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The Research Director
Agriculture, Resources and Environment Committee
Parliament House
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BY EMAIL: AREC@parliament.qld.gov.au

Dear Mr Rickuss

Mineral and Energy Resources (Common Provisions) Bill 2014

The Australian Petroleum Production and Exploration Association (**APPEA**) is pleased to provide a submission to the Mines and Energy Resources (Common Provisions) Bill 2014 (**MERCP Bill/the Bill**) to the Agriculture, Resources and Energy Committee (**the Committee**). APPEA would like to thank the Department of Natural Resources and Mines (**DNRM**) for the exceptional work they have done through consultation of these provisions with close industry involvement.

APPEA has been in close contact with DNRM throughout this process and has commented on consultation drafts of these provisions through individual working groups with the Department. The basis of this submission will focus on the issues stemming from this process where APPEA and its members feel there are required amendments or clarifications to ensure a world class tenure management system that encourages economic development in the State and ensures confidence in the regulatory framework. APPEA will be responding to these key sections of the Bill namely:

- The dealings, caveats and associated agreements provisions,
- Land access provisions,
- Restricted land provisions,
- Gas emissions provisions, and
- Overlapping tenure and Incidental Coal Seam Gas (**ICSG**) provisions.

CHAPTER 2: DEALINGS CAVEATS AND ASSOCIATED AGREEMENTS AND CHAPTER 5 APPLICATIONS AND OTHER DOCUMENTS.

APPEA has previously provided feedback to DNRM's *'Dealings, caveats and associated agreements – Draft provisions'* consultation document. We have provided this table as **Annexure 1** against DNRM's response to the APPEA submission along with how these issues have been addressed in the Bill. In addition to the comments canvassed at Annexure 1, we have made the following observations regarding Chapters 2 and 5 of the Bill:

1. **Importance of regulation:** As DNRM has noted in consultation documents in relation to the dealings provisions, *"a distinct change (under the Bill) from the existing legislative structure is the movement of large sections of provisions that deal with processes to the regulations."* The Explanatory Notes to the Bill state in this respect:

   > *"The Bill in providing for the Common Provisions Act, generally adopts a less prescriptive and outcome-based drafting style. This has resulted in many requirements that were previously provided for in the primary legislation, to now be prescribed in subordinate legislation…*
   >
   > *The existing level of detail and rigidity [contained in the various resources Acts] does not allow government to adequately respond to the changing conditions within the resources sector. The drafting style adopted in the common provisions Act recognises the dynamic environment within which the resources sector operates by including detailed technical and procedural matters in subordinate legislation."*

   The 'technical and procedural matters' to be included in the regulation under the Bill include a large number of important dealings and applications provisions, including:

   - what 'transactions and arrangements' will be prescribed as 'dealings';
   - what 'prescribed dealings' will require registration;
   - what dealings will be 'prohibited dealings';
   - what criteria will be applied for assessment of 'prescribed dealings';
   - what consents/ notifications will be required for the various 'prescribed dealings';
   - what the validity period for an indicative approval given by the Minister to a prescribed dealing will be;
   - what will be required to lodge a caveat;
   - what caveats will be 'prohibited caveats';
   - what types of agreements will be able to be registered as 'associated agreements';
   - what will be required to make and amend applications;
   - what fees will apply to applications;
   - what types of applications will be 'invalid applications';
   - what criteria will be applied for assessment of applications; and
   - how and where documents may or must be lodged.

   A draft of the regulation under the Bill has not yet been released which will contain significant details on the application of these provisions. APPEA understands the DNRM is currently drafting the regulations and will release them for consultation with industry as this Bill is passed through Parliament.

2. **Continuing effect of dealings:** The Bill currently does not provide for dealings registered over prerequisite tenure (e.g. an Authority to Prospect, **ATP**) to carry over onto subsequent higher-level or replacement tenure granted from or in respect of that prerequisite tenure (e.g. petroleum lease, **PL**). APPEA highlighted this to DNRM in its comments regarding clause 205 of the Bill (refer to Annexure 1). This is an issue as dealings and associated agreements will need to be re-registered upon granting of subsequent or replacement tenure.

3. **Consent to caveat:** Clause 27(3) of the Bill provides:

   "There is consent to a caveat only if each holder of the affected resource authority has consented to the lodgement of the caveat and the consent is lodged together with the caveat."

   This provision does not acknowledge that a caveat may be lodged over only a share in a resource authority. In such circumstances, it would seem appropriate that only the holders of the relevant share of the resource authority would need to consent to the lodgement of a caveat over their share.

   If the Bill were to be amended to address this issue, we recommend that the reference to 'holder of the affected resource authority' in clause 27(3) be changed to 'affected resource authority holder', and then a clause based on clause 19(4) be inserted after clause 27(3):

   "28(4) In this section –

   affected resource authority holder means –

   (a) for a caveat lodged over the whole of a resource authority – the holder of the resource authority

   (b) for a caveat lodged over a share in a resource authority – the holder of the share."

4. **Transitional provisions:** The Bill provides for the existing dealings, caveats and associated agreement provisions under the various resources Acts to be repealed and replaced with the provisions under Chapter 2 of the Bill. To 'transition' dealings under the 'old' resources Acts into the new Bill, a number of transitional provisions for dealings are provided at Part 2, Chapter 7 of the Bill. APPEA has previously commented on these provisions (see Annexure 1), however we note that, since we reviewed the consultation draft Bill, two more transitional provisions have been added to this part: clause 203 (regarding the continuing effect of indicative approvals) and clause 204 (regarding unrecorded associated agreements).
   Where administratively onerous requirements such as registration of historical conduct and compensation agreements is contemplated, the transitional provisions need to be flexible to allow for reasonable timeframes for resources companies to do so (for instance, some proponents would be retrospectively registering over 2,000 agreements).

5. **Transfer of applications:** The original DNRM Discussion Paper on dealings, the *'Dealings, caveats and associated agreements – Discussion Paper'* document, dated July 2013 identified the area of transfer of applications (other than applications for mining leases) as a potential area for reform under the Bill (currently, mining lease applications are the only form of applications for resource tenure that can be transferred). The Bill contains no provisions relating to this area of reform.

CHAPTER 3: LAND ACCESS

1. **Importance of regulation:** As outlined above, a draft of the regulation under the Bill has not yet been released. Because of this, there is unfortunately an absence of detail around certain land access provisions contained in the Bill. As land access is vitally important to the operation of the onshore petroleum and gas industry APPEA will continue to work with DNRM in implementing the policy intent of this legislation through the draft regulations.

2. **Drafting error:** The Queensland Law Society has identified a potential drafting error under the current drafting of clause 43(1) of the Bill. Under that clause, there is no ability for a proponent to deal with multiple landowners on different bases. The drafting states 'each owner and occupier' before the four options. This means that only one type of agreement (or being a party to Land Court proceedings) is required with each owner and occupier. The Bill should be amended to address this issue as follows:

> *"43(1) A person must not enter private land to carry out an advanced activity for a resource authority unless each owner and occupier of the land –*
>
> *(a) ~~each owner and occupier of the land~~ is a party to a conduct and compensation agreement about the advanced activity and its effects;*
>
> *(b) ~~each owner and occupier of the land~~ is a party to a deferral agreement;*
>
> *(c) ~~each owner and occupier of the land~~ has elected to opt out from entering into a conduct and compensation agreement or deferral agreement under section 45; or*
>
> *(d) ~~each owner and occupier of the land~~ is an applicant or respondent to an application relating to the land being considered by the Land Court under section 94."*

A similar issue is present in clause 40(2) of the Bill, for which the drafting is not as clear as it could be. An alternative would be to include an 'avoidance of doubt' provision which expressly provides that the parties do not need to sign up to the same type of agreement (or the same agreement) for access to be authorised.

3. **Right to 'opt-out':** Clause 45 of the Bill implements a Land Access Implementation Committee recommendation. The clause provides owners and occupiers with a right to elect to 'opt out' of entering into a Conduct and Compensation Agreement (**CCA**) or a deferral agreement with a resource authority holder, through agreement of an 'opt-out agreement'. The Bill provides for a 'cooling-off' period of 10 business days after a signed copy of the opt-out agreement is given to the owner/occupier, during which time either party may unilaterally terminate the opt-out agreement. The entry into an 'opt-out agreement' does not deprive the landholder of its rights under the land access code and its right to compensation under clause 80 of the Bill, however it does mean that the landholder cannot subsequently go to the Land Court and ask it to assess the compensation liability of the resource authority holder (see clause 94 of the Bill).

The requirements for opt-out agreements are to be prescribed by regulation. It is unclear whether the requirements will include a requirement that an opt-out agreement must be in writing (as is the case for CCAs). There is nothing in the Bill to suggest this, however the Explanatory Notes to the Bill suggest that an opt-out agreement must be written. APPEA will monitor this issue through drafting of the regulation. It would also be of benefit for clarification to be provided as to whether or not opt-out agreements are intended to be binding on successors in title (as the drafting currently stands this is not the case).

4. **Oral access agreements:** Clause 47 of the Bill allows access agreements in relation to land outside of the authorised area between resource authority holders and owners/occupiers to be made orally. This is a positive step for industry, although we note the potential issues that may arise as a result of the fact that oral access agreements bind successors and assigns under clause 79 of the Bill.

   Clause 48(3) of the Bill provides that if an owner/occupier has not made an access agreement with a proponent within 20 business days after being asked, the owner/occupier is taken to have refused to make the agreement. The fixed period of 20 business days to make an access agreement cannot be extended by mutual agreement between the parties. This is incongruous with the provision regarding negotiations on CCAs and deferral agreements at clause 83 of the Bill (which does allow extension of the negotiation period by mutual agreement). APPEA would suggest replicating this policy intent to Clause 47.

5. **'Court-made' agreements:** Clauses 52(3)(b) and 97(3)(b) of the Bill provide that the Land Court may make access agreements and CCAs between parties (if there is not already one) in deciding a dispute about access or compensation issues. Clause 53 also provides for the Land Court to vary an access agreement if it considers that a change to the agreement is appropriate 'because of a material change in circumstances'. The term 'material change in circumstances' is not defined in the Bill or clarified in the Explanatory Notes to the Bill. However, these clauses mirror clauses currently contained in Chapter 5, Parts 2 and 5 of the P&G Act. For clarity APPEA suggests referencing the P&G Act term for material change in circumstances for consistency across legislation.

