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MERCPA is now in full force – what do you need to know?

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As we reported in our October 2014 newsletter titled '*Common Provisions Act – implications for land access and compensation*', the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) (**MERCPA**) received royal assent on 26 September 2014.

A number of key provisions under MERCPA, however, did not commence until 27 September 2016. In addition, two key supporting regulations also commenced on the 27th: the *Mineral and Energy (Common Provisions) Regulation 2016* and the *Mineral and Energy (Common Provisions) Transitional Regulation 2016*.

MERCPA now replaces certain key aspects of the existing mining and petroleum legislation.

What has changed?

Opt Out Agreements

The general requirement remains for resource authority holders to enter into a conduct and compensation agreement (**CCA**) with owners and occupiers of private land before undertaking advanced activities on their land. MERCPA, however, introduces an option for landholders to opt out of the CCA negotiation framework.¹ A binding '*Opt Out Agreement*' (**OOA**) must be in the approved form published on the Department's website.²



The form requires that the resource authority holder, among other things:

1. Provides the landholder with a copy of the Opt Out Information Sheet³ and the Land Access Code;
2. Explains to the landholder that they are not required to enter into the OOA and may instead request a CCA be negotiated;
3. Provides a written description of the activities to be carried out; and
4. Lodges the appropriate information with the Registrar within 28 days of the date of the OOA, to have the OOA noted on the title for the relevant land.

The OOA form also allows for additional provisions to be agreed between the parties.

An OOA does not negate the authority holder's liability to compensate owners and occupiers of the relevant land. A signed OOA is subject to a 10 business day cooling off period. During this period, the resource authority holder cannot enter the land to undertake advanced activities.

Registration of CCAs and OOA's

Resource authority holders are now required to register CCAs and OOA's against the title of the relevant land.⁴

Within 28 days of entering into a new CCA or OOA, the resource authority holder must notify the registrar of the existence

of the agreement using the appropriate form. The terms of the agreement will not be made publicly available, the existence of the CCA or OOA is simply noted against the title for the relevant land along with certain particulars including the parties to the agreement.

The resource authority holder must also notify the registrar within 28 days of a relevant agreement coming to an end.

This requirement to register CCAs will apply retrospectively and all existing CCAs, as well as '*incomplete*' agreements currently under negotiation before the commencement of MERCPA must be noted on title within six months of the commencement of MERCPA.⁵ This gives resource authority holders until 27 March 2017 to register all existing CCAs.

The agreements will be registered by way of a Form 14 Administrative Advice. The fee for registration of each agreement will be \$26.

Pursuant to s 30(2)(e) of the *Mineral and Energy Resources (Common Provisions) Regulation 2016*, it is a prescribed requirement for a CCA to contain provisions stating that:

1. The resource authority holder is required to give notice of the agreement to the land titles registrar; and
2. The land titles registrar is required to record the agreement in the relevant register.

If this requirement is not complied with, the CCA will be invalid.⁶

Expanded jurisdiction of the Land Court

Under the existing regime, the Land Court was permitted to consider amounts of compensation payable only.

MERCPA significantly broadens this jurisdiction to allow the Land Court to rule

on matters relating to conduct, with a prescribed ability to determine how and when the resource authority holder may enter the relevant land and how the authorised activities must be carried out.⁷

In making a decision, the Land Court may make any order that it considers appropriate to enforce its decision, including requiring the parties attend a conference or other ADR. In making an order for a conference or ADR, the Land Court may have regard to the behaviour of the parties in the process leading up to the application to the court.⁸

Restricted land

MERCPA introduces a consistent regime in relation to restricted land across resource types, effectively granting landholders a veto right over activities undertaken within specified distances of certain places.

Restricted land is categorised under MERCPA as being any land:

1. Within 200 metres of a school, childcare centre, residence, place of worship, hospital, library, or a building used for business that cannot be easily relocated or co-exist with resources activities as well as prescribed aquaculture, intensive animal feedlotting, pig keeping or poultry farming activities; or
2. Within 50 metres of an artesian well, bore, dam or water storage facility, a principal stockyard or a cemetery.

The restricted land distances have been enshrined in the operative provisions of the legislation, rather than being left to be prescribed under supporting regulations. As a result, any proposed change to the restricted land regime will be subject to full parliamentary scrutiny.

The new restricted land provisions are not retrospective, and will apply only to new tenures granted following commencement of MERCPA.

A new overlapping tenure framework

The introduction of MERCPA has also seen the commencement of the new overlapping tenure framework designed to better manage the interaction of coal and CSG activities in Queensland. The new framework is based around the 2012 joint industry proposal, and contemplates an overarching right of way for coal, mitigated by the rights of CSG parties to advance production and, ultimately, receive compensation for sterilised resources.

Many of the timeframes associated with the transitional requirements have already commenced. Companies that have outstanding applications for new tenure in overlapped areas must carefully consider their rights and obligations under the new regime.

Next steps

MERCPA was originally introduced as the first major step under the Modernising Queensland Resources Act Program (**MQRA Program**). Under the MQRA Program, the Government intended to replace the existing resources legislation with a single Act.

In this eventuality, further legislative reform would ultimately result in the existing resources legislation being repealed and replaced by commodity specific regulations sitting beneath MERCPA.

Since the introduction of the MQRA Program, however, there has been a change of government and a significant shift in the Government's approach to legislative reform in the resources sector. It appears that the current government no longer intends to commit to a full replacement and repeal of the existing resources legislation. Instead, it appears that the current regime, whereby the principle legislative regimes are supported by the new MERCPA, will continue, indefinitely.

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¹ *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) s 45.

² *Mineral and Energy (Common Provisions) Regulation 2016* s 22. The form is available at https://www.dnrm.qld.gov.au/__data/assets/word_doc/0010/480709/opt-out-agreement.docx

³ Available at https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0019/442621/opt-out-agreements-landholder-information.pdf.

⁴ Above note 1 s 92.

⁵ Ibid s 218.

⁶ Ibid s 83(4).

⁷ Ibid s 96 and s 83(1)(a) and (b).

⁸ Ibid s 96(4)(a).

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Carter Newell Compass

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Resources partner James Plumb says:

“Developing and delivering this service enables us to continue to assist clients facing challenges and constraints associated with low commodity prices and limited access to capital. The subscription service and document package provides ongoing support for the day-to-day operational requirements for many clients, for a low and controlled cost.”

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