Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017

Explanatory notes for SL 2017 No. 32

made under the

Mineral and Energy Resources (Common Provisions) Act 2014

General Outline

Short title

Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017

Authorising law

Section 211 of the *Mineral and Energy Resources (Common Provisions) Act 2014*

Policy objectives and the reasons for them

Parts of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced on 27 September 2016, including establishment of a new framework for the management of overlapping coal and coal seam gas tenures (the new overlapping tenures framework) in Queensland and a new standardised framework for restricted land.

The safety provisions in Part 9 of the *Water Reform and Other Legislation Amendment Act 2014* also commenced on 27 September 2016, so that the new safety requirements for joint interaction management plans for overlapping coal and coal seam gas tenures would commence together with the new overlapping tenure framework in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The objectives of the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* are to:

1. fill gaps that exist in the existing restricted land transitional arrangements;

2. clarify the petroleum production notice and information exchange requirements under the new overlapping tenures framework where a tender process is used to release an area straight to a petroleum lease; and
3. clarify and extend the time period for the making of a joint interaction management plan either through agreement or arbitration under the new overlapping tenures framework.

Restricted land

The *Mineral and Energy Resources (Common Provisions) Act 2014* chapter 3, part 4 introduced a new standardised restricted land framework. The new restricted land framework replaced the differing restricted land frameworks under the *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* and applies to all resource authorities including petroleum and gas and greenhouse gas storage authorities for the first time.

To support the transition to the new standardised restricted land framework transitional provisions were included in the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Section 228B of the *Mineral and Energy Resources (Common Provisions) Act 2014* applies the restricted land requirements under the pre-amended *Mineral Resources Act 1989* to the holder of a prospecting permit, an exploration permit, or a mineral development licence, granted prior to commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Section 228C of the *Mineral and Energy Resources (Common Provisions) Act 2014* applies the restricted land requirements under the pre-amended *Geothermal Energy Act 2010* to the holder of a geothermal tenure, granted prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

The policy intent is that the new restricted land framework should only apply to resource authorities applied for and granted after commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014* on 27 September 2017. As such, transitional provisions would be required to:

- apply the pre-amended restricted land requirements under the *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* to granted resource authorities as well as to resource authorities that where the subject of an application lodged prior to commencement and that remained undecided at commencement; and
- ensure that the new restricted land framework would only apply to resource authorities under the *Petroleum and Gas (Production and Safety) Act 2004*, the *Petroleum Act 1923* and the *Greenhouse Gas Storage Act 2009* that are both applied for and granted after commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* includes provisions to fill the gaps that exist in the current restricted land transitional provisions.

Section 6A of the transitional regulation provides that the pre-amended restricted land requirements will apply to a prospecting permit, an exploration permit, or a mineral development licence where an application is made before the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced, but was undecided at commencement. Section 228 B of the *Mineral and Energy Resources (Common Provisions) Act 2014* remains unchanged and will continue to apply where a prospecting permit, exploration permit or mineral development licence was granted prior to commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 6B of the transitional regulation provides that the pre-amended restricted land requirements will apply to geothermal tenures where an application is made before the *Mineral and Energy Resources (Common Provisions) Act 2014* commencement, but was undecided at commencement. Section 228C of the *Mineral and Energy Resources (Common Provisions) Act 2014* remains unchanged and will continue to apply where a geothermal tenure was granted prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Section 6C of the transitional regulation provides that the new restricted land entry provisions do not apply to a mining claim and a mining lease under the *Mineral Resources Act 1989,* any resource authority type under the *Greenhouse Gas Storage Act 2009*, any resource authority type under the *Petroleum and Gas (Production and Storage) Act 2004*, or a lease under the *Petroleum Act 1923* that is applied for before commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, whether it is granted before or after commencement.

When considering applications for mining claims and mining leases, section 6C of the transitional regulation should be read in conjunction with sections 828 and 829 of the *Mineral Resources Act 1989.* Sections 828 and 829 of the *Mineral Resources Act 1989* are transitional provisions which preserve the pre-amended application process (of which the identification of restricted land is a component) where a mining claim or mining lease application has been lodged prior to commencement and reached their respective certificate or notice stage (i.e. a Mining Claim Application Certificate or Certificate of Application respectively).

The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* will operate in tandem with transitional provisions within the *Mineral and Energy Resources (Common Provisions) Act 2014* to ensure the original policy intent is achieved.

Overlapping tenures framework

Legislation for the new overlapping tenures framework is under chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 141 of the *Mineral and Energy Resources (Common Provisions) Act 2014* requires an applicant for a petroleum lease for coal seam gas to give an overlapping coal resource authority holder a petroleum production notice within 10 business days

after they apply for the tenure. Generally the purpose of a petroleum production notice is to give notice to the coal resource authority that an application for a petroleum lease has been made and the notice must include a copy of the application. If the underlying coal party holds a mining lease, the petroleum production notice must also include a proposed joint development plan.