6. **Access in relation to land outside of the authorised area for rehabilitation:** Clause 55 of the Bill provides holders of resource authorities with the right to enter private land to carry out rehabilitation and environmental management requirements under the *Environmental Protection Act 1994* (Qld). However, it is unclear whether this right to enter private land continues beyond the end of the relevant resource authority (to allow post-expiry rehabilitation, for example). As per variable Environmental Authority requirements, certainty of access is critical for proponents to be compliant with their environmental conditioning. APPEA suggests that the Bill be amended to include authorised rehabilitation activities can be conducted on a site when the tenure authority has expired.

7. **'Proposed authorised activity':** Clause 76 provides for access to land by a resource authority holder within a second resource authority holder's tenure area (where that tenure is not a lease) without consent. Clause 76(2) states that the access right may only be exercised by the first resource authority holder where 'its exercise does not adversely affect the carrying out of an authorised activity, or proposed authorised activity, for the second resource authority' (emphasis added).

The meaning of 'proposed authorised activity' is unclear and has the potential to mean future authorised activities that have not even been authorised yet. Clarification may be achieved by omitting the reference to 'proposed authorised activity' from clause 76(2) and adding a clause 76(3) similar to that contained at the existing section 530(3) of the P&G Act:

"Subsection (2) applies whether or not the authorised activity has already started"

8. **Notification to new owners/occupiers:** Clause 78 of the Bill requires a resource authority holder who 'becomes aware' that there has been a change to an owner or occupier of land in respect of which it has issued an entry notice or waiver of entry notice, to provide the new owner or occupier with a copy of the entry notice or waiver of entry notice within 15 business days.

   This provision has the potential to create a significant administrative burden for proponents. Given that ATPs typically span multiple land tenures with often numerous owners/occupiers on each tenure, proponents may find it difficult to comply with this provision within the 15 business day timeframe – with the consequence that the old entry notice/ waiver of entry notice will lapse and a new entry notice/ waiver of entry notice will need to be given or negotiated with the new owners or occupiers. APPEA suggests it would seem to be the best solution for owners and occupiers to provide notice of these changes to a proponent in circumstances where they have been served an entry notice or a waiver of entry notice.

   The definition of 'occupier' under the Bill has effectively been carried over without any substantive amendment from the P&G Act, however it remains extremely broad. See our commentary on this point at point 2 of Chapter 3 Part 4, Restricted Land below.

9. **Liability to compensate:** Clause 80 of the Bill defines the general compensation liability of resource authority holders (i.e. apart from compensation for notifiable road uses, which is outlined in section 91 of the Bill).

   The definition of 'compensatable effect' (provided to determine compensation liability) has not changed in substance from its current definition at section 532 of the P&G Act.

10. **Agreements to be recorded on titles:** Clause 90 of the Bill implements a second Land Access Implementation Committee recommendation. The clause provides that CCAs and opt-out agreements are required to be registered on the land title – at the cost of the resource authority holder. Clause 90(3) of the Bill provides that if the CCA or opt-out agreement ends, the resource authority holder must, within 28 days after the agreement ends, give the registrar notice, and removal of the agreement from title will be actioned by the registrar – again, at the cost of the resource authority holder. We query whether the resource authority holder should be entitled to provide one single notice to the registrar when a tenure (for which there are multiple land access agreements in place) ends. This does not seem to be possible under the current drafting of clause 90.

    Further, the transitional provisions provide that 'continuing agreements' (being past conduct and compensation agreements in force immediately before commencement) must comply with the registration requirements within 6 months of commencement. APPEA submits that, at the very least, the transitional provisions should allow for existing conduct and compensation agreements to remain unregistered.

    Neither the Bill nor the Explanatory Notes consider how clause 90(3) will operate if the parties to a CCA are in dispute about whether an agreement has ended/ been terminated. APPEA seeks clarification on this matter.

11. **Transitional provisions:** Clauses 207, 208, 209 and 214 of the Bill provide that a CCA, deferral agreement, access agreement or other compensation agreement 'being negotiated' immediately before the commencement of the Bill is to be completed under the provisions of the resource Act that applied to making the agreement (despite any repeal of those provisions).

    In our view, this transitional provision is not clear. Neither the Bill nor the Explanatory Notes provide a meaning for the phrase 'being negotiated'. On a narrow view, an agreement is only 'being negotiated' if it is actually under active negotiation, but on a broad view an agreement could be seen as 'being negotiated' at any point after any party makes contact with the other.

    APPEA seeks further clarification around the circumstances in which an agreement is considered as 'being negotiated'. It would appear that a CCA/deferral agreement is 'being negotiated' if a notice of intent to negotiate has been issued by the resource authority holder in respect of the agreement (see section 535 P&G Act) or if active negotiations are underway, however beyond that, it may be difficult to clarify if the transitional provisions apply. In addition, registration of historical conduct and compensation agreements should not be a mandatory requirement or, alternatively, extended timeframes for registration should be contemplated.

Chapter 3 Part 4: Restricted land

1. **Definition of 'restricted land':** Clause 68 of the Bill defines 'restricted land' as follows:

> *"(1) **Restricted land**, for a resource authority –*
>
> *(a) means land within a prescribed distance of any of the following –*
>
> *(i) a permanent building used, at the date the resource authority was granted, for any of the following purposes –*
>
> *(A) a residence;*
>
> *(B) a place of worship;*
>
> *(C) a childcare centre, hospital or library;*
>
> *(ii) an area used, at the date the resource authority was granted, for any of the following purposes –*
>
> *(A) a school;*
>
> *(B) a cemetery or burial place;*
>
> *(C) aquaculture, intensive animal feedlotting, pig keeping or poultry farming within the meaning of the Environmental Protection Regulation 2008, schedule 2, part 1;*
>
> *(iii) a building used, at the date the resource authority was granted, for a business or other purpose if it is reasonably considered that –*
>
> *(A) the building can not be easily relocated; and*
>
> *(B) the building can not co-exist with authorised activities carried out under resource authorities;*
>
> *(iv) another building or area prescribed by regulation; and*
>
> *(b) does not include land within a prescribed distance of a building or area prescribed by regulation.*
>
> *(2) To remove any doubt, it is declared that, for subsection (1), the date a resource authority was granted means the date the resource authority was originally granted, and not the date, if any, on which the resource authority was renewed.*
>
> *(3) In this section –*

place of worship *means a place used for the public religious activities of a religious association, including, for example, the charitable, educational and social activities of the association.*

residence *means a primary dwelling."*

As APPEA has previously submitted to DNRM, there are a number of terms used in this definition that are problematic:

(i) a 'residence' is defined in clause 68(3) as a 'primary dwelling', however it is unclear what constitutes a 'primary dwelling';

(ii) it is unclear what constitutes a 'place of worship' – it is defined very broadly in clause 68(3) to include any permanent building *"used for public religious activities of a religious association (including charitable, educational and social activities"*;

(iii) it is unclear what constitutes an 'area' used for a school/ cemetery/ aquaculture etc;

(iv) it remains unclear what constitutes a 'building used for a business or other purpose' – although we note that such a building is only 'restricted land' to the extent that it is *"reasonably considered that the building cannot be easily relocated; and the building cannot co-exist with authorised activities"*; and

(v) it is unclear in what circumstances a building will be considered to be 'easily relocated' or not;

(vi) it is unclear what the purpose of clause 68(1)(b) is – ie. restricted land "does not include land within a prescribed distance of a building or area prescribed by regulation".

'Restricted land', as defined, does not include principal stockyards, bores, artesian wells, dams and other artificial water storages connected to a water supply (as does the current concept of 'restricted land', under the *Mineral Resources Act 1989* (Qld)). The Explanatory Notes to the Bill state that the focus of the restricted land provisions is on infrastructure that 'cannot reasonably be relocated'. Stockyards, bores etc. can be more easily relocated and so, the Explanatory Notes state, *"potential impacts to these infrastructure types from resource activities are managed through the negotiation of a conduct and compensation agreement…"*

1. **Building that can 'co-exist' with authorised activities:** Clause 68 of the Bill includes in the categories of restricted land "a building used for a business or other purpose if it is reasonably considered that the building cannot be easily relocated and that it cannot co-exist with authorised activities." APPEA suggested that examples of buildings that cannot 'co-exist' with authorised activities should be included in the Bill or the Explanatory Notes. Neither the Bill nor the Explanatory Notes include examples of buildings that cannot co-exist with authorised activities.

2. **'Owner' and 'occupier' consent:** Clause 70 of the Bill contains the general provision that a person must not enter restricted land to carry out activities for a resource authority unless each *"relevant owner and occupier"* has given consent. APPEA suggested that the definition of occupier be restricted to someone who has a 'registered lease to occupy a primary dwelling'.

   Clause 69 of the Bill defines what is a 'relevant owner or occupier' but to obtain a complete understanding it is necessary to refer to clause 12 and Schedule 1 of the Bill for the definitions of the stand-alone terms 'owner' and 'occupier'.

   The definitions for these terms have not changed in substance from those currently provided under the P&G Act. Relevantly, an 'occupier' is not simply a person who has a registered lease, but:

   - *"any person who under an Act or a registered lease has a right to occupy the place (other than under a resource authority)"*; and

   - *"any person who has been given a right to occupy the place by an owner or another person mentioned in paragraph (a)."*

   The term 'right to occupy', used in the definition of 'occupier', is clearly extremely broad and has the potential to not only include leaseholders and persons holding a permit to occupy, but also bare licencees and other persons not located on any public record.

   Under the current 'restricted land' provisions contained in the *Mineral Resources Act 1989* (Qld), consent must only be obtained from 'owners', and not 'occupiers'. The extension of the consent requirement to 'occupiers' is concerning as it creates a very broad class of persons from whom restricted land consents must be obtained.

   APPEA would like clarity in particular as to what constitutes a ‘primary dwelling’ to being a residence for a registered owner and an occupier must have a registered lease to occupy a primary dwelling.

