Energy and Resources Legal Update

MEROLA Bill – Current status and implications

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Background and current status

The Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (**MEROLA Bill**), introduced into Queensland Parliament earlier this year, has just gone through the committee stage.

The State Development, Natural Resources and Agricultural Industry Development Committee (the **Committee**) reviewed the MEROLA Bill and released a report on the 27 March 2020. Overall the Committee supports the introduction of the MEROLA Bill, however, the Committee made nine recommendations, including that:

- the Minister for Natural Resources, Mines and Energy clarify the standard of negligence that will apply in relation to the offence of industrial manslaughter;
- guidelines be published by the Department of Natural Resources, Mines and Energy (**DNRME**) that explain the processes to assess an entity's financial and technical ability to comply with conditions of a resource authority when there is a change of control;
- guidelines be published by the DNRME for the application of disqualification criteria in the assessment of tenure applications for a resource authority; and
- that operational guidelines for the amendments to allow petroleum lease areas count towards relinquishment requirements be published by the DNRME.

Overview of the MEROLA Bill

Set out below is a quick recap of the significant features of the bill.

Environmental and Commercial Implications

The bill amends a series of legislation including the:

- *Petroleum and Gas (Production and Safety) Act 2004* (**P&G Act**);
- *Mineral and Energy Resources (Common Provisions) Act 2014;*
- *Geothermal Energy Act 2010;*
- *Greenhouse Gas Storage Act 2009;* and
- *Mineral Resources Act 1989.*

There are three main categories of amendments:

1. Safety and health – introduction of industrial manslaughter.
2. Financial assurance reforms.
3. Regulatory efficiency amendments.

01

Safety and Health – Introduction of Industrial Manslaughter

The MEROLA Bill will introduce an offence of industrial manslaughter for injuries or fatalities caused on resource authority sites due to 'criminal negligence' (gross negligence or recklessness). Although these are the terms used in the explanatory notes, the reference in the amendments is simply to 'negligence'.

The new offence will be introduced into the following legislation:

- *Coal Mining Safety and Health Act 1999* (Qld);
- *Mining and Quarrying Safety and Health Act 1999* (Qld);
- *Explosives Act 1999* (Qld); and
- *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

Industrial manslaughter will have occurred if:

1. The employer's (or senior officer's) conduct causes the death of a worker.
2. The employer (or senior officer) is negligent about causing the death of the worker.

A 'senior officer' is defined as:

i. an executive officer; or

ii. the holder of an executive position (however described) who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.

An executive officer is a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

A corporation found guilty of industrial manslaughter may be liable for a fine of up to $13.345 million, while an individual (senior officer) may be liable to a term of up to 20 years imprisonment. Additionally, a maximum fine of 100,000 penalty units may apply to the mine operator.

02

Financial Assurance reforms

The MEROLA Bill proposes to give effect to the results of consultation outlined in the consultation report titled *Queensland Government Consultation Report: Abandoned Mines and Associated Risks*, including in respect of the following areas:

- Transfer of tenements;
- Care and maintenance;
- Management of abandoned mines;
- Disqualification criteria for resource authority applicants; and
- Mining Lease tender process.

Change of Control and Transfer of Tenements

Before an assessable transfer of a tenement can be registered, the Minister will be required to consider whether the proposed transferee has the ability to fund the estimated rehabilitation cost for the resource authority.

The MEROLA Bill permits the Minister to change or place conditions on a resource authority if there is a direct or indirect change of control of the resource authority holder. The types of conditions that may be imposed include increased reporting obligations or requiring certain activities be undertaken.

A direct change of control refers to a scenario where a resource authority is sold to another company. An indirect change of control refers to, for example, a change in majority shareholding of the resource authority holder.

The MEROLA Bill proposes to create a process for the Minister, at his or her discretion, to assess a tenement holder's financial and technical position to comply with the resource authority following an indirect change of control and, if necessary, amend the conditions of the authority.