In addition, section 154 of the *Mineral and Energy Resources (Common Provisions) Act 2014* requires overlapping resource authorities to exchange prescribed information within 20 business days of the overlapping area coming into existence.

In a competitive tender process for a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*, each tenderer is considered an applicant. There is ambiguity about whether each tenderer would then be required to comply with the petroleum production notice and information exchange requirements.

It was not the policy intent for every tenderer to comply with the petroleum production notice and information exchange requirements; rather these requirements should only apply to the preferred tenderer who, subject to satisfying all relevant regulatory requirements, will be awarded the petroleum lease. The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* clarifies that the obligation to comply with the requirement to give a petroleum production notice and to exchange information is limited to only the preferred tenderer when a petroleum lease is applied for through a tender process. This will reduce the regulatory burden for overlapping tenure parties.

Safety and Health amendments – transitional requirements for joint interaction management plans

Part 9 of the *Water Reform and Other Legislation Amendment Act 2014* amended the *Coal Mining Safety and Health Act 1999,* the *Mineral Resources Regulation 2013,* and the *Petroleum and Gas (Production and Safety) Act 2004* to require the development and maintenance of joint interaction management plans, for overlapping coal and petroleum (Coal Seam Gas) operations, either through agreement or arbitration, and to provide for transitional arrangements. The procedure for arbitration of any safety disputes is set out in chapter 4, part 6, division 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

The original policy intention behind the transitional provisions was to provide six months from commencement of the joint interaction management plan provisions, before the site senior executive of the coal mine and the operator of each authorised activities operating plant would be subject to the process to make and maintain an agreed joint interaction management plan, for their ongoing overlapping operations.

The transitional provisions were intended to provide an initial six months to consult and start developing the joint interaction management plan, to transition to the new requirement of agreed risk management through a joint interaction management plan. The respective plans/principal hazard management plans/risk management under parts of the safety and health management system (under the pre-amended provisions) in place for overlapping operations prior to 27 March 2017 were intended

to be sufficient, until the overlapping parties complete the steps under the joint interaction management plan provisions to reach a joint interaction management plan, through agreement or through arbitration. The original intention was that overlapping operations were to continue under the requirements of the pre-amended provisions, until a joint interaction management plan is made.

If the overlapping parties do not reach agreement about their joint interaction management plan, they must go to arbitration to make their joint interaction management plan. The ability for the parties to go to arbitration to resolve any safety dispute is provided for under the *Mineral and Energy Resources (Common Provisions) Act 2014*, as well as through the joint interaction management plan provisions.

To ensure a seamless transition, the transitional provisions for the development of joint interaction management plans, where there have been overlapping coal and petroleum (Coal Seam Gas) operations occurring prior to commencement of the joint interaction management plan provisions should have also provided for the plans, principal hazard management plans and risk management in place under the old framework to be taken to be joint interaction management plans, until a joint interaction management plan is made, as required under the new framework.

The additional transitional provisions are required to remedy the transitional issue that arises because the joint interaction management plan provisions are drafted as if there have been no ongoing operations prior to 27 March 2017, and require the parties to have a joint interaction management plan “before” commencing overlapping operations. When the joint interaction management plan provisions are read literally with the transitional provisions for ongoing overlapping operations that have been conducted under the old framework, stakeholders have raised concerns about whether a joint interaction management plan must be made by 27 March 2017, if the overlapping operations are to continue.

Operationally there will be no issues for overlapping operations where the parties have agreed to their joint interaction management plan by 27 March 2017. However, additional transitional regulations are required to extend the transitional period for any overlapping operations that need to go to arbitration to make a joint interaction management plan, or have not yet reached agreement about a joint interaction management plan by 27 March 2017, so that overlapping operations do not stop.

The objective of the additional transitional provisions is to confirm the original policy intention that overlapping operations can continue under the plans, principal hazard management plans or risk management under the safety and health management systems under the pre-amended legislation, until a joint interaction management plan is made under the joint interaction management plan provisions, either through agreement between the respective parties or through arbitration.

The additional transitional provisions are intended to assist a seamless transition from the old framework to the new overlapping tenure safety framework, if a joint interaction management plan has not been made for overlapping coal and CSG petroleum overlapping operations by 27 March 2017.

Achievement of policy objectives

Restricted land

The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* achieves the policy objectives by inserting new sections into the *Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016*.