3. **Exemptions:** Clause 67(b) of the Bill contains a list of activities that are not activities that trigger restricted land provisions – ie. activities that are 'exempt' from the restricted land provisions. APPEA suggested that the list of activities exempt from the restricted land provisions should include: 'ponds, access tracks, all pipelines and high point vents and low point drains.'

   The list of 'exempt' activities at clause 67(b) of the Bill are:

   - the installation of an underground pipeline or cable if the installation, including the placing of backfill, is completed within 30 days;

- the operation, maintenance or decommissioning of an underground pipeline or cable;

- an activity that may be carried out on land by a member of the public without requiring specific approval of an entity; or

- an activity prescribed by regulation.

It is not clear that any of APPEA's expressed requests are addressed in this exemption provision (i.e. ponds, access tracks, vents and drains), although some of these activities may fall within a broad interpretation of the phrases 'operation, maintenance or decommissioning of an underground pipeline or cable'.

Further, the fact that the Bill only exempts pipelines to the extent their installation is complete within 30 days. APPEA seeks clarification as to what constitutes the commencement of the 30 days and does this include surveying, trenching and remediation of the pipeline? APPEA would recommend that the 30 days only be for the period of having an open trench to be cut and filled with the pipeline installed as prescribed in the legislation or regulation. It would also be of benefit for these activities to be specifically exempted under these provisions or, alternatively, listed in the Regulation.

4. **Accessing land off tenure:** APPEA noted in our submission to DNRM on the restricted land provisions that resource companies do not have the legal right to access properties off tenure to determine the existence of a primary dwelling or business that may trigger the 200 metre rule. This issue has not been addressed in the Bill, and the Bill contains no further rights for tenure holders to access land off-tenure for the purposes of determining restricted land areas.

5. **Granting of tenure:** The restricted land provisions that it was concerned to ensure that the introduction of restricted land to the P&G Act does not inadvertently provide a new avenue for objections to be made to the granting of petroleum and gas tenure. Our original submission stated that:

> *"If restricted land is to be added to the P&G Act consideration should be given to identifying existing infrastructure at the time of lodging an application, in particular an application for a production tenure, such that new infrastructure constructed post an application does not then create a 'new' zones of restricted land."*

The Bill provides that restricted land is assessed from the date the relevant resource authority is granted, not from the date the application is lodged. Under the Bill, tenure holders are therefore exposed in situations where it is discovered that additional restricted land which did not exist at the time of application has been created prior to the grant of tenure. This exposure of course increases the longer the timeframe between lodgement of the tenure application and the grant of tenure – a problem for PL applicants in particular.

It would be preferable if restricted land was assessed at the date on which the resource authority application is lodged. We note that this is the current position under the restricted land provisions in the *Mineral Resources Act 1989* (Qld) – see sections 181(8) and 238(1).

6. **'Prescribed activity':** Clause 67 of the Bill defines 'prescribed activities' that cannot be carried out within restricted land without owner or occupier consent. 'Prescribed activity is defined to include activity carried out *"below the surface of the land in a way that is likely to cause an impact on the surface of the land"*. It is not clear what 'likely to cause' encompasses in the context of this provision. A list of specific activities which are exempted should be included in the regulation.

7. **'Prescribed distance':** As outlined above, clause 68 of the Bill defines 'restricted land' as land within a 'prescribed distance' of certain features. The 'prescribed distance' for restricted land is to be set by the regulation. The Explanatory Notes to the Bill indicate that the prescribed distance for restricted land will be 200 metres. Comments by DNRM officers in the Public Briefing held regarding the Bill on 25 June 2014 before the Committee indicated that the prescribed distances are *"still subject to government decision on what they will eventually be"*, but that *"the general consensus [through the consultation process] was that [200 metres] would be something that would be acceptable [to stakeholders]."*

8. **Declaration about restricted land:** Clause 72 of the Bill allows an owner, occupier or holder of a resource authority to apply to the Land Court to make a declaration about whether land is restricted land. The practicality of proponents utilising this process – which is potentially costly and is not subject to any timeframes – is questionable. The process also has the potential to delay a proponent from commencing activities.

CHAPTER 6 DIVISION 3 AND 4: GAS EMISSIONS

APPEA has previously provided comments to the department on consultation drafts of legacy boreholes amendments now referred to as gas emissions in the Bill. APPEA supports these amendments going forward on the basis that the issues of liability and cost will be resolved through a second stage of work. Again for the Committees benefit we will be responding on the basis of previously provided feedback to the Department's consultation paper and what we have reviewed in the final Bill.

1. APPEA comment/recommendation: "An additional section should be added… to state that if a person has an authorisation under s.294B, even if those remediation activities are being done in the area of a tenement held by that person, the remediation activities are taken to be carried out only under the s.294B authorisation and not as an authorised activity for the tenement."

   - The Bill does not include any provisions to this effect. As a result persons acting under a section 294B authorisation in the area of their own tenure do potentially suffer from a lack of clarity as to whether they will benefit from the protections granted to section 294B authorisation holders, or whether their actions will simply constitute 'authorised activities' for the tenure.

2. APPEA comment/recommendation: "… It might be the case that a tenement holder requires the consent of an overlapping tenement holder in order to conduct remediation of a legacy borehole…. [This] may deter parties from undertaking remediation as an "authorised activity" under a tenement where consent of an overlapping tenements holder is required. [Recommend:] Possible clarification in the Protocol about remediation on overlapping tenures."

   - The Bill does not include any provisions to this effect. As noted in our original submission, the likely effect of this (together with the fact that a company remediating a legacy bore as an "authorised activity" does not have indemnity protection, and is subject to the usual environmental and land access obligations) is that a companies will seek section 294B authorisation before undertaking any remediation as an "authorised activity".

3. APPEA comment/recommendation: "In all of the Acts except the P&G Act, the "Legacy Borehole" definition includes the words "reasonably believes". However, in the P&G Act definition, those words are omitted and are instead used in sections 23 and 24 of the Bill. The definition of "Legacy Borehole" should be changed so that the use of the terminology is consistent across all Acts."

   - The Bill does not amend the definition of 'legacy borehole' in the P&G Act and the discrepancy described above remains.

CHAPTER 4: OVERLAPPING TENURE AND INCIDENTAL CSG (ICSG)

The overlapping tenure provisions in this Bill have been extremely difficult to implement from the industry White Paper process. APPEA would like to congratulate DNRM staff for their strong consultation with industry on these provisions in particular as they have been an extremely technical challenge to implement. For ease of reading for the Committee we have attached a table as **Annexure 2** to this submission to demonstrate a consistency check against the White Paper and the provisions within the MERCP Bill. A summary of the overarching issues is as follows;

1. Definitive positions/comments cannot be made on how the Bill provisions adopt the principles of the White Paper on compensation for lost CSG production, replacement of major PL major gas infrastructure, replacement of PL minor gas infrastructure, severing of PL connecting infrastructure and ATP major gas infrastructure, as the compensation or costs of replacement are to be assessed based on principles to be set out in the regulations. It remains to be seen to what extent the regulations will reflect the principles in the White Paper. The hierarchy of compensation methods has not been reflected in the Bill.

2. The concept of a PL holder having to provide replacement CSG to an Mining Lease (**ML**) holder as a reconciliation payment for later recovered CSG for which the PL holder had been compensated, has been introduced at section 162(2) (b). APPEA is unclear on how the provision of replacement CSG works in this context. It is not mentioned in the White Paper. It may be a misapplication of the concept of the ML holder providing compensation for lost CSG production through providing replacement gas.

3. Although section 100 (2)(e) states that the main purposes of chapter 4 are achieved amongst other ways, by providing for participants in each of the industries to negotiate arrangements as an alternative to particular legislative requirements, the operative provisions of the chapter do not acknowledge this ability or purport to preserve existing arrangements between participants.

4. The Bill at sections 221 and 223 does continue the existing restrictions on exploration activities over a production tenement for the other resource. That is the written consent of the production tenure holder must be obtained. This seems appropriate. However, sections 221 and 222 are meant to ensure that granted PLs and MLs that exist at the commencement of the new regime should not be subject to the new regime at all, and should continue to be governed by the old regime. This should be clearly stated in those sections as the current wording is vague such that it is not clear that new Mining Leas Application (**MLA**s) made from Exploration Permit for Coal (**EPC**s) and Mineral Development License (**MDL**s) over existing PLs and new PLAs that are made over existing MLs are to be dealt with under the old provisions.

5. There is still a restriction on activities under a PL being carried out on land overlapping an already granted EPC or MDL. The PL activities can only be carried out if there is no adverse effect on already commenced coal exploration activities. APPEA does not believe this was intended by the White Paper. Further there is the possible anomaly in the case of already granted PLs overlapping EPCs and MDLs that after the commencement of the Bill the EPC and MDL holder will still require the written consent of the PL holder to conduct activities within the overlap area.

6. Land access has only been partly addressed with respect to the overlap of an ATP with an ML – section 146. There are no provisions dealing with land access for overlapping production tenures where a production tenure holder (or a related entity) owns the underlying land.

7. The transitional provisions at sections 231 to 233 for Surat Basin area petroleum leases may not work as effectively as intended by the White Paper. As the sections of the Bill are currently worded the 16 year (non-reducible) delay for commencement of mining does not apply to a mining lease applied for but granted after the commencement of the new provisions and does not apply to a PL granted before the commencement. In the former case the holder of the ML granted after the commencement could give an 11 year notice of commencement of mining in the Surat Basin area and shorten that time (subject to compensation) by an acceleration notice.

8. The ability of an ATP holder to give an exceptional circumstances notice which would bind it once it became the holder of a PL has not been included in the Bill even though it was in the working draft.

9. There is a potential lack of clarity of the application of chapter 4 part 2 division 5 of the Bill which addresses where a PL holder is to commence production on the area of an overlapping ML. The sections require an agreed joint development plan to be in place. The working draft provided for these matters to apply where an ATP was granted first then an ML and then a subsequent PL based on the ATP. Section 136 takes into account both where there is and where there is not an existing ATP but on the strict wording of section 102 of the Bill the sections may not apply where a PL is granted after an ML, as such a PL would not be a column 2 resource authority mentioned in the table for part 2.

