

Mineral and Energy Resources (Common Provisions) Regulation 2016

Explanatory notes for SL 2016 No. 169

made under the

Coal Mining Safety and Health Act 1999

Geothermal Energy Act 2010

Greenhouse Gas Storage Act 2009

Mineral and Energy Resources (Common Provisions) Act 2014

Mineral Resources Act 1989

Petroleum Act 1923

Petroleum and Gas (Production and Safety) Act 2004

General Outline

Short title

Mineral and Energy Resources (Common Provisions) Regulation 2016

Authorising law

Section 282 of the *Coal Mining Safety and Health Act 1999*

Section 385 of the *Geothermal Energy Act 2010*

Section 429 of the *Greenhouse Gas Storage Act 2009*

Section 210 of the *Mineral and Energy Resources (Common Provisions) Act 2014*

Section 417 of the *Mineral Resources Act 1989*

Section 149 of the *Petroleum Act 1923*

Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004*

Policy objectives and the reasons for them

The primary objective of the *Mineral and Energy Resources (Common Provisions) Act 2014* is to harmonise common provisions from the *Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum and Gas (Production and Safety) Act 2004*, and the *Petroleum Act 1923* (collectively referred to as the Resource Acts) into one Act. The major elements harmonised in the *Mineral and Energy Resources (Common Provisions) Act 2014* include provisions

relating to dealings, caveats and associated agreements; private and public land access; and the maintenance of a resource authority register.

The *Mineral and Energy Resources (Common Provisions) Act 2014* also implements the following policy objectives:

- establishes a new framework for the management of overlapping coal and coal seam gas resource authorities (overlapping tenures framework) in Queensland;
- gives effect to the recommendations of the Land Access Implementation Committee to improve the land access framework relating to private land; and
- implements a consistent restricted land framework across all resource sectors.

In addition to the above, the *Mineral and Energy Resources (Common Provisions) Act 2014* further provides a number of amendment provisions, amending other matters in the Resource Acts and the *Coal Mining Safety and Health Act 1999*.

The primary objective of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* is to prescribe certain details, and amend the existing Resource Regulations, namely the *Geothermal Energy Regulation 2012*, the *Greenhouse Gas Storage Regulation 2010*, the *Mineral Resources Regulation 2013*, the *Petroleum and Gas (Production and Safety) Regulation 2004*, the *Petroleum Regulation 1923* to support the policy objectives of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Achievement of policy objectives

To achieve the objectives, the *Mineral and Energy Resources (Common Provisions) Regulation 2016* prescribes matters that support the operation of the *Mineral and Energy Resources (Common Provisions) Act 2014* and amends existing Resource Regulations.

Key matters prescribed under the *Mineral and Energy Resources (Common Provisions) Regulation 2016* are detailed below.

Chapter 1 – Preliminary

Chapter 1 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides the introductory provisions to the Regulation. This includes the Regulation's short title, commencement and definitions.

Chapter 2 – Dealings and caveats

Chapter 2 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides the prescribed matters relating to dealings and caveats. In particular it prescribes the types of dealings with a resource authority that must be registered under the *Mineral and Energy Resources (Common Provisions) Act 2014* to have effect. These prescribed dealings include:

- a change to a resource authority holder's name even if the holder continues to be the same person after the change;
- a mortgage over the resource authority or over a share of the resource authority;

- a release, transfer or surrender of a mortgage;
- a sub-lease of a lease; the transfer of a sub-lease or of a share in a sublease; and
- a transfer of all, or a share of, a resource authority.

Chapter 2 also prescribes:

- dealings that are prohibited dealings under the *Mineral and Energy Resources (Common Provisions) Act 2014*. For example a dealing with a prospecting permit other than permitted under section 334N of the *Mineral Resources Act 1989*;
- matters the Minister must consider when deciding to approve an application for indicative approval of an assessable transfer and the period for registration of an assessable dealing following the giving of the indicative approval;
- matters the Minister must consider when deciding to approve an application to register an assessable transfer and a dealing other than an assessable transfer;
- that a caveat over a prospecting permit under the *Mineral Resources Act 1989* is prohibited; and
- instruments that a caveat does not prevent from being registered.

Chapter 3 - Land access

Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides the prescribed matters relating to the land access framework. This includes the making of a new Land Access Code dated September 2016. There have been no policy changes to the mandatory provisions of the new Land Access Code that have been removed from the *Petroleum and Gas (Production and Safety) Act 2004* and are now contained in Schedule 1 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016*. The mandatory provisions reflect the recent changes to the definition of declared pest resulting from the making of the *Biosecurity Regulation 2016*. Minor amendments have been made to the mandatory provisions to clarify that the Land Access Code applies to private land.

