

Mineral and Other Legislation Amendment Bill 2016

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

Title of the Bill

The short title of the bill is the Mineral and Other Legislation Amendment Bill 2016.

Objectives of the Amendments

The main purpose of the Mineral and Other Legislation Amendment Bill 2016 (the Bill) is to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) to implement a number of government commitments to:

- Reinstating public notification and community objection rights to proposed mining projects;
- Protecting key agricultural infrastructure under the restricted land framework;
- Enshrining the distances for restricted land in the primary legislation;
- Repealing changes that would allow the Minister to grant a mining lease over restricted land prior to compensation being agreed with the landholder; and
- Repealing changes that would allow the Minister to extinguish restricted land where the Minister considers that the activities carried out on the restricted land cannot coexist with authorised activities under the proposed mining lease.

Amendments are proposed to the Bill to implement certain recommendations of the Infrastructure, Planning and Natural Resources Committee (Report No. 26 of the 55th Parliament), and to respond to issues raised by stakeholders during the Committee process. In addition minor amendments are proposed to be included in the Bill to amend the MERC Act to ensure that the provisions are operable on their commencement.

Notice of an application for a mining lease

Amendments are proposed to require an applicant for a proposed mining lease to directly notify:

- The owners of land adjoining land that is the subject of the proposed mining lease; and
- Entities that provide infrastructure wholly or partially on the land the subject of a proposed mining lease.

These notification requirements will be in addition to the existing requirement to directly notify the owners of the land that is the subject of the mining lease; the owners of access land; and the relevant local council, as well as the requirement that a mining lease applicant publish a notice in a newspaper circulating generally in the area of the proposed mine.

These amendments will implement recommendations 2 and 4 of the Parliamentary Committee's Report and will improve access to information about proposed mining projects.

Restricted land

Amendments are proposed to change the definition of restricted land to remove the definition of 'residence' and the associated example. This amendment is in response to recommendation 6 of the Parliamentary Committee's Report. Amendments will also be made to clarify that restricted land is the land within the prescribed distance laterally of the permanent building or area used for the prescribed purpose.

These amendments will correct an oversight in the development of the provision and ensure the effective operation of the restricted land framework upon its commencement.

Overlapping tenure for coal and coal seam gas

Amendments are proposed to the new overlapping tenure framework for coal and coal seam gas. These amendments are in response to concerns raised by industry stakeholders during the Parliamentary Committee submission process and are required to ensure the effective operation of the framework upon its commencement.

Other minor amendments

Minor amendments to the Bill are also proposed to remove duplicated consequential amendments to the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) from the MERCPC Act.

Achievement of the Objectives

Notice of an application for a mining lease

To achieve the main objectives the following changes to the Bill are proposed:

- Amend the definition of affected person to include an owner of adjoining land, and an entity that provides infrastructure wholly or partially on the land that is the subject of the proposed mining lease; and
- Amend the Bill to include a definition of adjoining land holder and infrastructure.

Restricted land

To achieve the main objectives the following changes to the Bill are proposed:

- Amend the Bill to include an amendment to remove the definition of residence under chapter 3 of the MERCPC Act; and
- Amend the definition of restricted land to make it clear that restricted land is the prescribed distance 'laterally' from a permanent building or area used for the prescribed purposes.

Overlapping tenure for coal and coal seam gas

To achieve the main objectives the following changes to the Bill are proposed:

- Amend the Bill to clarify the application of provisions about joint development plans that apply to only production tenure over production tenure relationships; and
- Amend the compensation provisions so that they more accurately reflect the policy setting in the industry-developed White Paper.

Other minor amendments

To achieve the main objectives the following changes to the Bill are proposed:

- Amend the Bill to repeal duplicated consequential amendments to the P&G Act.

Alternative Ways of Achieving Policy Objectives

The Bill must be amended to give effect to the government's implementation of certain Committee recommendations, and to ensure the effective operation of the MERCPC Act at commencement.

Estimated Cost for Government Implementation

Amendments to the Bill are not expected to create any additional cost to government to implement.

Consistency with Fundamental Legislative Principles

The proposed amendments are consistent with fundamental legislative principles and have sufficient regard to the rights and liberties of individuals.

Consultation

Feedback provided through the Infrastructure, Planning and Natural Resources Committee submission process has been considered in preparing these amendments.

NOTES ON PROVISIONS

Clause 7 (Amendment of s 68 (What is *restricted land*))

Clauses 1 to 3 each amend clause 7 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 68 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Clauses 1 and 2 amend clause 7(1) of the Bill to clarify that for an exploration resource authority and a production resource authority, restricted land is land within 200m laterally from a permanent building, or an area used for the prescribed purpose; or land within 50m laterally from an area used for the prescribed purpose.

Clause 3 amends clause 7(1) to clarify that for a resource authority other than an exploration resource authority or a production resource authority, restricted land is the area within 50m laterally of any area building or structure used for the prescribed purposes.

Clause 4 amends clause 7 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 68 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to remove the definition of residence and associated examples.