10. The White Paper provides that the gas party should be free to explore for and produce CSG outside any area of sole occupancy (White Paper 3.2.2 and 3.3.5). The Bill provides that an ATP or PL holder could only carry out an authorised activity in an overlapping area if it does not adversely affect the authorised activity of an overlapping EPC or MDL holder. (section 145). The White Paper 3.3.5 expressly states that on production tenures, the conduct of exploration activities will be subject to a requirement that any activities which are undertaken must not adversely affect safe and efficient production activities on the overlapping production tenure. Reference to 'petroleum lease (CSG)' should not be included as Column 1 tenure under section 144. A production tenure holder must be able to undertake production activities in accordance with its development schedule and must be able to implement additional safety measures in mitigating risk to personnel and equipment to as low as reasonably practical when an explorer enters into a producing area.

11. S131 (get info from Arrow, clarification JDP), check consistency table. The Bill provides that a Petroleum Resource Authority (PRA) Holder and an ML holder may carry out an authorised activity in an overlapping area only if the activity is consistent with each agreed joint development plan that applies to the relevant holder (section's 131(2); 142(2)). APPEA respectfully deems that the PRA holder should be entitled to commence or continue authorised activities under the PRA unless and until there is an agreed joint development plan (see Annexure 2 point 9 for further details). Further, the White Paper contemplated that a PL holder would be free to carry out its activities in the balance of the PL/ML overlap area outside the Initial Mining Area (**IMA**), Rolling Mining Area (**RMA**) and Simultaneous Operations Zone (**SOZ**), but the ML holder would have the "right of way"

inside the IMA and RMA and the SOZ would be subject to safety and health arrangements. Section 131 of the Bill does not make this distinction and should be amended to align with the White Paper.

12. Section 126 (4) of the Bill allows the ML holder to occupy an IMA or RMA for an indefinite period to carry out rehabilitation. This occupancy could result in the PL/ATP holder being unable to enter the area to carry out activities until the rehabilitation is completed. A definite date for the ML holder to abandon an IMA or RMA should be stated.

13. The White Paper accepts that the basic property rights to gas reside with the holder of the petroleum tenement, and that in return for agreeing to a right of way for coal mining, there should be a well-defined compensatory right for the petroleum tenement holder to take any ICSG produced by the ML holder. In essence, that is a right to take gas that the petroleum tenement holder could otherwise have produced themselves but for the right of way for coal mining.

Of fundamental importance to this trade-off is a requirement that the ICSG be produced by the ML holder in a form aligned with the requirements of the petroleum tenement holder, and then offered on terms that could reasonably be accepted (a "reasonable offer"). If follows that the ML holder's right to commercialise ICSG should only arise when a reasonable offer has been rejected and further, that compensation liabilities are offset only when a reasonable offer has been rejected.

The production and offer requirements for ICSG therefore have a flow-on effect from Division 4 of the Bill dealing with ICSG to Division 3 dealing with compensation and dispute resolution, and to the MRA amendments dealing with the commercialisation of ICSG. It is therefore important that the requirements for ICSG production in overlaps and for an offer of the ICSG to be valid and reasonable are clearly enshrined in the legislation itself. In respect of a contract for the delivery of ICSG, Regulations to include:

- a delivery point where the petroleum resource authority holder can sensibly take the gas,
- arrangements for industry standard metering and regular reporting,
- a contribution to the direct reasonable costs incurred by the ML (coal) holder in making the accepted incidental coal seam gas available at the delivery point,
- obligations to forward plan together to foster investment certainty and minimise impacts to each other's activities resulting from amended development plans,
- an obligation on the ML (coal) holder to provide, at a minimum, annual updates to expected gas quality and quantities, and
- provisions to ensure compliance with Part 4 Division 1 concerning information exchange.

In respect of a valid offer and re-offer for ICSG, Regulations to include:

- the ML (coal) holder's mine plan(s) and associated degassing plan,
- the degassing plan's schedule including details of the timing of when gas wells will commence production of incidental coal seam gas,
- a description of the degassing methods and the measures that will be taken to avoid contamination and dilution,
- gas reservoir modelling that underpins the degassing plan,
- mapping identifying degassing wells, pipelines, associated infrastructure and the proposed delivery point, and
- details of the expected quality and quantities of incidental coal seam gas for each six month period of forecasted production.

APPEA supports the progression of these amendments in modernising Queensland tenure management and creating a world class jurisdiction for resource development. We would welcome the opportunity to present our findings to the Committee if further clarification is required. If you would like to discuss any of the matters raised in this letter please contact Mr Nathan Lemire at nlemire@appea.com.au or (07)3231-0509.

Yours sincerely

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ANNEXURE 1: Dealings, caveats and associated agreements

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
1.	16(b)	100(b)	The term 'a regulation' could mean either the CRA regs or the 1923 Act regs or 2004 Act regs. While this draft appears to amend the Resource Acts, they do not attempt to amend the Resource Act Regulations and this could lead to confusion. Disagree that a regulation should have the power to deem what constitutes a dealing and what doesn't. This should be dealt with in the Act properly and accordingly subsection (b) should not provide this additional power and should be deleted.	Any regulation would be made under the power of this Act. Therefore, there will be a new Regulation where applicable matters to the Act will be provided. It is the department's objective to simplify legislation and provide flexibility in lieu of rigid process that cannot respond to changing circumstances. While a balance is needed and that brevity should not be sacrificed for certainty, these are dealings provisions that are relatively low risk in comparison to a tenure grant application.	No change to relevant provision. The Regulation will have to be monitored to see what other 'transactions or arrangements' are prescribed as a 'dealings' under clause 16(b).
2.	17	101	1) The difference between 'dealing' and 'prescribed dealing' is confusing. Is there such a thing as a dealing that *causes the creation, variation, transfer or extinguishment of an interest in an existing authorisation* (see s.101(a)) that does not need to be registered? Furthermore, it is considered that the difference between an assessable and	1) The definition of the term dealing is to provide a general concept that can then be limited to only certain types required to be registered by the Regulations. Other types of dealings might include transactions like commercial arrangements with a third party, joint ventures, farm-out etc. These will still be able to occur as they do now. Only dealings prescribed under	1) No change to relevant provision. The Regulation will have to be monitored to see what 'prescribed dealings' require registration under clause 17(1). 2) No change to relevant provision. The Explanatory Notes to the Bill indicate that 'the ending of a sublease'

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			non-assessable transfer should be dealt with in the Act, and not left to the regulations. While the purpose of s.101 is to remove the prescriptiveness, assumption is that the prescriptiveness will simply move to the regulations and while that may streamline matters for government, it will remain overly prescriptive for industry. 2) If a prescribed dealing (as per comments for this section) is to include the 'ending of a sublease' does that mean that if a sublease term expires that a dealing needs to be registered? Surely it should just be the ending of a sublease prior to its expiration of term that needs registration. An expired lease should just be removed from the record.	the Regulations will need to be registered. This drafting concept allows government to respond in a timely manner to changing situations. 2) Agreed. Only subleases that end before a stated date or end when no date is stated will require registration.	is likely to be a prescribed dealing under the Regulation. The Regulation will have to be monitored to confirm this.
3.	18(2)	102(2)	This particular section may inadvertently render valid commercial arrangements invalid under this statutory power. Accordingly, s.102(2) needs to be deleted.	It is questionable that the removal of subsection (2) would change the intent of this section. We will approach Parliamentary Counsel to consider the following amendment to remove potential ambiguity: *include sub (3) 'To remove any doubt, this section does not prohibit any transaction or commercial agreement which does not transfer legal ownership in a resource authority.'*	No change to relevant provision. The Regulation will have to be monitored to see what dealings will be 'prohibited dealings' under clause 18. The Explanatory Notes to the Bill outline the prohibited dealings likely to be prescribed in the Regulation. Note that one specific 'prohibited dealing' is now listed in clause 18(1) – a dealing with a resource authority

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
					that transfers a divided part of the authorised area for the resource authority (unless the dealing is a sublease or a transfer of a sublease). The Explanatory Notes clarify that it is the 'transfer of legal ownership' of the divided part of the authority that is the focus of this clause. Any transaction or commercial agreement that does not transfer 'legal ownership' is not prohibited.
4.	19	103	1) Although headings are for convenience only, section 103 should read: Minister's approval required to register *certain* dealings. Furthermore, subsection (1) should either state that only certain prescribed dealings require Ministerial approval. The current wording of this provision provides that Ministerial consent is required for non-assessable transfers, which are defined as prescribed dealings because they need to be registered. The ambiguity in the terms 'dealings' and 'prescribed dealings' and the removal of the terms 'assessable' and 'non-assessable' in the Act is problematic. Although it is not government's intention to "alter the practical difference between	For legislative simplicity, all transfers will require approval. However, the decision criteria will be varied to deliver the same outcome as the current assessable/non-assessable framework. That is, there will be limited or no criteria for a 'non-assessable' dealing. The policy on what is considered 'assessable' dealings was determined during the development of the *Mines Legislation (Streamlining) Amendment Act 2012.* The policy is that because holders are jointly liable for the tenure regardless of the percentage share, any transfer of an existing holder out of the ownership is to be assessed (for compliance reasons). Any new owner	No change to relevant provisions. The Regulation will have to be monitored to see what criteria are prescribed for 'assessable' versus 'non-assessable' dealings.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			'assessable' and non-assessable' dealings that currently exist in the Resources Acts' this is a real possibility given the current drafting and this does not appear to be remedied by s.308 in Chapter 9 on the decision-making criteria. Further, the Act should broaden the scope of a "non-assessable" dealing to include a transfer of all or part of a share in a petroleum authority from one existing holder to another. Currently, this is limited to when a share of a tenement is transferred. For example, the wording of the current section 571(a) of the Petroleum and Gas (Production and Safety) Act 2004 ("**P&G Act**") should be amended to: a transfer of a petroleum authority or of a share in a petroleum authority under which: .....; or ***all or*** part of one holder's share in the petroleum authority will be transferred to another holder of the petroleum authority. The introduction of a "non-assessable" transfer from one holder to another was to streamline the transfer process so that the transferee's capability was not	in, or existing owner totally out is assessed. The application requirements will be prescribed under the Regulations and be reflected in the approved form. Differences between Acts, Regs, forms and guidelines are not intentional and will be corrected when identified.	