One of the submissions made on the bill to the Committee by the Queensland Law Society (**QLS**) and the Association of Mining and Exploration Companies (AMEC) was that there should be a mechanism to allow parties considering a transaction that may result in a change of control of a resource authority holder to seek an indicative assessment in advance, in order to discover what conditions may be imposed by the Minister.

The Committee did not include such a process as one of its recommended changes. This was on the basis of representations from DNRME that adequate protection/ certainty would be given to prospective transaction parties through the indicative changed holder review allocation process which exists under the *Mineral and Energy Resources (Financial Provisioning) Act* 2018.

Although this process would only relate to possible changes in the risk category (and thereby the amount of financial assurance required) for the environmental authority relating to the relevant resource authority, DNRME's view was that if the Financial Provisioning Scheme Manager did find an increased risk arising from a prospective change of control, then this would likely indicate that the Minster may review the appropriateness of existing conditions if the change was effected. Conversely, if the assessment was that there was no increased risk then the potential investor could be confident that the Minister would be unlikely to impose or vary conditions, at least regarding financial capability.

The MEROLA Bill proposes to streamline the dealing approval and registration process. This will be achieved by limiting the types of dealings which require approval and making other dealings such as change of name or a transfer of interests between holders, where they will all remain holders, subject to only a notification and registration requirement.

The MEROLA Bill will also create a regime of prescribed and notifiable dealings under the *Mineral and Energy Resources (Common Provisions) Act* 2014. Specifically:

- notifiable dealings will require notification to the chief executive and registration but only prescribed dealings must be approved by the Minister and registered by the chief executive; and
- regulations will prescribe whether a dealing is a prescribed or notifiable dealing.

Development Plans

The MEROLA Bill will expand the requirement which presently applies to coal mining lease holders to have a development plan, to the holders of mining leases for certain other minerals. This will apply where the lease or the project of which the mining lease forms part is for a prescribed mineral and the amount of the prescribed mineral mined is above a threshold amount.

This new requirement on mining lease holders is intended to increase the State's oversight of prescribed mineral mines as well as provide the State with a clearer picture on the status of sites that may become, or are in, care and maintenance.

Prescribed minerals are bauxite, clays, copper, diatomite, dimension stone, gold, gypsum, lead, limestone, magnesium rich materials, phosphate rock, silica, silver, tin, titanium minerals, zinc and zircon.

The thresholds for each prescribed mineral will be inserted as schedule 2A of the *Mineral Resources Regulation 2013*.

Management of Abandoned Mines

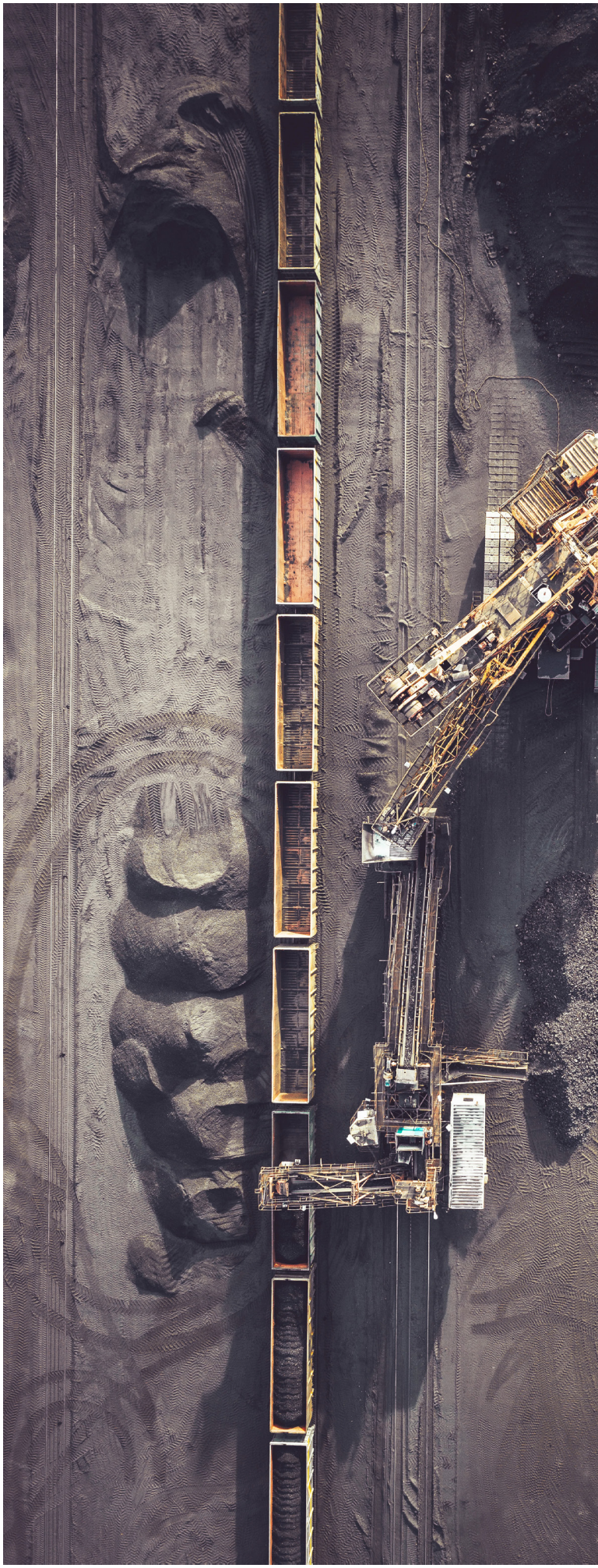
The MEROLA Bill will allow authorised persons, with consent of the owners and occupiers of affected land, to access land that is outside a granted tenure boundary to carry out remediation activities.