These new sections will:

- Preserve the old restricted land frameworks for resource authorities applied for under the pre-amended *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* but had not been granted at the time the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced; and
- Ensure that the new restricted land framework does not apply to applicants for authorities to prospect and petroleum leases applied for under the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923,* or for any resource authority under the *Greenhouse Gas Storage Act 2009,* regardless of whether the resource authority had been granted before or after commencement of the *Mineral and Energy (Common Provisions) Act 2014.*

Overlapping tenures framework

To achieve the objectives, the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* inserts new sections into the *Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016* to clarify that it is only the preferred tenderer in a competitive tender process that must comply with the requirements to give a petroleum production notice and exchange information.

The preferred tenderer is taken to have complied with section 141(2) of the *Mineral and Energy Resources (Common Provisions) Act 2014* if the petroleum production notice is given to an overlapping coal resource authority holder within 10 business days of the preferred tenderer's appointment as preferred tenderer.

Both the preferred tenderer and coal resource authority holder are taken to have complied with section 154(3)(a) *of the Mineral and Energy Resources (Common Provisions) Act 2014* if information exchange first occurs within 20 business days of the giving of the petroleum production notice.

Safety and Health amendments – transitional requirements for joint interaction management plans

To achieve the policy objectives, additional transitional regulations are inserted in the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* to combine with the existing transitional provisions to provide a longer timeframe for overlapping coal and Coal Seam Gas petroleum operations that have been occurring under the old framework, to comply with the new requirement to

make a joint interaction management plan, either through agreement or arbitration, and to confirm that overlapping operations can continue without interruption after 27 March 2017 until a joint interaction management plan is made.

Prior to 27 March 2017, the pre-amended legislation has required coal mines to have a plan for production overlapping operations, or in the case of exploration overlapping operations to manage risks as part of the safety and health management system, and petroleum operating plant to have a principal hazard management plan to manage overlapping production risks or to manage exploration risks as part of the safety management system. However, there has been no requirement prior to 27 March 2017 that agreement be reached about how to jointly manage risks from overlapping operations, as is required under the joint interaction management plan provisions.

The additional transitional regulations will confirm that the overlapping operations can continue under the respective plans, principal hazard management plans or parts of the safety and health management systems for overlapping operations made under the pre-amended provisions of the *Coal Mining Safety and Health Act 1999,* the *Mineral Resources Regulation 2013,* and the *Petroleum and Gas (Production and Safety) Act 2004* until the parties have completed all of the steps under the joint interaction management plan provisions and have made a joint interaction management plan, either through agreement or arbitration under the new framework.

Consistency with policy objectives of authorising law

The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* and 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) Transitional Amendment Regulation (No. 1) 2017.*

The amendments relating to the restricted land transitional provisions ensure the new standardised restricted land framework applies as intended.

The amendment relating to the new overlapping tenures framework reduces the regulatory burden for industry by ensuring a coal resource authority holder will only have to deal with a preferred tenderer instead of multiple petroleum lease tender

applicants, and removing obligations for unsuccessful petroleum lease tender applicants.

Consistency with fundamental legislative principles

The *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Section 211 of the *Mineral and Energy Resources (Common Provisions) Act 2014* provides for a transitional regulation to be retrospective to a date no earlier than commencement of that section on 27 September 2016. As the transitional regulation relates to provisions that commenced on 27 September 2016, it is appropriate the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* applies from the date of the commencement of *Mineral and Energy Resources (Common Provisions) Act 2014*.

Consultation

Consultation on the restricted land and overlapping tenure (excluding safety and health) sections was undertaken in early February 2017 with stakeholders including the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, the Association of Mining and Exploration Companies, Agforce, the Queensland Farmers Federation and key resource companies. Stakeholders were supportive of the proposed amendments.

Ongoing consultation about the additional transitional provisions for the making of joint interaction management plans occurred with the Queensland Resources Council from November to December 2016 and during February 2017. The Queensland Resources Council support progressing additional regulations to clarify and extend the transitional period for joint interaction management plans.

Feedback provided by stakeholders through previous legislative and regulatory processes, such as development of the *Mineral and Energy Resources (Common Provisions) Act 2014* and the *Mineral and Other Legislation Amendment Act 2016*, was referred to in development of the *Mineral and Energy Resources (Common Provisions) Transitional Amendment Regulation (No. 1) 2017* to ensure the original policy intent has been achieved.

In accordance with the Queensland Government Guide to Better Regulation, the department applied a self-assessable exclusion from undertaking further regulatory impact analysis. Category (e) – Regulatory proposals that are of a transitional nature applies to the provisions for overlapping tenure, including joint interaction management plans. Category (d) – Regulatory proposal is of a saving nature applies to provisions for restricted land. Consultation with the Office of Best Practice

Regulation was not undertaken as it is not required for self-assessable exclusion regulation.