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			required to be assessed where it was already a holder of relevant tenement. It makes limited commercial sense that where an authority holder has a registered 50% interest and transfers 49%, it would be non-assessable, but where it transfers 50% - it is treated as assessable. Moreover, the consultation paper dated February 2014 ("**Consultation Paper**") indicates that the 'application requirements' will be dealt with under the general application provisions applying to all applications made under the Act. It is recommended, to ensure certainty and consistency that the assessment criteria in applications should be prescribed in either the Act or the regulations. In practice, uncertainty exists as these requirements are developed in various locations (i.e. P&G Act, approved forms and the DNRM guides). This has led to DNRM staff applying assessment requirements and principles inconsistently. See comments at section 308 below.		
5.	19(1)	103(2)	This particular section should not be limited to the authorisation holder (only) who may apply to the Minister for	This is being considered.	**APPEA comment adopted**. The provision now allows 'any other entity with the affected resource authority

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			approval to register a prescribed dealing. Rather, this should be broadened so that the transferee may also make such an application. It is common commercial practice that, following a transaction, the transferee is the responsible party for applying for an indicative approval and the subsequent lodgement of all documents relating to the relevant dealing. Therefore, it would be practical in a commercial sense to allow the transferee to apply to the Minister for approval to register a prescribed dealing (as opposed to limiting this ability to the authorisation holder to do so). The usual consent requirements (i.e. from both the transferee and transferor) would still apply to ensure that only pre-approved dealing applications are lodged.		holder's consent' to apply to register a prescribed dealing – which could include a transferee.
6.		103(5)	Although the Act refers to the as yet unseen regulations for dealings executed due to operation of law, the regulations should provide that notices are served on all holders when these dealings arise (particularly exercise of power of sale by a mortgagee, administration, receivership and liquidation of a Corporation, etc).	A business practice will be considered to ensure all holders are notified in these scenarios.	No change to relevant provision. The Explanatory Notes to the Bill state that "Detail on what consents are required for a prescribed dealing will be prescribed under a regulation as part of the application requirement." The Regulation will have to be monitored to see what notifications and consents are required for prescribed dealings.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
7.	21	104	Industry considers there is no need for such a provision to be included in the Act. Analogous provisions under existing legislation are very seldom utilised. Consideration should be given to streamlining such requirements with the review being conducted by DEHP in respect of financial assurances.	Section 104 to remain in Bill with the view that it will be amended at a later stage of the program if required once financial assurance review has been concluded.	No change to relevant provision.
8.	21(2)	104(2)	Recommend the insertion of the words 'additional or replacement' between the words 'State' and 'security'. This recognises that for an existing tenure, security is already held by the State.	This is a drafting matter for OQPC and will be forwarded for consideration. The intent is that the transferee may be required to give security and once they have, it is taken to have been given under the appropriate section of the relevant resources Act.	No change to relevant provision.
9.	(21(3)	104(3)	Subsection (3) appears to be a transitional provision that may be better suited to be situated in the transitional provisions at the back of the Act.	This is a drafting matter that will be forwarded to OQPC for consideration.	No change to relevant provision.
10.	22	105	The heading is problematic. Again, the way that section 103 is worded is that registration of a prescribed dealing (be it assessable or not) can only occur when the Minister provides consent so there is 'or' about it. The issue of assessable v non-assessable transfers should be dealt with in the Act.	While these comments relate to the question of whether assessable and non-assessable dealings should be defined in the Act, the following amendment will be forwarded for OQPC consideration: *'The registration of a prescribed dealing allows the dealing to have effect according to its terms but does not of itself give the dealing any*	**APPEA comment partly adopted**. The heading of the clause has been changed so that it reads 'Effect of registration ~~or~~ and Minister's approval'. However, the wording of the clause itself has not changed.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
				more effect or validity than it would otherwise have.'	
11.	23	106(2)	A prescribed dealing as per s.103 arguably includes a non-assessable dealing. Why would we need indicative approval to a non-assessable transfer? Differentiation between assessable and non-assessable dealings really needs to be in the Act or different terminology needs to be considered.	There would be no need to apply for an indication for a dealing where there is little or no decision criteria prescribed in the regulations. Applying for an indication is the choice of the holder.	No change to relevant provision.
12.	23(4)(b)	106(4)(b)	It is proposed in the Consultation Paper that the 'prescribed period' will be three months, with an allowance for another 3 months extension if the holder gives written notice to the chief executive and demonstrates that the basis upon which the indication was given has not materially changed. Industry strongly endorses this new ability to extend an indicative approval by notice to the chief executive. It is recommended, however, that an indicative approval validity period of six months (instead of three) be prescribed, along with the ability to extend the indicative approval notice to the chief executive. Recent practice has shown that indicative approvals almost always	It is considered 6 months is an appropriate period upon which an indicative approval should remain valid. The State carries an element of risk when giving an indicative approval and this should be limited to an appropriate timeframe.	No change to relevant provision. The Explanatory Notes to the Bill also make no comment on this point. The Regulation will have to be monitored to see what indicative approval validity period is prescribed, and whether the period may be extended.