Disqualification Criteria for Resource Authority Applicants

The Minister will have the power to decline to grant, accept a tender for, or register a dealing in respect of a resource authority if the applicant/transferee or any of its associates (including parent companies, directors and directors of parent companies) have a history of insolvent trading, environmental non-compliance, workplace safety non-compliance and/or a criminal history (in Queensland or under any other jurisdiction).

Mining Lease Tender Process

The MEROLA Bill introduces a new process for the grant of mining leases by competitive tender. The explanatory notes state that the provisions are to support the ability to repurpose abandoned mine sites in order to re-commercialise where mineral resources remain. However, the amendments allow the tender process to be applied to any areas the State may choose (other than areas subject to existing applied-for, or granted, tenures other than prospecting permits) not just abandoned mine sites.



03

Regulatory Efficiency

In order to improve the efficiency and timeliness of the resource authority approval process, several amendments were introduced, including, a dispute resolution process for certain overlapping tenements.

The amendments include allowing the grant of a specific purpose or transportation mining lease over the area of another mining tenement without that other tenement holder's consent, provided the activities under the later overlapping mining lease must be carried out consistent with a co-existence plan. The process requires the overlapping tenement holders to negotiate in good faith and use all reasonable endeavours to agree a co-existence plan. If the parties can't agree to a co-existence plan, statutory arbitration may be used to resolve the dispute.

Similarly, the MEROLA Bill introduces new provisions to the P&G Act that will allow for a pipeline licence holder or petroleum facility licence holder to operate on any overlapping area with a resource production lease either with the production leaseholder's consent or consistent with a co-existence plan. If this plan is not agreed by the overlapping tenure holders, the outcome can be determined by statutory arbitration.

Other amendments that seek to improve regulatory efficiency include the following:

Counting petroleum lease areas towards relinquishment requirements:

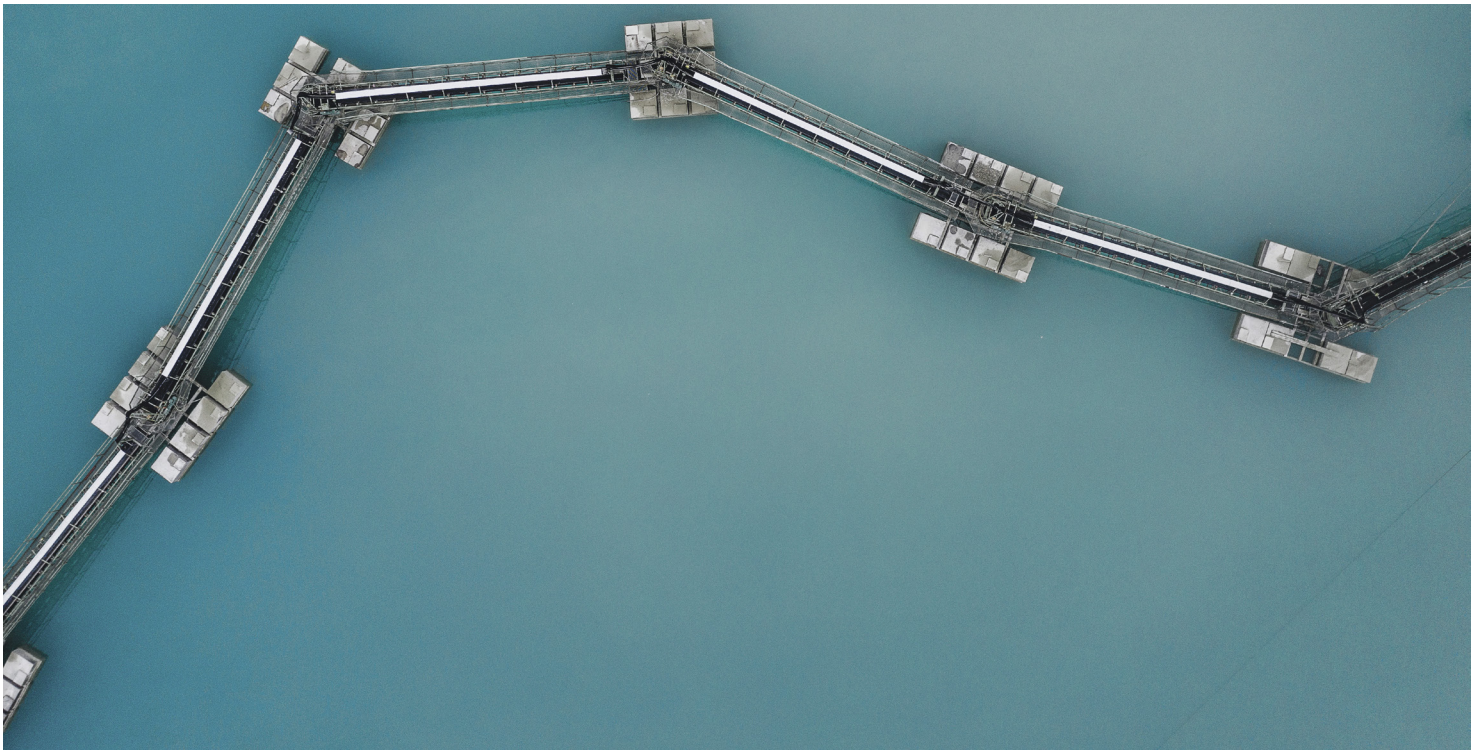
- Any sub blocks removed from an Authority To Prospect (ATP) on inclusion in a petroleum lease granted out of the ATP can be counted towards the relinquishment condition for the ATP.
- The due date for compliance with the compulsory relinquishment condition is deferred until the current petroleum lease application is determined.

Allow amalgamation of tenures on replacement from the 1923 Act to the P&G Act:

- Introduces ability to amalgamate two or more petroleum leases granted under the Petroleum Act 1923.

Amendments to the Mineral Resources Act 1989:

- Before a mining lease is renewed or granted, the Minister must decide the amount of security to be deposited by the applicant.
- The Minister has the power to decide 'excluded land' for the purposes of granting or renewing an Exploration Permit (EP) and Mineral Development Licence (MDL).



Conclusion

The MEROLA Bill provides for a significant shift in risk management in the resources sector. Amongst other things, businesses should ensure that they have a clear safety framework that will comply with the obligations introduced by the offence of industrial manslaughter.

The Queensland government has three months to respond to the recommendations made in the Committee's report which may have implications for the standard of negligence that will apply in relation to the offence of industrial manslaughter.

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