Chapter 3 also prescribes the requirements for giving a notice to enter private and public land and the waiver of this requirement by the landowner or occupier, or public land authority; for a conduct and compensation agreement; and an opt-out agreement.

Chapter 4 - Overlapping coal and petroleum resource authorities

Chapter 4 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides the prescribed matters relating to the overlapping tenures framework. This includes:

- detailing matters that must be included in the notice to the chief executive about the new mining commencement date and about an agreed joint development plan;
- detailing matters that must be included in the notice of offer, or re-offer, of supply of incidental coal seam gas, and the contract for delivery of incidental coal seam gas;
- detailing principles for calculating compensation for:
 - lost production,
 - the cost of replacement of PL major gas infrastructure,

- the cost of replacement of PL connecting infrastructure,
- the cost of abandonment of ATP major gas infrastructure,
- minimising the compensation liability,
- offsetting of compensation liability, and
- the reconciliation payment;
- prescribing matters concerning the dispute resolution process, including:
 - prescribing the arbitration institutes;
 - additional matters an arbitrator may consider in deciding an award; and
- providing the experience or qualifications of a qualified person to be appointed as an expert under the arbitration process.

The overlapping tenures framework was based on the Queensland Resources Council's report entitled, '*Maximising Utilisation of Queensland's Coal and Coal Seam Gas Resources – A new Approach to Overlapping Tenure in Queensland*' and subsequent technical working group reports.

Chapter 5 – Applications and other documents

This chapter establishes the prescribed requirements for applications made under the *Mineral and Energy Resources (Common Provisions) Act 2014*. This includes applications under the *Mineral and Energy Resources (Common Provisions) Act 2014*, pursuant to:

- section 19 – Application for Minister's approval to register a dealing;
- section 23 - Indication of the Minister's approval to register;
- section 33 - Recording associated agreements;
- section 35 - Removing associated agreements; and
- section 41 – Approval to give entry notices by publication.

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* also prescribes the following details with regard to these five types of applications:

- the requirements for amending and withdrawing an application;
- a 20 business day time period for complying with a direction about an application made under the *Mineral and Energy Resources (Common Provisions) Act 2014*; and
- the place and way in which applications and other documents must be lodged.

Chapter 6 - Miscellaneous

Chapter 6 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides for miscellaneous matters. This includes regulating fees payable under the *Mineral and Energy Resources (Common Provisions) Act 2014* and defining the Surat Basin Transitional Area for the overlapping tenures framework.

Schedule 2 to the *Mineral and Energy Resources (Common Provisions) Regulation 2016* sets out the fees associated with dealings, caveats and associated agreements and those for searching and taking extracts from the resource authority register, or obtaining a copy of all or part of a document held in this register. There have been no changes to the amounts charged for these fees from the amounts that are currently charged for these fees in the relevant Resource Regulations.

The Surat Basin Transitional Area refers to a transitional arrangement provided for under the *Mineral and Energy Resources (Common Provisions) Act 2014* for coal and coal seam gas resource authorities within the defined area to transition to the new overlapping tenures framework. The *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides the latitude and longitude coordinates for the Surat Basin Transitional Area.

Chapter 7 – Amendments of other regulations

Part 1 of Chapter 7 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* refers to amendments relating to safety for the new overlapping tenures framework for coal and coal seam gas resource authorities (overlapping tenures safety framework).

The new overlapping tenures safety framework is intended to provide greater guidance to both the coal and coal seam gas industries about their safety obligations when their authorities overlap and production or exploration activities are to be conducted. Key policy objectives of the *Coal Mining Safety and Health Act 1999* and *Petroleum and Gas (Production and Safety) Act 2004* amendments that were included in the *Water Reform and Other Legislation Amendment Act 2014* include:

- ensuring that safety outcomes are not compromised by the less restricted overlapping resource authorities arrangements under the new framework. Both coal and coal seam gas parties are required to safely operate with an acceptable level of risk, over the same piece of ground;
- requiring both parties to develop and maintain an agreed joint interaction management plan to manage risks and hazards;
- requiring agreements/dispute resolution to be consistent with legislative safety requirements or the relevant Department of Natural Resources and Mines' Coal Mining Inspectorate/Petroleum and Gas Inspectorate directives/directions in relation to safety; and
- harmonising some key terminology across overlapping coal and coal seam gas resource authorities under the *Coal Mining Safety and Health Act 1999*, the *Mineral Resources Regulation 2013*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*, .