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			lapse prior to lodgement of assessable transfer forms due to delays (i.e. most commonly from stamping by the OSR or FIRB).		
13.	23(4) & (5)	106(4) & (5)	These subsections provide that if the indicative approval indicates that the Minister would give approval to register the proposed prescribed dealing, then the Minister must grant approval in accordance with the indicative approval. The issue here is that current practice is to heavily condition the indicative approval to state that we must be in substantial compliance and ensure no royalty remains unpaid. The indicative approval is really a clayton's approval if that basic background check on substantial compliance with the tenure and royalty payments has not been done at the time of the indicative approval being given. If DNRM continues this practice, the provisions become redundant because there is no real reason to apply for indicative approval. If a holder falls out of substantial compliance or overdue for royalty payments from the time the indicative approval is given to the time they apply for the full approval, then that's	This would require these matters to be assessed both at the indicative approval stage and the transfer application stage. The conditioning of the indication relate to matters the holder has responsibility for; therefore if they have met those conditions, then the transfer application will be approved. However, this issue will be raised with the operational area for consideration.	**APPEA comment partly adopted**. New clause 23(6) in the Bill states that, 'to remove any doubt, granting of the [final] approval is subject to sections 20 ['Unpaid royalties prevent transfer of resource authority'] and 21 ['Security may be required'].' The addition of this clause into the Bill perhaps clarifies that unpaid royalties at the indicative approval stage will not prevent final approval to transfer, so long as those unpaid royalties are paid before the final approval is given.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			acceptable reason not to approve the dealing. Reference to a non-compliance or royalty issue before the date of the indicative approval should be void (i.e. industry wastes its money otherwise).		
14.	25	108	1) The caveat section does not deal with the lodging of a caveat by a holder over the holder's interest. See comments at s.110, below. 2) Also, clarity should be provided around prohibited caveats. In practice, it is very common for a transferee to lodge a caveat following the grant of indicative approval but pending the registration of an assessable transfer. As it stands, it is somewhat unclear whether this would be a 'prohibited caveat'. 3) Furthermore, it is recommended that that the responsibility for notification of a caveat remains with the chief executive, to avoid undue disputes regarding notice, place of notice etc. Should the onus be transferred to the caveator, uncertainty is likely to arise regarding who exactly needs to be notified. For example, parties to a farmin agreement who have registered an associated agreement (under section 115 of the Act) may be considered to be parties with a	1) Not addressed by DNRM. 2) It is the intent that if an indicative approval has already been given, someone cannot prevent the transfer based on that indication. In other words, protects the indicative approval from being invalidated by a caveat. It is not intended to prevent a transferee from protecting the indicative approval by caveating to prevent a transfer by the holder to another third party. This clarity can be provided for in the Regulations. 3) We are considering leaving the onus to notify other interests of the presence of the caveat with the chief executive.	1) No change to relevant provision. However, it could be argued that a 'person claiming an interest in a resource authority' could include the holder of the resource authority. 2) No change to relevant provision. The Explanatory Notes to the Bill outline examples of the types of caveats that are likely to be 'prohibited caveats' under the Regulation. The Regulation will have to be monitored to see what caveats are prescribed as 'prohibited caveats'. 3) **APPEA comment adopted**. Responsibility for notification of a caveat under the Bill falls to 'the chief executive' rather than 'the caveator'.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			'registered interest'. If it is intended to include such parties, this would likely create significant uncertainty and complexity concerning which associated agreements gives rise to a 'registered interest' and which do not. Furthermore, associated agreements are often incorrectly recorded on the register and not all parties to associated agreements appear on public enquiry reports (as DNRM has no obligation to review or comment on the associated agreement itself). Therefore, should the onus of notification be transferred to the caveator under the Act, it is strongly submitted that: • any notification requirement should explicitly prescribe who must be notified (i.e. limited to registered tenement holders, mortgagees, other caveators); and • the Public Enquiry Reports must ensure that every registered entity's ABN/ACN is noted to ensure that the address of each entity that needs to be notified may be searched to ensure notification is correctly carried out.		
15.	25(2)	108(3)	The word 'receipt' is unusual. The notification should be triggered upon	Agreed – will forward to OQPC for consideration.	No change to relevant provision.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			registration of the caveat, not 'receipt'. To this end, perhaps the term 'receipt' should be replaced with 'lodgement'.		
16.	26(2)	109(1)	A caveat registered over one party's interest should not affect dealings of an unaffected interest. This is the same argument industry had over the mortgagee consent issue. Caveats should not affect non-caveated interests and they should be capable of being registered over part of an authorisation as they are in real property (e.g. where the Child Support Agency lodges a caveat over one spouse's interest in a property held by both spouses as joint tenants). The wording should be: "Until a caveat lapses, is removed or withdrawn, the caveat prevents registration of a dealing with that part of the affected authorisation…"	Agreed. This is how the existing process that uses this same wording is implemented. However, will forward to OQPC for consideration.	**APPEA comment adopted**. New clause 25(2)(b) of the Bill states that, "if a caveat is lodged over only a share in a resource authority, lodgement of the caveat does not prevent registration of a dealing in relation to other shares in the resource authority".
17.	27	110	1) A holder of an authorisation should only be capable of registering a lapsing caveat over their interest. They would need a court order to have the caveat remain. The failure to deal with the situation of a holder lodging a caveat over their interest means that a holder can stymie bona fide dealings with an authorisation by other parties. There is	1) Preliminary view is that this is a business arrangement between parties that can be addressed through the Court or if particular parties have concerns about this, they should only consent to caveats that have an end date. Distinguishing between who can place an expiry of what part of a tenure will likely complicate this matter. If all	No change to relevant provisions.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			an abundance of case law in property jurisdictions (other than Queensland) where owners who can lodge caveats over their interests have had orders against them to remove caveats (see *Capital Finance Australia Limited v Bayblu Holding Pty Ltd & JNW Investments Pty Ltd* [2011] NSWSC 24 as an example). Making these sorts of caveats lapsing will trigger section 113 if a holder continues tries to re-lodge a caveat. 2) A mortgagee should not be able to register a caveat over an interest that they already hold security over.	caveats have to have an expiry date, this may increase cost to industry to re-register the caveat. Would need whole industry consensus to progress. 2) Consent from the interest holder would be required to register the caveat. Otherwise the non-consent caveat limitations and potential compensation for damages applies.	
18.	35	117	Feedback request regarding removal of an associated agreement: Persons other than the person that registers the associated agreement should have the ability to remove the associated agreement. If the person who registered it is an individual who dies, or a company that has been wound up, then there will be an issue in removing the associated agreement. The holders of the authorisation should be able to remove the associated agreement.	Based on feedback generally, it is not intended to progress with a process for removal of associated agreements. The registered agreements do no provide greater certainty for due diligence purposes as there is no compulsion to register an associated agreement.	**APPEA comment partially adopted**. There is now a provision allowing for removal of an associated agreement. Only the holder of the relevant resource authority can do this. This amendment accords with an amendment to clause 33 (clause 116 of the consultation draft) which provides that only the holder of the relevant resource authority may apply to have an associated agreement recorded. The consultation Bill provided that any person could make such an application.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
19.	175	300	***Deciding authority*** should include at (b) a 'person' to which the power to decide the application has been delegated. The word 'entity' is not generally used in the legislation and shouldn't suddenly appear. The term 'person' includes anyone or anything that has legal personality and that is the term that should be used..	Will confirm rationale for this.	No change to relevant provision.
20.	177	302	It is indicated in the Consultation Paper that for a non-assessable transfer (in respect of a transfer of an interest to an existing holder), it is intended to require the consent of a mortgagee for that part only. Industry strongly endorses the limitation of mortgagee consent to the tenement interest the subject of the transfer. However, it is unclear as to whether the consent of all other holders would still be required. Industry endorse that applications for non-assessable transfers continue to require the consent of all current holders to ensure transparency. This provides the current holders with protection and assurance that interests in the tenement cannot be changed without their consent. In practice, the removal of the requirement to obtain consent from all holders may	The current legislative framework does not require consent from all holders for non-assessable transfers. However it is required for assessable transfers.	No change to relevant provision. The Regulation will have to be monitored to see what notifications and consents are required for prescribed dealings.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			result in the lodgement and registration of additional arrangements so as to try and provide holders with an alternate level of protection (i.e. deed of cross charges amongst holders).		
21.	177(1)(b)	302(1)(b)	The term 'prescribed requirements' makes its first appearance here. Although defined later, what is the real difference between 'all requirements', and 'prescribed requirements' and 'other things prescribed under regulation' and 'prescribed criteria'? These are terms that are all used interchangeably when one should be used.	These terms are used to refer to different concepts relating to an application. 'Prescribed requirements' refer to application requirement stated in the regulations, 'all requirements' is used in the context of the authorising provision in the Act, 'other things prescribed under the regulations' is to ensure there is clear head of power to require things such as fees and prescribed criteria relate to decision making.	No change to relevant provision.
22.	177(1)(c)	302(1)(c)	1) As mentioned previously, the differentiation between assessable and non-assessable transfers should appear in the legislation. Also, while the issue is being discussed, why is it that an existing holder transferring all of its interest to another existing holder triggers an assessable transfer? Holders are jointly and severally liable and DNRM would have been satisfied that both holders met the capability criteria to hold the authorisation, so there shouldn't be	1) See comments under section 103 2) The department is required by law to ensure any duty has been paid prior to authorising a transfer. No changes are proposed to the existing process at this time.	No change to relevant provisions.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			another assessment at a later date. 2) Is the regulation going to require the original stamped commercial agreement (e.g. sale and purchase agreement) to be lodged as is the current practice?		
23.	178	303	This section creates uncertainty around timing. It provides that an application has no effect (and as such is an invalid application) in certain prescribed circumstances and may be refused. However, section 304 provides that in some circumstances, even if an application is an invalid application, the application may be accepted if the application substantially complies and any noncompliance has no adverse effect. Industry would greatly benefit from the insertion of a time frame into section 303 (i.e. in relation to the time period that DNRM have to decide that an application is invalid and refuse to accept it).	Depending on the timeframe, it may not be feasible for the department to process the application given various circumstances e.g. complexity, priorities etc. As dealings applications are already online, and that at the most an application takes to be processed online is less than two weeks, this sort of requirement is not required.	No change to relevant provision.
24.	178(1)(b)	303(1)(b)	Should include the term 'prohibited dealing' so that the provision reads “it is a prohibited dealing or a type prescribed under a regulation as an application that cannot be made.”	There may be several other types of applications that may need to be stopped from being made under this section. Therefore adding prohibited dealings may cause this section to become complex by needing to list all	No change to relevant provision.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
				types in this section rather than the regulations as intended.	
25.	178(2)	303(2)	Subsection (1)(a) is the only provision that a deciding authority will have the discretion to allow to proceed. (1)(b) cannot be accepted.	Agreed, will refer to OQPC for consideration.	No change to relevant provision.
26.	178(4)	303(4)	The streamlining and application process is new and accordingly in the beginning holders may make defective applications. If the application is defective on more than one ground, then the deciding authority should list all the reasons an application is rejected. Otherwise, holders will be subject to multiple re-lodgements of applications and charged accordingly because the deciding authority stopped reviewing the application at the first defect. Is it possible to have a requisition fee like property title applications rather than a full fee being applied?	Online lodgement will better facilitate such responses and minimise invalid application being made in the first place (system won't allow it to be lodged).	No change to relevant provision.
27.	179	304(2)(c)	The term "any person" is extremely broad. This subsection does further complicate the provision and should be removed. In the instance that the provision is not removed, industry will greatly benefit from an additional criterion of	We are considering the removal of sub(c) based on feedback.	**APPEA comment adopted**. The relevant provision has been removed.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			'materiality' in this section.		
28.	180	305	For the avoidance of doubt, it is strongly recommended that section 844(1)(c) of the P&G Act is explicitly retained in the Act, which facilitates the change to the applicant of an application. If not prescribed in the Act, this must be contained within the regulations and not the subject of policy.	The process for amending an application to change an applicant under s844 P&G Act will continue. The new amending application provisions relate to applications for dealings under the new Act. There will be a change to allow a delegated officer to approve change of applicants that will significantly improve the efficiency of this process. There will also be a fee for this process.	Clause 526 of the Bill amends section 844 of the P&G Act to provide that the chief inspector/ chief executive may decide a change of an applicant and not 'the official who may or must decide the application' (as section 844(1)(b) currently provides). Clause 180 of the Bill contains much less detail than existing clause 844, and provides that an amendment may only occur if "the applicant has complied with the prescribed requirements for amending the application." The Regulation will have to be monitored to confirm that amendments to applicants may be made, and what requirements are prescribed for such amendments.
29.	180	305(1)(c)	The prescribed fee for an amendment may be problematic for the multiple renewals and replacement tenure applications that are yet to be approved. Some of these have been waiting five or more years and therefore we need to amend the applications to provide updated LDPs. Whilst the streamlining	Valid point, however these types of application will not be covered in this Bill. Future phases of the program will address these types and this issue could be addressed through the regulations at that time. Introduction of a fee will only be applied to changing of applicant at this time.	**APPEA comment partially adopted**. There is now no reference to a fee for amendment applications in clause 180 of the Bill. Note however that the Regulation may still include a fee as a 'prescribed requirement' for an amendment application in future. The Regulation will have to be monitored

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			process proposes to eliminate such extensive delays, where it occurs in future, the applicant is unfairly penalised with a fee to amend an application. At the least, there should be a transitional provision that existing applications yet to be decided will not incur a fee.		for this. Note however that existing applications will be decided under section 844 of the P&G Act – and pursuant to clause 526 of the Bill a fee is proposed to be implemented in respect of applications under that section. APPEA's fundamental issue has therefore not been addressed.
30.	180	305(2)	Agree – subsection (2) should be removed.	Noted, we are still considering this.	**APPEA comment adopted**. The relevant provision has been removed.
31.	181(4)	306(4)	The 'may' should be a 'must' – or there should be some structure around when all is refunded and when part is refunded. At present, the deciding authority can simply choose not to refund the fee even if the application has not been looked at.	May is used because it could be appropriate that no part of the fee is returned e.g. the application has been progressed to the decision maker for a decision and all work has been done to assess the application. This will need to be determined on a case by case basis by the decision maker.	No change to relevant provision.
32.	182	307	It is indicated in the Consultation Paper that an applicant will be provided with 20 business days to comply with the direction(s) given by DNRM from the point in time in which DNRM gives the direction(s). It is suggested that an ability to extend the 20 business day period be included. In practice, additional information (such as sourcing an	Agree, this is provided by section 307(2)(c) and the regulation may prescribe different periods for particular requirements. The idea is that a "minimum" period is prescribed. The deciding authority may give longer, but not shorter.	No change to relevant provision. The power for the deciding authority to extend the period for complying with the direction is included at clause 182(2)(c) of the Bill.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			independent expert report) can often exceed 20 business days, therefore an application should not be refused due to this time restriction that may be out of the applicant's control.		
33.	182(1)(a)	307(1)(a)	How does this work with sections 302 and 304? Does a completion or correction of an application trigger a fee?	This power would only be used if the application has been accepted as substantially compliant. It would not trigger the payment of a fee.	No change to relevant provision.
34.	182(1)(c)	307(1)(c)	Why 'or another stated entity'? Why would an applicant making an application to the deciding authority be compelled to provide additional information to another entity who is not deciding the application?	This is merely for administrational efficiency. The deciding authority may be the Minister. So that the reply can be sent to the public service officer processing the application and making the recommendation to the Minister, rather than waiting for the reply to be forwarded down through the department from the Minister.	No change to relevant provision.
35.	182(2)(a)(ii)	307(2)(a)(ii)	Who is deemed an 'executive officer' (this is not a term in the *Corporations Act 2001* (Cth)). Is a statement made pursuant to a power of attorney acceptable? If not, this provision will not be feasible for large companies.	Will request OQPC to clarify or amend.	**APPEA comment adopted**. Clause 182(6) of the Bill includes a definition of 'executive officer' as follows: *'executive officer, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or the person's position is given the name of executive officer.'*

