

MINING AND PETROLEUM TENURE REFORM IN QUEENSLAND

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Legal Briefings

Material changes are proposed to the tenures under which minerals and petroleum are explored and produced in Queensland. The Department of Natural Resources and Mines has recently released a policy position paper titled 'Innovative resources tenures framework'.

This article considers:

- the recently announced mining and petroleum tenure reforms in Queensland; and
- the status of the *Mineral and Energy Resources (Common Provisions) Act 2014 (Qld)*.

SUMMARY

Material changes are proposed to the tenures under which minerals and petroleum are explored and produced in Queensland. The Department of Natural Resources and Mines has recently released a policy position paper titled 'Innovative resources tenures framework' (Reform Policy). Consultation with the industry and interested parties is proposed for September and October 2015. Importantly, submissions on the [policy position paper](#) are due 16 October 2015.

Separately, and as a consequence of the *Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015 (Qld)* (Regulation), the balance of the Common Provisions Act will automatically commence on 27 September 2016 (if not commenced, amended or repealed beforehand).

However, the release of the Reform Policy suggests that the Common Provisions Act will be amended or repealed before 27 September 2016.

TENURE REFORMS

The Reform Policy proposes changes to the tenure framework (read exploration tenure, retention tenure and mining/production tenure). The reforms are in response to the following issues identified in the current framework:

- the requirement for strict compliance with prescriptive exploration permit work plans,
- relinquishment provisions for exploration in intervals that are often considered to be too short to achieve effective exploration results, noting in particular the time taken to access the ground for exploration,
- a lack of effective direct pathways to production, and
- a shortage of available land for exploration essentially a land turnover issue.

The Reform Policy does not contain extensive detail on each of the reforms. There are also a number of issues/comments made that are not explained in any great detail. Set out below are a number of noteworthy issues. There are no doubt others and a careful read of the Reform Policy is recommended.

RELINQUISHMENT

The general proposal is to set maximum terms with no renewals. The proposed default maximum terms for exploration are:

- resource exploration authority for minerals – 8 years,
- resource exploration authority for coal – 10 years, and
- resource exploration authority for petroleum, geothermal and greenhouse gas – 12 years.

In addition, the proposal is to have a default relinquishment of 50% of the area at the following times:

- resource exploration authority for minerals – 4 years,
- resource exploration authority for coal – 5 years, and
- resource exploration authority for petroleum, geothermal and greenhouse gas – 6 years.

PRE-REQUISITE TENURE

There is a comment on page 7 of the Reform Policy that suggests that pre-requisite tenures are no longer a necessary requirement for subsequent tenure. Further detail will be required but this appears to suggest that the framework for who may apply for a mining lease/production tenure may change.

TRANSITIONAL ARRANGEMENTS

The details of the proposed transitional arrangements will be developed in late 2015. Consultation is proposed with industry stakeholders. The policy paper notes the following principles:

- existing tenure – will be maintained,
- opt-in – capacity for tenure holders to opt-in to the new framework to the equivalent authority,
- higher tenure – may only be available under the new legislation,
- renewals – limited in duration to coincide with the new laws, and
- production tenures – tenures that have ‘rights and processes in common between the current and new tenure framework may be transitioned by statute to the new framework’.

Each of these transitional arrangements could conceivably have a substantial impact on the holder of current existing tenure, including:

- removal of the ability to renew the tenure (consider long term exploration tenure), and
- a change to 'higher tenure' under the new framework (potentially changing timelines and processes for projects to be developed in the short term).

RESOURCE DEVELOPMENT AUTHORITY (WITH CAPACITY FOR RETENTION STATUS)

The Reform Policy puts forward a new authority for commodities to permit (potentially) retention. The maximum terms proposed are:

- resource development authority for minerals and coal – 10 years, and
- resource development authority for petroleum, geothermal and greenhouse gas – 15 years.

It may be possible to renew a 'resource development authority' where the authority has 'retention status'.

STATUS OF COMMON PROVISIONS ACT

The Common Provisions Act was introduced in 2014, with the date of assent being 26 September 2014. Not all parts of the Common Provisions Act commenced on assent.

Under section 15DA of the *Acts Interpretation Act 1954* (Qld), if a law remains uncommenced within one year after the assent date, it automatically commences on the next day. This means that the balance of the Common Provisions Act was to commence on 27 September 2015.

On 2 July 2015, the Regulation was passed. The Regulation has the effect of postponing the automatic commencement of all uncommenced provisions of the Common Provisions Act until 27 September 2016, if not commenced, amended or repealed beforehand. This is subject to the usual 'disallowable' proviso.

IMPLICATIONS

A key asset of any mining and petroleum project is its exploration and mining tenure. Accordingly, any reform to the legislative framework that regulates this tenure, particularly with respect to term, renewability and relinquishment, needs to be closely considered.

We recommend that these reforms be closely monitored against a company's matrix of tenure. In particular, consider:

- relinquishment,
- any long term retention proposals, and
- development horizons for projects in the next 3 years.

We are progressing our thinking on how this system will work. If you need assistance preparing a submission in response to the reforms or if you would like to discuss them further, please let me know.

This article was written by [William Oxby](#), Partner, Brisbane.

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