Concerns were raised during the Infrastructure, Planning and Natural Resources Committee hearing process by stakeholders, and echoed by the Committee in their Report No. 26 that non-resident workers accommodation would not attract the protection of restricted land.

The removal of the definition of residence and the associated examples will remove the limitations placed on what can be considered a residence. The ordinary definition of the term 'residence' would then apply for the purposes of restricted land.

Clause 31 (Amendment of s 130 (Requirement for agreed joint development plan))

Clauses 5 to 6 amend clause 31 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 130 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. This section requires a mining lease (coal) holder to ensure that there is an agreed joint development plan in place when it overlaps a petroleum lease (PL) holder.

Stakeholder submissions to the Infrastructure, Planning and Natural Resources Committee raised concerns about potential ambiguity arising from the use of the term 'petroleum resource authority holder' in section 130.

Clause 5 of these amendments removes a reference to a 'petroleum resource authority holder' in section 130(3)(c) (as amended by Clause 31 of the Bill) that was intended to be changed to 'PL holder'. Clause 31 of the Bill already removes some references to 'petroleum resource authority holder' in section 130, but not all references were removed. A 'petroleum resource authority holder' can be either an authority to prospect holder or a PL holder. This amendment clarifies that section 130 will only apply to the circumstance of a mining lease (coal) overlapping a petroleum lease.

In addition, section 130(2)(d) was intended to mirror the requirement for a joint development plan contained in section 142(3)(c). As part of the Committee process it was identified that an inconsistency between these provisions exists regarding the use of the word 'proposed'.

Clause 6 amends Clause 31 of the Bill to ensure these provisions are consistent by removing the word 'proposed'.

Clause 35 (Replacement of s 134 (Authorised activities allowed only if consistent with agreed joint development plan))

Clauses 7 to 8 amend clause 35 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 134 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. Section 134 requires that any authorised activities to be undertaken in an overlapping area must be consistent with the agreed joint development plan.

Stakeholder submissions to the Infrastructure, Planning and Natural Resources Committee raised concerns about potential ambiguity arising from the use of the term 'petroleum resource authority holder' in section 134.

Amendment is required to remove a reference to a 'petroleum resource authority holder' in section 134(3) (as replaced by the Bill) that was intended to be changed to 'PL holder'. Clause 34 of the Bill already removes some references to 'petroleum resource authority holder' in section 134, but not at all references were removed. A 'petroleum resource authority holder' can be either an authority to prospect holder or a PL holder. This amendment clarifies that section 134 will only apply to the circumstance of a mining lease (coal) overlapping a petroleum lease.

Clause 44 (Replacement of s 147 (Authorised activities allowed only if consistent with agreed joint development plan))

Clauses 9 to 10 amend clause 44 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 147 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. Section 147 requires that any authorised activities to be undertaken in an overlapping area must be consistent with the agreed joint development plan.

Stakeholder submissions to the Infrastructure, Planning and Natural Resources Committee raised concerns about potential ambiguity arising from the use of the term 'petroleum resource authority holder' in section 147.

Amendment is required to remove a reference to a 'petroleum resource authority holder' in section 147(2) (as replaced by the Bill) that should instead be 'PL holder'. A 'petroleum resource authority holder' can be either an authority to prospect holder or a PL holder. This amendment clarifies that section 147 will only apply to the circumstance of a petroleum lease overlapping a mining lease (coal).

Clause 51A Amendment of s 170 (Minimising compensation liability)

Clause 11 inserts new clause 51A into the Mineral and Other Legislation Amendment Bill 2016 to amend section 170 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

This proposed amendment has resulted out of feedback raised by stakeholders through submissions to the Infrastructure, Planning and Natural Resources Committee that the current drafting of section 170 does not fully reflect the policy intent set out in the industry-developed White Paper on overlapping coal and coal seam gas tenures.

Currently, section 170 requires that a mining lease (coal) holder may meet a compensation liability to a petroleum lease holder, once incurred, through the provision of an amount of coal seam gas equal to the compensation liability. The petroleum lease holder is not required to accept this gas when offered (for example if the quality of the gas is not adequate), and where the parties are unable to agree to terms on the supply of gas, financial compensation may then be sought by the petroleum lease holder.

However, the policy intent is not to limit the type of gas that may be provided to meet a compensation liability to coal seam gas only (it could be, for example, conventional natural gas sourced from the eastern Australian gas market).

To better align the legislation with the original policy intent, amendment to replace reference to 'coal seam gas' in section 170(2) with 'natural gas' is proposed. The ordinary meaning of the term 'natural gas' will apply.

Clause 52 (Amendment of s 172 (Reconciliation payments and replacement gas))

Clauses 12 to 13 amend clause 52 of the Mineral and Other Legislation Amendment Bill 2016, which amends section 172 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 172 makes reference to a petroleum lease holder receiving 'an amount of coal seam gas' from a mining lease (coal) holder to meet a compensation liability.