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
36.	183(1)	308(1)	The term 'prescribed criteria' first makes an appearance. See comments on 302(1)(b) above.	See response to s302(1)(b).	**APPEA comment adopted**. The term 'prescribed criteria' (contained in the consultation draft Bill) has been replaced by the term 'criteria prescribed by a regulation' in the Bill. Note that this is for clarity only (ie to distinguish 'prescribed criteria' from 'prescribed requirements'). The term 'criteria prescribed by a regulation' was previously the definition of 'prescribed criteria' contained in the consultation draft Bill, so the substance of the Bill has not changed.
37.	183(2)	308(2)	1) If the prescribed criteria are not exhaustive, then if the deciding authority requires additional information it considers relevant, then does provision of this trigger a fee? If it's not prescribed, then how can a deciding authority request it? What if the information cannot be provided for confidentiality reasons, triggers ASX reporting requirements etc? 2) Examples of what may be prescribed criteria includes 'financial and technical resources'. Can we please ensure that publicly listed companies are exempt from this requirement as per the industry reference group discussion and can we	1) Requesting additional information does not trigger a fee. It is not intended to change how this process currently works under the existing Acts. 2) A policy is being considered about exemption for publically listed companies as per the industry reference group discussions. Processes described in the link provided will be applied as appropriate (will pass on to operational area for implementation consideration). 3) Investigating.	No change to relevant provisions. The Explanatory Notes to the Bill do not give any indication as to what the criteria for considering applications will be. The Regulation and future DNRM policy releases will have to be monitored to determine what criteria will apply.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			also ensure that the issue of requiring one capability criteria by one applicant is acceptable as per the following industry newsletter link? http://www.vision6.com.au/em/message/email/view?a=23788&id=963210 3) Furthermore, the requirement that the proposed transferee be capable of carrying out activities to achieve the purposes for which the authorisation was granted has historically been an assessment criterion and the Consultation Paper indicates that it will be included in either the Act or the regulation. However, the assessment of this criterion should be streamlined as it is often inconsistently applied in commercial practice. For example, currently, this assessment criterion is contained in the P&G Act, described on the DNRM approved form and discussed in the DNRM Permit Administration Guide. The requirements on the approved form and in the administration guide currently require capability statements (financial & technical) to be provided by the transferee and all other holders, however, this is not something contained		

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			within the provisions of the P&G Act, therefore creating confusion and inconsistent application of DNRM's requirements when lodging an assessable transfer. The Act and the regulation should expressly clarify this assessment criteria. 4) Industry also strongly submits that the capability criteria should only be required from the incoming transferee of an assessable transfer to prove their financial and technical capabilities. For example, where an authority is owned by three parties and one of those holders agrees to transfer its share, it is overly burdensome to require the two remaining holders to also provide evidence regarding their capability which can include sensitive financial and technical information (which they are required to submit to the outgoing holder to form part of the assessable transfer application). In practice, this requirement is time consuming, costly and is most often resisted by holders who are not a party to the relevant assessable transfer. Rather, the transfer process should require the transferee to commit to all obligations and conditions of the		

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			outgoing holder.		
38.	184 (3)	309(3)	If the decision includes conditions, the conditions should be the subject of a discussion with the applicant. If the applicant doesn't accept or cannot comply with the conditions and only gets notified once the decision is made, then this is problematic.	This is the purpose of the indication process. The applicant will be able to appeal the final decision to the Land Court if not satisfied.	No change to relevant provisions.
39.	185	315(2)	If the regulation nominates MyMinesOnline as the way a document must be lodged, there may be issues with larger companies obtaining the necessary authorisations to be able to lodge on behalf of all holders.	Further clarification on this point is requested.	No change to relevant provisions.
40.	192	401(2)	The method of payment should only be prescribed under regulation. A form can easily become out of date and if a form and a regulation conflict, it would be confusing for industry.	In some cases there may not be an approved form. Will request OQPC consider providing clarity about which one prevails.	**APPEA comment adopted**. This provision now includes a sub-clause to the effect that, *'if a regulation and the chief executive inconsistently fix the methods to be used for the payment of a fee, the approved payment method for the fee is the method fixed by the regulation'*.
41.	193	402	This provision appears to be contemplating electronic fee payment only. Does this mean payment by cheque is going to be removed? Is this a problem?	Payment by cheque will still be available.	No change to relevant provision.

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42.	202	501	This provision may catch us out as a similar provision did when the Greentape Reduction legislation was passed in 2013 and we couldn't get transfers decided under the old provisions because DEHP had lost the power to transfer EAs. Can we put in some discretion for the deciding authority just in case we're caught again?	The requirement under the existing provisions to be a registered suitable operator under the EP Act prior to a transfer being approved will be the same under the common provisions Act. There will be no changes to the EP Act like what happened with the Greentape Reduction legislation.	**APPEA comment partly adopted**. This provision has been greatly expanded (although there is no 'discretion' given to the chief executive).
43.	205	502	Can we deal with replacement authorisations in this provision? At present under the P&G Act there is no mechanism available to retain dealings registered against one authorisation which is being replaced. This is problematic as the dealings and associated agreements all need to be re-registered.	Further clarification on this point is requested.	No change to relevant provision.
44.	205(3)	502(3)	This provision should be in Part 2 (s.109) so that any caveat (not just previous caveats) does not prevent a change of name.	It is intended that a caveat over a name of change will be a prohibited dealing prescribed in the regulations. This avoids complicating the caveat provisions in the Act.	No change to relevant provision. The Regulation will have to be monitored to ensure that caveats over a change of name are prohibited caveats.
45.	480(2)	523(2)	The words “to the extent the authorisation is a 1923 Act petroleum tenure” are redundant.	Will refer to OQPC for consideration.	**APPEA comment adopted**. The wording has been clarified.
46.	485	524	It is impossible to ascertain the effect of removing these provisions without seeing	Noted, details of proposed regulations have been provided, but not regulations	No change to relevant provision. The Regulation will have to be monitored

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			the detail of the regulations.	drafted by Parliamentary Counsel.	to ensure that removal of these sections does not adversely affect proponents.
47.	485	525	As above per comment on s.524.		No change to relevant provision. The Regulation will have to be monitored to ensure that removal of these sections does not adversely affect proponents.
48.	485	526	As above per comment on s.524.		No change to relevant provision. The Regulation will have to be monitored to ensure that removal of these sections does not adversely affect proponents.
49.	524	528	As above per comment on s.524.		No change to relevant provision. The Regulation will have to be monitored to ensure that removal of these sections does not adversely affect proponents.
50.	524	529	As above per comment on s.524.		No change to relevant provision. The Regulation will have to be monitored to ensure that removal of these sections does not adversely affect proponents.
51.	524	530	As above per comment on s.524.		No change to relevant provision. The Regulation will have to be monitored to ensure that removal of these sections does not adversely affect proponents.
52.		531	The words “to the extent the	Will request OQPC consider.	**APPEA comment adopted**. The

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			authorisation is a petroleum authority" are redundant.		wording has been clarified.
53.		Schedule 10	There is no real difference between "prescribed criteria" and "prescribed requirements". Why is there a separate definition of the same thing just for applications?	One is for application requirements, the other for making the decision.	**APPEA comment adopted**. The term 'prescribed criteria' (contained in the consultation draft Bill) has been replaced by the term 'criteria prescribed by a regulation' in the Bill. Note that this is for clarity only (ie to distinguish 'prescribed criteria' from 'prescribed requirements'). The term 'criteria prescribed by a regulation' was previously the definition of 'prescribed criteria' contained in the consultation draft Bill, so the substance of the Bill has not changed.
54.		General comment	How do coordination arrangements fit into the MQRA – should they be included in these provisions? Is there any equivalent under the Resources Acts?	Coordination arrangements or their replacement will be addressed in the new common Act as part of the new coal/CSG overlapping arrangements. Any necessary linkages to the dealings provisions will be provided.	Refer to Chapter 4 of the Bill.
55.		General comment	Transitional provisions for replacement tenures transitioning from 1923 or 2004 Acts to CRA, including requirement that dealings remain on authorisations replaced.	We will look into this.	Refer to Chapter 7, Part 2 of the Bill.
56.		General comment	Ongoing problems with proving compliance with OSR etc.	Noted.	No comment on this in the Bill or Explanatory Notes. The Regulation will

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
					have to be monitored to see how it deals with this issue.
57.		General comment	'Non-assessable dealings' and 'assessable dealings' should be defined in the Act and not left to the regulation. This provides too much uncertainty.	It is the department's objective to simplify legislation and provide flexibility in lieu of rigid process that cannot respond to changing circumstances. While a balance is needed and that brevity should not be sacrificed for certainty, these are dealings provisions that are relatively low risk in comparison to a tenure grant application. Providing for assessable and non-assessable dealings in the Regulations will achieve the same outcome as them being in the Act. There is no intention to change how these applications are currently being processed, i.e. we won't be "assessing" what are currently defined "non-assessable" dealings, this will be defined through different sets of criteria i.e. there will be few or none, for non-assessable dealings.	As outlined above, the Regulation will have to be monitored to see what criteria are prescribed for 'assessable' versus 'non-assessable' dealings.
58.		General comment	What is the difference between 'prescribed criteria' and 'prescribed requirements'?	These are defined in the definition part of the Bill and refer to decision criteria prescribed in the regulations and the application requirements prescribed in the regulations.	As outlined above, the term 'prescribed criteria' (contained in the consultation draft Bill) has been replaced by the term 'criteria prescribed by a regulation' in the Bill. Note that this is for clarity only (ie to

