Overlapping tenures – coal and coal seam gas

The new framework for coal and coal seam gas (CSG) overlapping tenures (the framework) commenced on 27 September 2016. The framework regulates both the resource authority and safety and health requirements and provides greater flexibility for both industries to come to cooperative arrangements than the previous regime.

The framework is based on a joint industry proposal, Maximising utilisation of Queensland's coal and coal seam gas resources: A new approach to overlapping tenure in Queensland – May 2012 (PDF, 1.9MB). It supports high standards for both industries and aims to maximise the safe and optimal extraction of resources.

Changes introduced under the new legislation have also been incorporated into MyMinesOnline. We are continually releasing new functionality into MyMinesOnline to make managing your resource authorities easier. This includes the ability to submit a notice to the department to comply with overlapping provisions.

Holders of overlapping resource authorities are encouraged to seek legal advice on the impacts of the framework on their resource projects.

Overlapping tenure requirements, including safety and health, are set out in the:

- *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act)
- Mineral and Energy Resources (Common Provisions) Regulation 2016 (MERCP Regulation)
- *Coal Mining Safety and Health Act 1999* (CMSHA)
- *Coal Mining Safety and Health Regulation 2001* (CMSH Regulation)
- *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

Who the framework applies to

From 27 September 2016, the new framework applies to holders of the following resource authorities where there is an overlapping area:

- Exploration permit for coal (EPC)
- Mineral development licence for coal (MDL (coal))
- Mining lease for coal (ML (coal))
- Authority to prospect (ATP) for CSG
- Petroleum lease (PL) for CSG

Some overlapping relationships will continue to be administered under the *Mineral Resources Act 1989* (MRA) and the P&G Act, as in force immediately before commencement of the MERCP Act. The transitional provisions in chapter 7, part 4 of the MERCP Act provide clarity to resource authority holders on which framework will apply to their overlaps. An overview to the application of the new framework can be found at https://www.qrc.org.au/wp-content/uploads/2016/09/Final-Handout-New-Overlapping-Tenures-Framework-Application-and-transitional-provisions.pdf

Mandatory requirements

As a minimum, overlapping resource authority holders under the framework will need to comply with the mandatory requirements set out under section 117 of the MERCP Act.

For mining lease (ML) (coal) holders:

- giving an advance notice to an overlapping ATP or PL holder within 10 business days of making a ML (coal) application (section 121)
- if overlapping an ATP holder and exceptional circumstances (i.e. extension of the notice period to achieve full economic potential of CSG production) is established – a notice to the department about the exceptional circumstances (section 127(8)(b))
- if overlapping a PL – have an agreed joint development plan in place within the statutory timeframes and notifying the department of the plan (section 130)
- ensure an agreed joint development plan with a PL holder is consistent with any initial development plan or later development plan under the MRA (section 132)
- notify the department of any changes to an agreed joint development plan that result in cessation, or significant increase or reduction, of activities by the ML (coal) holder or PL holder (section 133)
- exchange required information with the overlapping ATP or PL holder (section 154)
- comply with Ministerial directions about agreed joint development plans and requests for information (sections 157-160).

For PL holders:

- giving a petroleum production notice to the holder of an overlapping EPC, MDL (coal), or ML (coal) within 10 business days of making a PL application (section 141)
- if overlapping a ML (coal) – have an agreed joint development plan in place within the statutory timeframes and notifying the department of the plan (section 142)
- ensure an agreed joint development plan with a ML (coal) holder is consistent with any initial development plan or later development plan under the P&G Act (section 145)
- notify the department of any changes to an agreed joint development plan that result in cessation, or significant increase or reduction, of activities by the PL holder or ML (coal) holder (section 146)
- exchange required information with the EPC, MDL (coal) or ML (coal) holder (section 154)
- comply with Ministerial directions about agreed joint development plans and requests for information (sections 157-160).

For exploration resource authority holders (ATP, EPC or MDL (coal)):

- ensure there are no adverse effects on other overlapping resource authority holder/s (section 152)
- exchange required information with any overlapping resource authority holders (section 154)
- comply with concurrent production applications, if applicable
- comply with Ministerial directions about agreed joint development plans and requests for information (sections 157-160).

Flexibility for resource authority holders

As a minimum, overlapping resource authority holders under the framework will need to comply with the mandatory requirements set out under section 117 of the MERCP Act.

Apart from the mandatory requirements, parties can agree to alternative arrangements outside the legislative default. This will enable parties to come to mutually beneficial outcomes above what is afforded in the legislation.

Where parties cannot agree to alternative arrangements, the default model set out under chapter 4 will apply.

Under this model, a ML (coal) holder has right of way and can establish areas of sole occupancy in an overlapping area. Establishment of sole occupancy is subject to the giving of notices, observation of notice periods, and compensation to the ATP or PL holder.

Areas of sole occupancy are defined as an initial mining area and rolling mining areas. For each area of sole occupancy the ML (coal) holder identifies a mining commencement date, which is when the ML (coal) holder establishes sole occupancy to carry out activities.

