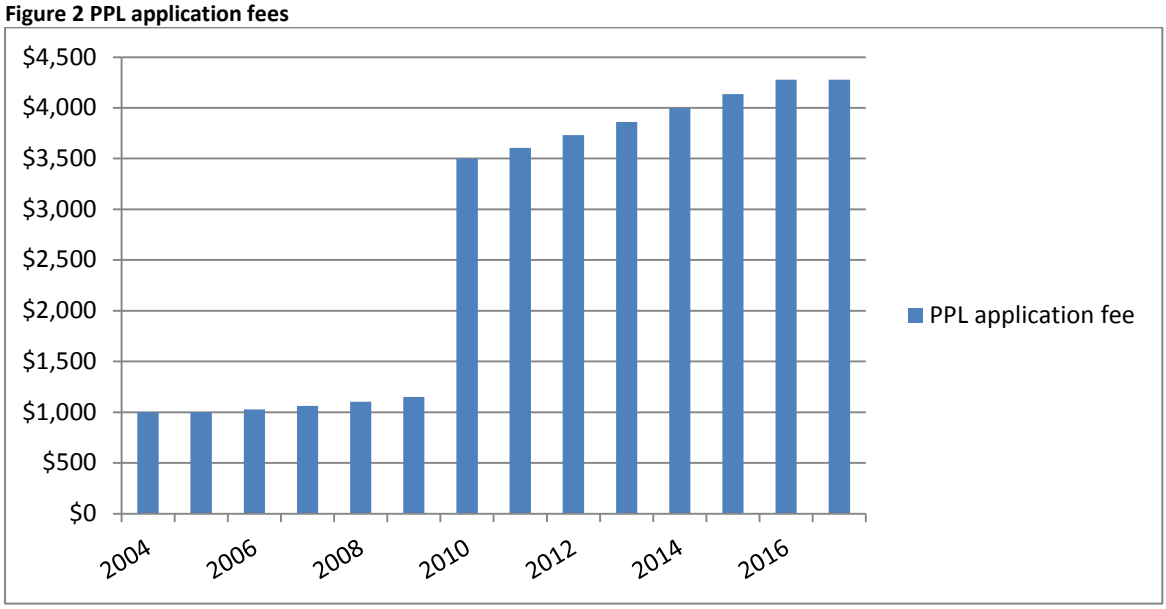
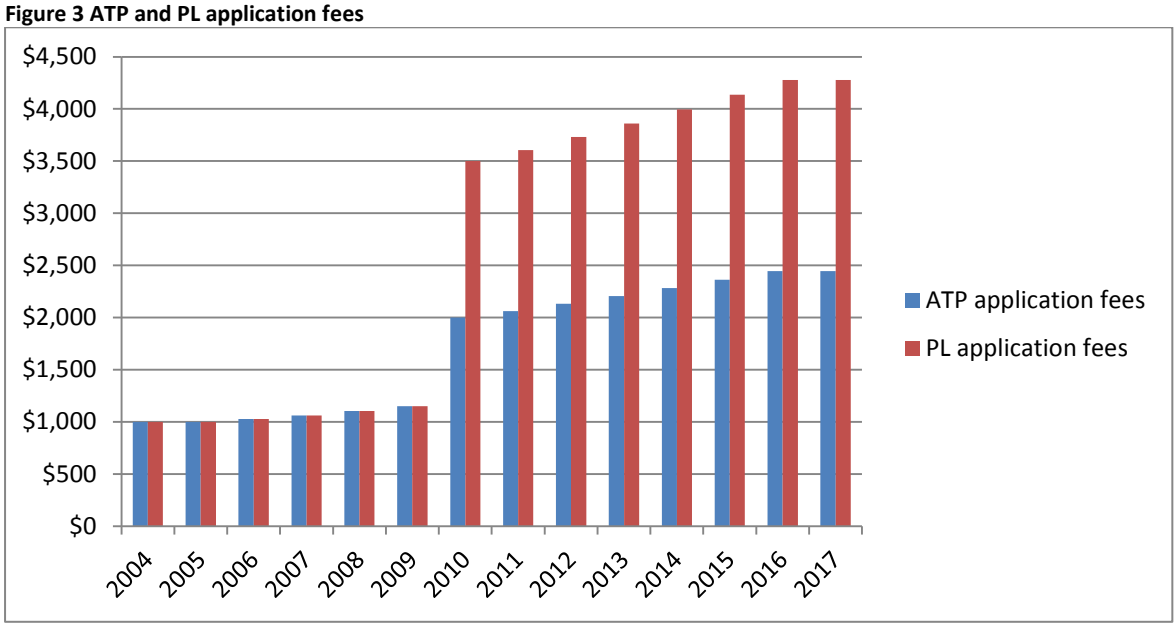


