

Natural Resources and Other Legislation Amendment (Postponement) Regulation 2020

Explanatory notes for SL 2020 No. 67

made under the

Natural Resources and Other Legislation Amendment Act 2019

General Outline

Short title

Natural Resources and Other Legislation Amendment (Postponement) Regulation 2020

Authorising law

Section 15DA(2) of the *Acts Interpretation Act 1954*
Section 2 of the *Natural Resources and Other Legislation Amendment Act 2019*
(NROLA Act)

Policy objectives and the reasons for them

The objective of the *Natural Resources and Other Legislation Amendment (Postponement) Regulation 2020* (postponement regulation) is to postpone the automatic commencement of certain provisions in the NROLA Act. These provisions relate to prescribed terms under the *Land Act 1994* and a new framework for amalgamating potential commercial areas (PCAs) under the *Petroleum and Gas (Production and Safety) Act 2004*. The postponement of these provisions will ensure sufficient time for the amendments to be effectively implemented in line with the policy intent.

Specifically, the objective of the postponement regulation is to postpone the automatic commencement of sections 112, 115, 116, 117(2) and (3), 144, 149, 150, 161(1) and (2), 186 (to the extent it inserts chapter 9, part 4, division 4), 188(1) and (2) (other than to the extent it inserts definition *perpetual lease*), 303, 312(1) and section 313(2) (to the extent it inserts the definition of *amalgamated potential commercial area*) of the NROLA Act.

The NROLA Act received assent on 24 May 2019. Various provisions of the NROLA Act commenced on assent and by Proclamation on 30 September 2019 and 11 October 2019. Sections 122 to 127, 185, 243 to 302, 304 to 311, 312(2) and 313 (except to the extent it inserts the definition of *amalgamated potential commercial area*) of the NROLA Act have not yet commenced, and are intended to automatically commence on 25 May 2020 in accordance with section 15DA(2) of the *Acts Interpretation Act 1954*.

The postponement of the prescribed terms framework under the *Land Act 1994* and the amalgamation of potential commercial area under the *Petroleum and Gas (Production and Safety) Act 2004*, is required to prevent the perverse regulatory outcomes that would result if the proposals were to commence automatically on 25 May 2020.

Prescribed terms

Sections 112, 115, 116, 117(2) and (3), 144, 149, 150, 161(1) and (2), 186 (to the extent it inserts chapter 9, part 4, division 4), 188(1) and (2) (other than to the extent it inserts definition *perpetual lease*) of the NROLA Act amend the *Land Act 1994* to provide for the discontinuation of the use of mandatory standard terms documents. In their place, prescribed terms schedules documenting the State's interests will be placed in the *Land Regulation 2009*, which will make the State's requirements for subleases, trustee leases and trustee subleases more transparent and easily accessible.

The prescribed terms include conditions such as providing indemnity to the Minister and the State; requiring public liability insurance; outlining legal rights of use of the land. Supporting *Land Regulation 2009* amendments are required to give effect to the prescribed terms framework.

Under section 2 of the NROLA Act these provisions are to commence on a day to be fixed by proclamation, but will automatically commence on 25 May 2020 if not commenced earlier. This is the outcome under section 15DA of the *Acts Interpretation Act 1954*, which provides that a postponed law that has not commenced within one year of assent automatically commences on the next day.

Postponing commencement will enable the Department of Natural Resources, Mines and Energy to finalise the prescribed terms schedules and progress these amendments with the remaking of the *Land Regulation 2009*.

Aligning these initiatives will streamline implementation and avoid any customer confusion.

Amalgamation of potential commercial areas

Section 303 of the NROLA Act inserts sections 107AA to 107AE into the *Petroleum and Gas (Production and Safety) Act 2004*. The new sections establish a framework for holders of an authority to prospect to amalgamate two or more potential commercial areas held under the authority into a single larger potential commercial area (PCA).

To support these new provisions, section 312(1) of the NROLA Act establishes the ability to appeal a refusal to declare an amalgamated PCA to the Land Court and

section 313(2) of the NROLA Act inserts a definition of an 'amalgamated potential commercial area' into the Schedule 2 Dictionary.

However, there is an error in the wording of the new section 107AD of the *Petroleum and Gas (Production and Safety) Act 2004*, which provides that the term of declaration for the amalgamated PCA will be 15 years from the declaration of the latest PCA in the amalgamation. This effectively mandates an extension of the PCA declaration period of any older PCA that forms part of the amalgamated PCA.

An amendment to the new section 107AD of the *Petroleum and Gas (Production and Safety) Act 2004*, correcting this error, has been included in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (MEROLA Bill). Subject to the passage and assent of the MEROLA Bill, it is intended that this amendment will be commenced via proclamation simultaneously with these postponed provisions.

Postponing the commencement of the PCA amalgamation framework will allow sufficient time for the error to be legislatively resolved and will ensure the incorrect provision does not come into force.

Achievement of policy objectives

Section 15DA(3) of the *Acts Interpretation Act 1954* enables a regulation to extend the period before automatic commencement, to not more than two years of the assent day.

The postponement regulation will prevent automatic commencement of sections 112, 115, 116, 117(2) and (3), 144, 149, 150, 161(1) and (2), 186 (to the extent it inserts chapter 9, part 4, division 4), 188(1) and (2) (other than to the extent it inserts definition *perpetual lease*) and 303, 312(1), and 313(2) (to the extent it inserts definition *amalgamated potential commercial area*) of the NROLA Act on 25 May 2020. Instead, it will defer the automatic commencement until 25 May 2021, unless commenced earlier.

Consistency with policy objectives of authorising law

The postponement regulation is consistent with the objectives of the NROLA Act and the *Acts Interpretation Act 1954*.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

Prescribed terms

Were the prescribed terms provisions to automatically commence without the supporting regulation, subleases, trustee leases and trustee subleases will be made that are not be subject to either a mandatory standard terms document or the prescribed terms. This means that the tenure holders would not be required (for example) to hold public liability insurance or indemnify the Minister or State from liabilities arising from the sub-tenure holders use of the land. Without the protection of the prescribed terms, the Minister and departments could be joined in legal actions against the sub-tenure holder.

There is no other mechanisms to ensure the lease and sublease documents protect the interests of the state, nor can these terms be imposed after the sublease, trustee lease or trustee sublease is registered.

Amalgamation of potential commercial areas

Postponing the PCA amalgamation amendments will prevent the error from coming into force and provide sufficient time to make amendments to correct the error in section 303 of the NROLA Act.

There are no costs associated with the implementation of the postponement regulation.

Consistency with fundamental legislative principles

The postponement regulation is consistent with fundamental legislative principles.

Consultation

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The Department of Natural Resources, Mines and Energy applied a self-assessable exclusion from undertaking further regulatory impact analysis (category g - Regulatory proposals that are of a machinery nature).

Prescribed terms

No other consultation was conducted on the proposal to delay the commencement of the prescribed terms framework. Only the state would be adversely affected by the automatic commencement of the prescribed terms. The prescribed terms requirements will only affect relevant tenure holders once the prescribed terms schedules are made in the Land Regulation.

Amalgamation of potential commercial areas

An amendment to correct the error is included in the MEROLA Bill. Stakeholders have been made aware that postponing the commencement of the NROLA Act provisions may be necessary to give the MEROLA Bill amendment its intended effect.