Amendment to clause 52(1) of the Bill is required as a consequence to amendment of section 170(2), which replaces reference to 'an amount of coal seam gas' with 'an amount of natural gas' (refer to clause 11 of these amendments).

To ensure consistency in the framework, amendments will replace references to 'coal seam gas' in sections 172(1)(a), 172(2)(b) and 172(2)(c)(ii) (as amended by Clause 52 of the Bill) to 'an amount of natural gas'.

Clause 89 (Replacement of s 436 (Replacement of ss 252-252D))

Clause 14 amends clause 89 of the Bill, which replaces section 436 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) to insert a new section 252-252D into the *Mineral Resources Act 1989* (MRA).

Specifically this clause inserts a definition for 'adjoining land' into section 252A of the MRA.

The definition of 'adjoining land' is consistent with that currently included in section 436 of the MERC Act.

Adjoining land is defined as private land that adjoins land subject to a mining lease application or a lot of land (as defined by the *Land Act 1994* or *Land Title Act 1994*) that contains any land subject to the mining lease application. The land is considered to be adjoining if it connects or is in contact with the land, including where only a common corner is shared. It is also considered adjoining if it is separated by a road, watercourse, railway, stock route, reserve or drainage or other easement. Land that adjoins land necessary only for access or transportation to the proposed mining lease is excluded by the definition.

The definition of adjoining land is included in the Bill to support the interpretation and application of the amendments proposed in clause 15 of these amendments.

Clause 89 (Replacement of s 436 (Replacement of ss 252-252D))

Clause 15 amends clause 89 of the Bill, which replaces section 436 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to insert a new section 252-252D into the *Mineral Resources Act 1989* (MRA).

Specifically this clause amends the definition for 'affected person' in section 252A of the MRA. This amendment will establish a requirement for an applicant for a mining lease to give certain information and documents (as prescribed under section 252A(1) of the MRA) directly to the owner of adjoining land. This is in addition to the existing requirement under clause 89 of the Bill to give information to: an owner of the land that is the subject of the proposed mining lease; an owner of land necessary for access to the area of the mining lease; and the relevant local government.

To establish this requirement, clause 15 will amend the definition of affected person under clause 89 of the Bill to include 'an owner of adjoining land' within the definition of affected person.

The proposed amendment to include 'an owner of adjoining land' within the definition of 'affected person' arose out of the Infrastructure, Planning and Natural Resources Committee Report's recommendation 2.

Clause 89 (Replacement of s 436 (Replacement of ss 252-252D))

Clause 16 amends clause 89 of the Bill, which replaces section 436 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to insert a new section 252-252D into the *Mineral Resources Act 1989* (MRA).

Specifically this clause amends the definition for 'affected person' in section 252A of the MRA. This amendment will establish a requirement for an applicant for a mining lease to give certain information and documents (as prescribed under section 252A(1) of the MRA) directly to an entity that provides infrastructure wholly or partially on the subject land. This is in addition to the existing requirement under clause 89 of the Bill to give information to: an owner of the land that is the subject of the proposed mining lease; an owner of land necessary for access to the area of the mining lease; and the relevant local government.

To establish this requirement, clause 16 will amend the definition of affected person under clause 89 of the Bill to include 'an entity that provides infrastructure wholly or partially on the subject land' within the definition of affected person.

The proposed amendment to include 'an entity that provides infrastructure wholly or partially on the subject land' within the definition of 'affected person' arose out of the Infrastructure, Planning and Natural Resources Committee Report's recommendation 4.

Clause 89 (Replacement of s 436 (Replacement of ss 252-252D))

Clause 17 amends clause 89 of the Bill, which replaces section 436 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) to insert a new section 252-252D into the *Mineral Resources Act 1989* (MRA).

Specifically this clause inserts a definition for 'infrastructure' into section 252A of the MRA.

The definition of infrastructure is consistent with that currently included section 436 of the MERC Act.

Infrastructure is defined to include transport (road, rail, air), water, waste water, telecom or energy transmission infrastructure or other similar infrastructure. It includes the infrastructure used to operate and / or maintain the infrastructure including pumping stations, valve sites, monitoring infrastructure, etc. Infrastructure providers for this section are defined as the owners of infrastructure who provide infrastructure that is wholly or partially on the land.

The definition of infrastructure is included in the Bill to support the interpretation and application of the amendments proposed in clause 16 of these amendments.

Clauses 109A and 109B Omission of ss 560 and 564

Clause 18 inserts new clauses 109A and 109B into the Bill to repeal sections 560 and 564 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act).

The intent of sections 560 and 564 of the MERC Act were to make consequential amendments to sections 418 and 451 of the *Petroleum and Gas (Production and Safety) Act 2004*. These changes were required as a consequence of the consolidation of the land access provisions under the MERC Act.

Sections 560 and 564 are duplicate consequential amendments to those provided in sections 629 and 632 of the MERC Act. Sections 629 and 632 have already commenced by proclamation on 21 November 2014.