Figure 3 ATP and PL application fees



Safety and health fees

For an ATP, the safety and health fee payable is $2.28 per sub-block (rising to $2.36 for the 2017-18 financial year)[4]. At introduction the fee was $0.65 for each square kilometre (approximately $1.95 per sub-block). The current maximum size of an ATP is 100 blocks, or 2500 sub-blocks. This makes the current annual safety and health fee $5,700 for a 'maximum' size ATP issued under the 2004 Act. The biggest remaining ATP currently is ATP 582, originally issued under the *Petroleum Act 1923*, at 6975 sub-blocks, and therefore has an annual safety and health levy of $15,903. What is this for? Ostensibly, according to section 134A[5] of the *Petroleum & Gas (Production & Safety) Regulation 2004*, this is to cover the operating costs of the department's activities for safety and health matters. But this applies whether or not any on-the-ground activity took place. If no work was carried out,

[4] https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/petroleum-gas/regulation/safety-health-fee

[5] Inserted in 2010 by Subordinate Legislation No. 143, s7

what safety and health costs have been incurred? Is size of an ATP the most equitable why to assess the fee?

The insertion in 2010, of "the holder of an authority to prospect" as someone who was liable to pay an audit and inspection fee (section 135 of the *Petroleum & Gas (Production & Safety) Regulation 2008*)[6] saw the introduction of a per sub-block fee levied on the ATP holder. It is arguable whether it is reasonable to apply that fee to the entirety of the ATP, especially since the Act does not include this as 'operating plant' in section 670. In 2007[7], the definition of operating plant was extended to include "*any **part of the area** of a petroleum tenure or 1923 Act petroleum tenure on which an **operating plant** under subsections (2) to (5) **happens or is located** as an authorised activity for the tenure.*" So the part of the ATP that has operating plant on it, but not the entirety of the ATP. This definition was subsequently omitted in 2010[8]. The current definition includes "*all of the authorised activities for a petroleum authority.*." but not the entirety of the ATP. The regulation however, still includes the holder of the ATP as someone liable to pay the safety and health fee, which is levied on a sub-block basis.

The explanation for the fees is to cover costs associated with the "*ongoing delivery of regulatory services relating to safety and health at operating plant across Queensland*."[9] This includes activities such as:

- legislative administration;
- policy development;
- stakeholder engagement;
- inspections and audits;
- complaint and prescribed incident response;
- dangerous situation and emergency response;
- investigations; and
- other safety initiatives.

Some of these activities are standard business as usual activities for government, such as legislative administration and policy development. Is it reasonable then to include these activities as justification for these fees? On the other hand, inspections, audits, and incident responses are directly related to levels of industry activity and therefore result in additional expenses for government, which is solid justification for a levy on industry.

Financial Assurance (in brief)

The increase in both dollars and complexity of the Financial Assurance regime is perhaps a topic for another time; but is a huge issue for industry. For exploration tenures operating under standard conditions and eligibility criteria, where DEHP has already accepted that the environmental risk is low, the financial assurance process, and the amounts required, needs to be looked at long and hard. There have been at least a few attempts at this in the past, but none have successfully addressed the issue to the satisfaction of industry. I would like to see some sort of standard schedule for ATPs that does away with all the current justifications and calculations, saving time for

[6] Inserted by SL No. 143 2010, *Petroleum & Gas (Production & Safety) Amendment Regulation No. 2 2010*
[7] Inserted by Act No. 46 2007, section 210 *Mining & Other Legislation Amendment Act 2007*
[8] Omitted by Act No.31, section 555, *Geothermal Energy Act 2010*
[9] https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/petroleum-gas/regulation/safety-health-fee

both industry and government. So possibly a set amount for a work program that comprises 1 to 5 exploration wells (perhaps in the order of $150,000)[10], an increased amount for 5 to 10 wells (perhaps $300,000), and for a program including more than 10 wells, a calculation is required.

In summary

This is of course by no means a complete review of all the fees industry currently pays, but even this snapshot demonstrates the generally steady, but occasionally precipitous, increase in fees over the last several years, both when making applications and when maintaining those approvals. If this increase in fees gave rise to an increase in the service level received it would be more palatable, but unfortunately that is rarely the case.

The resource sector does not have bottomless pockets, particularly when we are talking about exploration companies. These fee increases do have an impact, and when combined with the cost of additional compliance requirements, significantly impact the amount of dollars that can be put directly into exploration. Drilling wells and shooting seismic will find more gas, not paying fees – let's put the dollars where they will count.

I am happy to hear suggestions about topics you would like covered. Feel free to email me at sue.slater@rlms.com.au with the subject heading Tenure Matters.

In the meantime, remember "Tenures make the Project; the Project doesn't make the Tenures".

RLMS covers the project spectrum from planning through to State and Federal government approvals, including land access, compensation, environmental impact statements and work schedules for clients ranging from entrepreneurs to major corporations, from start-ups to government agencies, and state significant projects such as Queensland's LNG giants. Contact RLMS at:

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[10] The current value in the FA calculator for an exploration well is in the order of $30,000