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides amendment provisions to support the new overlapping tenures safety framework. The provisions amend related provisions under the *Coal Mining Safety and Health Regulation 2001*, the *Mineral Resources Regulation 2013*, the *Petroleum and Gas (Production and Safety) Regulation 2004* and the *Petroleum Regulation 2004*. Based upon the Safety and Health Technical Working Group Proposal and additional requirements developed by the coal and coal seam gas industries, key amendments include:

- requiring the joint interaction management plan to describe the way in which the site senior executive and the operator of each operating plant in the overlapping area intend to communicate about and co-ordinate emergency, incident response, induction training, information exchange and vehicle safety obligations;
- additional safety requirements for drilling and abandoning wells and bores; and

- adding pressurisation of coal exploration holes to the potential hazard guide schedule in the *Coal Mining Safety and Health Regulation 2001*.

Part 2 of Chapter 7 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* provides miscellaneous amendments to existing Resource Regulations. These amendments refer to the existing royalty exemption provided for certain coal seam gas and incidental coal seam gas uses, and for production and storage testing notices for petroleum tenure holders.

The mineral royalty exemption for certain coal seam gas and incidental coal seam gas uses in section 49 of the *Mineral Resources Regulation 2013* is amended to clarify the existing scope and application of the exemption. With the *Mineral and Energy Resources (Common Provisions) Act 2014* establishing a new framework for the management of overlapping coal and coal seam gas resource authorities, section 318CN of the *Mineral Resources Act 1989* has also been amended to expand the permitted uses of coal seam gas and incidental coal seam gas to support the new framework.

The new overlapping tenures framework and the amendment to section 318CN of the *Mineral Resources Act 1989* do not alter the current application and scope of the royalty exemption however, section 49 of the *Mineral Resources Regulation 2013* and section 318CN of the *Mineral Resources Act 1989* use similar terminology to prescribe what is a permitted coal seam gas and incidental coal seam gas use for the purpose of each section. Section 49 of the *Mineral Resources Regulation 2013* is therefore being amended to clarify those coal seam gas and incidental coal seam gas uses which will continue to qualify for the royalty exemption.

Section 49 of the *Mineral Resources Regulation 2013* is also being amended to reflect an existing administrative practice which extends the application and scope of the mineral royalty exemption. The exemption will continue to be able to be claimed when the circumstances detailed in section 49(1)(b)(ii) of the *Mineral Resources Regulation 2013* arise.

Among other things, amendments are being made to the *Petroleum and Gas (Production and Safety) Regulation 2004*, in relation to a requirement to lodge a:

- notice about the commencement of authority to prospect or petroleum lease production or storage testing for a petroleum well; and
- notice about any stopping of authority to prospect or petroleum lease production or storage testing, during allowable authority to prospect authority to prospect or petroleum lease production or storage testing periods.

These amendments will support the implementation of the *Mineral and Energy Resources (Common Provisions) Act 2014* amendments to the *Petroleum and Gas (Production and Safety) Act 2004*, which extend the timeframes when an authority to prospect or petroleum lease production or storage testing may be carried out without first requiring Ministerial approval.

In relation to a notice about the commencement of authority to prospect or petroleum lease production or storage testing for a petroleum well, this information will keep the Minister administering the *Petroleum and Gas (Production and Safety) Act 2004*, and

the chief executive of the department administering this Act, informed of where and when production testing is being carried out.

Also, at the very end of authority to prospect or petroleum lease production testing or storage testing for a petroleum well, one notice will be required to be lodged within 20 business days from this date. This notice must detail each stoppage that occurred during the allowable authority to prospect or petroleum lease production or storage testing period. The details of each stoppage, as required under the *Petroleum and Gas (Production and Safety) Regulation 2004* for this notice, must be included in the notice.

Consistency with policy objectives of authorising law

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* is consistent with policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

No significant administrative costs will be associated with implementing the *Mineral and Energy Resources (Common Provisions) Regulation 2016*.

Consistency with fundamental legislative principles

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Public consultation on the development of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* occurred from 22 July 2016 to 12 August 2016. During this period, the draft regulation was publically released on the Department of Natural Resources and Mines' website and a targeted list of stakeholders were notified via email, seeking feedback on the draft *Mineral and Energy Resources (Common Provisions) Regulation 2016*.

Additional targeted consultation occurred in relation to the *Mineral and Energy Resources (Common Provisions) Regulation 2016* for the overlapping tenures framework and the overlapping tenures safety framework. This involved direct

consultation with an Industry Reference Group, established by the Queensland Resources Council. The Industry Reference Group consisted of peak industry associations, the Queensland Resources Council and the Australian Petroleum Production and Exploration Association, as well as major industry participants from the coal and coal seam gas sectors.

Preliminary consultation was undertaken with the Department of the Premier and Cabinet and Queensland Treasury. Consultation involved providing an advanced copy of the draft *Mineral and Energy Resources (Common Provisions) Regulation 2016* for consideration.

The Department of the Premier and Cabinet and Queensland Treasury did not highlight any issues with the draft *Mineral and Energy Resources (Common Provisions) Regulation 2016*, providing a general support.

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