Generally, a mining commencement date is, if the overlapping petroleum resource authority holder is an:

- ATP, at least 18 months after the date on which the advance notice for the ML (coal) is given; or
- PL, at least 11 years after the date on which the advance notice for the ML (coal) is given.

There are a number of circumstances where a mining commencement date can be changed, such as when the following situations apply: exceptional circumstances, acceleration notice, and concurrent production applications.

A simultaneous operation zone, where both a ML (coal) holder and ATP or PL holder can operate concurrently, can be established contiguous to an initial mining area or rolling mining area. Activities carried out in a simultaneous operation zone are subject to safety and health requirements.

Further information on the rolling abandonment model is in the joint industry proposal, Maximising utilisation of Queensland's coal and coal seam gas resources: A new approach to overlapping tenure in Queensland – May 2012 (PDF, 1.9MB). The Queensland Resources Council (QRC) has also prepared material to assist resource authority holders with understanding their rights and obligations under the new framework. The materials are available on the QRC website at https://www.qrc.org.au/policies/overlapping-tenure/.

The legislation does not alter existing requirements for gaining tenure. This includes native title obligations, obtaining an environmental authority, and reaching access and compensation arrangements with landholders.

Certainty for resource authority holders

To provide certainty for resource authority holders on overlapping arrangements, an alternative dispute resolution process is available for certain matters.

Parties can refer the following matters under the new framework to arbitration:

- disputes about exceptional circumstances
- disputes about the size or location of an initial mining area, rolling mining area or simultaneous operation zone as set out in a joint development plan
- disputes about compensation, reconciliation payments or replacement gas
- disputes about joint interaction management plans.

Joint development plans

It is mandatory for overlapping production resource authority holders (e.g. ML (coal) over PL) to have an agreed joint development in place.

The purpose of a joint development plan is to require overlapping resource authority holders to establish agreed arrangements within an overlapping area that, in return, satisfies the State's requirement that the development and use of coal and CSG resources will be optimised.

An agreed joint development plan must be in place within the following statutory timeframes:

- for a ML (coal) application over a granted PL – within 12 months of giving the advance notice, or within 9 months of appointing an arbitrator (if applicable)
- for a PL application over a granted ML (coal) – within 12 months of giving the petroleum production notice, or within 9 months of appointing an arbitrator (if applicable).

An agreed joint development plan must include the following:

- identification of the ML (coal) holder and PL holder
- an overview of the activities proposed to be carried out in the overlapping area by both resource authority holders, including the location of the activities and when they will start
- identification of any initial mining area, rolling mining area and simultaneous operation zone
- the mining commencement date for any initial mining area or rolling mining area
- a statement on how the activities carried out by the resource authority holders will optimise the development and use of the State's coal and CSG resources
- the period for which the joint development plan has effect.

The production tenure applicant is required to give the department a notice within 20 business days of finalising the joint development plan. The notice must state / include the following:

- that the agreed joint development plan is in place
- the period for which the agreed joint development plan has effect
- a map that shows
  - each of the resource authorities, including their identifying number
  - each overlapping area to which the plan applies
- a statement about how the activities carried out by the resource authorities optimise the development and use of the State's coal and CSG resources
- a statement about whether the agreed joint development plan has been prepared in accordance with the statutory requirements.

A single agreed joint development plan may apply to more than one overlapping area. One notice can be given relating to several agreed joint development plans.

It is a condition of tenure that each ML (coal) holder and PL holder comply with each agreed joint development plan that applies to them.

Surat Basin transitional provisions

The new legislation includes arrangements to ensure a smooth transition for existing and future resource authority holders under chapter 7, part 4 of the MERCP Act.

Special transitional arrangements for a defined area of the Surat Basin have been established under the legislation (sections 242-243 of the MERCP Act). These take into account the importance of the basin to the State's CSG-to-liquefied natural gas industry, and will provide certainty of future access for the coal industry. The MERCP Regulation provides coordinates setting out the Surat Basin Transitional Area (section 62).

Safety and Health

The new overlapping tenure safety framework is intended to provide greater guidance to both the coal and CSG industries about their safety obligations when their tenures overlap. Key policy objectives include:

- ensuring that safety outcomes are not compromised by the less restricted overlapping tenure arrangements under the new framework. Both coal and CSG 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 Inspectorate directives/directions in relation to safety; and
- harmonising some key terminology across overlapping coal and CSG tenures under the CMSHA, P&G Act, *Petroleum Act 1923*, and Mineral Resources Regulation 2013.

Amendments of the Coal Mining Safety and Health Regulation 2001 and Petroleum and Gas (Production and Safety) Regulation 2004 support this new overlapping tenure safety framework in the Acts through further development of the technical and content requirements for joint interaction management plans, and consequential amendments harmonising key terminology. Key requirements in the regulations 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 where there is a mining lease granted or mining lease application made after the commencement of the provisions;
- taking into account pressurisation of coal exploration holes as a potential hazard, with the inclusion of pressurisation of coal exploration holes in the hazard guide schedule in the Coal Mining Safety and Health Regulation 2001.

More information

General queries can be sent to the Department at ResourcesPolicy@dnrme.qld.gov.au

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