

15 August 2016

Our ref:JKC/Mining&Resources/MERCP Reg

Resources Policy and Projects Team
Department of Natural Resources and Mines
ResourcesPolicy@dnrm.qld.gov.au

Dear Resources Policy and Projects Team

Queensland Law Society Submission on the *Mineral and Energy Resources (Common Provisions) Regulation 2016*

Thank you for the opportunity to comment on the above. Queensland Law Society (the Society) appreciates being consulted on this important subsidiary legislation.

Our policy committees and working groups are the engine rooms for the Society's policy and advocacy to government. The Society, in carrying out its central ethos of advocating for good law and good lawyers, endeavours to ensure that its committees and working groups comprise members across a range of professional backgrounds and expertise. In doing so, the Society achieves its objective of proffering views which are truly representative of the legal profession on key issues affecting practitioners in Queensland and the industries in which they practise. This furthers the Society's profile as an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

This response has been compiled with the assistance of the Society's Mining and Resources Committee who have substantial expertise in this area.

The submissions below are made on the basis set out in respect of each of them, and irrespective of whether or not similar provisions exist in the current regulations.

Regulation 4(a) [prescribed dealings – change to the resource authority holder's name]: under section 17(1) of the *Mineral and Energy Resources (Common Provisions) Act 2014 (Act)*, a regulation may prescribe dealings with a resource authority that must be registered. Under section 17(2), a "prescribed dealing must not be registered without the Minister's approval" and under section 17(3) the "dealing has no effect unless, and until, it is registered under this part".

As regulation 4(a) recognises, a change of name does not result in a change to the person concerned, whether the person is an individual or a corporate entity.

There appear to be sound legal reasons for recording a change of name on the register, but not for requiring the Minister's approval, as changes of name of individuals and entities are

governed by other laws of the States, Territories and the Commonwealth. We submit that the regulation should be amended so as to require the registration of such a dealing, with no requirement for Minister's approval.

Regulation 15(1)(e) [caveats]: provides that for section 26(2)(a) of the Act, lodgement of a caveat does not prevent registration of "another instrument that, if registered, will not affect the interest claim by the caveator". This appears to require an unidentified officer to make a determination about whether or not a particular instrument will "affect the interest claimed by the caveator".

Conventionally, that process would be undertaken by a court. Here, no indication is given as to the person by whom it may be made, and no power is conferred upon such a person. Consequently, it is submitted that this is an inappropriate provision and should not be included.

Regulation 33 [conduct of conference, specifically the presence of lawyers]: the default position adopted is that lawyers should not attend a conference. It is difficult to conceive of a reason for this, unless it is stipulated that the presence of lawyers at a negotiation conference will not assist the parties to achieve an outcome.

In fact, the reverse may be true. For example, an unrepresented landowner who deals with legally trained (but not legally qualified) tenement holder personnel may indicate agreement on issues or concessions that, on the later provision of legal advice after the conference, is withdrawn. Personnel representing a party (one would expect more often the tenement holder) may be former lawyers and/or have extensive legal experience but not hold a current practising certificate thereby not coming within the meaning of "lawyer".

It seems to the Society that there is no good reason why a party should not be legally represented, if it wishes to be represented and if the other parties are given an equivalent opportunity. There should be a power for the person conducting the conference to determine that lawyers should not be present, if there are good grounds for that.

Regulation 38 [contract for delivery of ICSG] and regulation 39 [notice of offer or re-offer of supply of ICSG]: it is submitted that "indicative volume" does not allow for proper commercial negotiation in respect of the obligations by seller and buyer of the gas. The quantities of gas to be delivered in a contract (as opposed to, perhaps, outlined in an offer) should be stated as firm gas (which the seller must deliver and the buyer must pay for) and non-firm gas (which the seller may offer if the gas becomes available, and the buyer may take). The term "indicative" in this context is vague and unhelpful.

Regulation 49 [reconciliation payment]: in paragraphs (a)(1) and (a)(2) the term "real value" is used. That term is not given a meaning in the regulation or in the Act. It may be that the intent is that the value of the purposes of each paragraph is calculated by reference to the time value of money. If so, that is intent is unclear, and this should be specified.

The Society commends the Department and the Resources Policy and Projects Team for providing the draft regulation for review and submissions well in advance of the intended start date of the Act.

MERCP Regulation 2016

If you have any queries regarding the contents of this letter, please contact our Policy Solicitor Julia Connelly, on (07) 3842 5884 or J.Connelly@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Potts', with a long horizontal flourish extending to the right.

Bill Potts
President