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
					distinguish 'prescribed criteria' from 'prescribed requirements'). The term 'criteria prescribed by a regulation' was previously the definition of 'prescribed criteria' contained in the consultation draft Bill, so the substance of the Bill has not changed.
59.		General comment	What is the difference between a 'dealing' and a 'prescribed dealing'?	The definition of the term dealing is to provide a general concept that can then be limited to only certain types required to be registered by the Regulations. Other types of dealings might include transactions like commercial arrangement with a third party, joint venture, farm-out etc.	As outlined above, the Regulation will have to be monitored to see what 'transactions or arrangements' are prescribed as a 'dealings' under clause 16(b), and what 'prescribed dealings' require registration under clause 17(1).
60.		General comment	Why do we still have to provide financial and technical capability criteria for publicly listed companies. Can we have a concept similar to 'registered suitable operators' under the EPA?	Consideration of capability will be maintained in the decisions criteria to be prescribed under the Regulations. However, a policy is being considered to provide that certain applicants won't need to provide this every time e.g. publically listed companies.	As outlined above, the Regulation will have to be monitored to see what criteria are prescribed for 'assessable' versus 'non-assessable' dealings.
61.		General comment	We cannot provide practical feedback if all the detail is going to be in the regulations. We need to see the regulations to see if the proposed sections of the Act will work.	Discussion paper sought to provide an indication of what will be contained in the regulations. A separate round of consultation will occur on the draft regulations before commencement of the Act.	

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
62.		General comment	For further clarity and consistency, the requirements in respect of stamping of a dealing need to be clearly prescribed in the regulation (i.e. does an approved form need to be stamped or is it adequate that the agreement under which the transfer occurred has been stamped (and provided with the application)).	Not addressed by DNRM	No comment on this in the Bill or Explanatory Notes. The Regulation will have to be monitored to see how it deals with this issue.
63.		General comment	A dealing cannot be registered by DNRM until the related financial assurance of the outgoing holder is replaced with financial assurance of the incoming transferee. Such requirement is historical and is now specified in the approved form for assessable transfers. In practice, this results in significant commercial uncertainty as the incoming transferee provides replacement financial assurance upon lodgement of the transfer forms, while the outgoing holder's financial assurance can only be released once the dealing has been registered, which can take some time. During this time (between lodgement and registration), both the outgoing holder and the incoming transferee have financial assurance issued and held by DNRM pending registration (usually in the	Not addressed by DNRM	No comment on this in the Bill or Explanatory Notes. The Regulation will have to be monitored to see how it deals with this issue. Refer also to DNRM's comment on clause 21, at Row 7 above.

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			form of bank guarantees) which both accrue interest. Given the significant quantum that financial assurances often have, this process causes significant confusion and is uncommercial (i.e. both the transferor and transferee accruing interest on bank guarantees pending assessment and the outgoing transferor having an outstanding liability months after it has completed a transaction to sell its relevant assets). Unfortunately, bank guarantees (unlike cash) cannot simply be transferred across to the incoming transferee by notice to DEHP, as specific bank guarantees issued by financial institutions must be returned in order to be effectively discharged. While industry recognises that: • dealings are dealt with by DNRM; and • financial assurances are managed by DEHP, given the significant interrelationship between the registration of a dealing and the replacement and release of financial assurance (and the fact that one cannot occur without the other) it would be preferable for this arrangement and DNRM's requirements be prescribed in the dealings provisions of the Act. This is		

Ref.	Bill clause	Consultation draft clause	APPEA comment on draft clause	DNRM response to APPEA comment	How APPEA's comment addressed in Bill
			particularly relevant given that, following the introduction of the streamlining provisions, transfers are no longer required to transfer the associated environmental authority, which is now automatically done by virtue of the transfer of the tenement, and therefore there is no interaction with DEHP in the transfer process.		

ANNEXURE 2: Overlapping tenure

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
1.	The White Paper stresses the preservation of existing co-development arrangements and consents. This is an aspect of parties being able to reach alternative positions by agreement. (White Paper 1.5 and 3.2.4).	The Bill does not address the continuation or application of existing agreements or generally acknowledge the ability of the tenure holders to agree to alternative arrangements. One of the foundation principles of the White Paper for the proposed legislative framework is flexibility for parties to negotiate bespoke agreements as an alternative to the legislative default. Whilst the MERCP Bill provides for certainty and predictable conduct, the White Paper acknowledges the rights of parties to come to alternative arrangements where opportunities for further cooperation exist. This principle includes recognition that existing agreed co-development arrangements are already in place and do not fall under the Bill unless both parties agree to opt into the legislative default framework described under chapter 4. The Bill must therefore recognise that the terms of an existing joint development plan may override the legislative position unless the Minister decides otherwise in accordance with s150 of the Bill.
2.	The White Paper provides that an ATP holder's relinquishment obligations and work program conditions will be suspended to the extent of any areas of sole occupancy for the duration of the sole occupancy. (White Paper 3.2.2)	Chapter 4 of the Bill does not deal with the impact of the new overlapping tenure regime on relinquishment and work program obligations of the ATP holder. (Chapter 4) Recent amendments to the Petroleum and Gas (Production and Safety) Act 2004 by the Land and Other Legislation Amendment Act 2014 were not designed to address necessary amendments to work

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
		programs due to sole occupancy under a mining lease. The White Paper describes that an ATP holder is to be relieved from relinquishment obligations and work program conditions to the extent of any area the subject of sole occupancy by the ML holder.
3.	The White Paper provides that exceptional circumstances may be claimed by an ATP holder when an ML application is made over an ATP and could be given for IMAs and RMAs with the ability to re-open a claim for areas outside the IMA or RMA, if the ML holder changes its mine plan triggering truncation. (White Paper 3.4.2)	The Bill only allows a PL holder to give an exceptional circumstances notice in respect of an IMA. [s 124] The Bill must also include provision for exceptional circumstance notices to apply where there are changes to an existing RMA.
4.	The White Paper contemplated that an exceptional circumstances notice could be given for IMAs and RMAs. (White Paper 3.4.2) The White Paper and relevant Technical Working Group Paper provide for reopening of the ability to claim exceptional circumstances where for areas outside the IMA or RMA, the ML holder changes its mine plan triggering truncation. (White Paper 3.4.2)	The Bill only allows an exceptional circumstances notice to be given in respect of IMAs. [s 124] The Bill must also include provision for exceptional circumstances to apply where there are changes to an existing RMA.
5.	The White Paper sets out a hierarchy of preferences for compensation, being: 1. avoid/mitigate lost CSG production; 2. replacement gas sourced by ML holder and supplied to PL holder (White Paper 3.6.1); and	The Bill does not refer to this hierarchy or the detailed compensation principles, although there is a reference in the Bill to principles to be prescribed by regulation in relation to the minimisation of compensation liability and the calculation of compensation for lost production and replacement of infrastructure.

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
	3. financial compensation. (White Paper 3.4.3) 1. The White Paper discusses in substantial detail principles for determining compensation for lost production , including in respect of delayed production PLs) , the mitigation of compensation liability with the supply of replacement gas of a specified type, the form of financial compensation for lost production including provision of security and timing of payments , calculation of reconciliation payments for later recovered CSG , principles for determining the cost of replacing gas infrastructure and compensation for stranded assets.	Addressing the hierarchy of compensation in the regulation is not viewed as an adequate mechanism to capture this key component to minimise lost gas production to the petroleum resource holder and the State. The CSG party will in all likelihood need to source replacement gas to meet its contractual sales obligations. This key component to the hierarchy of preferences for compensation should be captured in the legislation and not the regulation.
6.	Acceleration notice –proposed mining commencement date under section 125 of the Bill	The Bill does not clarify whether there is a minimum period of notice before mining can commence in an IMA/RMA where an acceleration notice is given. APPEA submits that such clarification should be made in the Bill.
7.	The White Paper intended that following completion of mining activities, the ML holder should be required to give up sole occupancy as soon as it is safe and practicable to do so. (White Paper 3.3.1) The White Paper also included principles of allowing parties flexibility in managing rehabilitation where there is successive land use. (White Paper 3.14)	The Bill provides that the ML holder may give an abandonment notice when it no longer requires sole occupancy for the whole or part of an IMA or RMA for an overlapping area. (s 126) The Bill does not refer to flexible rehabilitation arrangements for successive land use. Sole occupancy is not exclusivity. CSG rights have the potential to resume after mining activities have concluded and overlapping rights are not extinguished. Placing an obligation on the ML holder to provide advice at a point following rehabilitation of the relevant area by the ML holder or to negotiate for CSG activities to resume at an earlier date if convenient, allows for a resumption of CSG rights under its petroleum resource authority. Therefore it is

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
		important that existing obligations under an environmental authority take account of the potential for secondary land use. The PL holder could, for example, assume the obligation for rehabilitation requirements of delineated areas and the ML holder could do likewise for the PL holder in delineated areas that are to be mined through. APPEA understands DNRM is considering necessary amendments in consultation with DEHP to apply to the Environmental Protection Act but is yet to see proposed amendments. APPEA would like to draw attention in this circumstance to the streamlined model conditions for petroleum activities relating to overlapping tenure administered through the Department of Environment and Heritage Protection (**DEHP**), http://www.ehp.qld.gov.au/management/non-mining/documents/guide-model-conditions-petroleum.pdf.

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
8.	The White Paper recognises that agreed co-development plans under a Coordination Arrangement between overlapping production lease holders, and approved by the Minister under the Petroleum and Gas (Production and Safety) Act 2004, will remain in force unless the parties agree to opt into the new regime.	The requirements of s127 describing the mandatory content of a joint development plan are therefore not necessarily consistent with the White Paper in respect to there being a defined IMA/RMA/SOZ concept. A bespoke joint development plan does not necessarily describe joint development using these terms or concepts.
9.	The White Paper recognises that each party may conduct exploration activities outside of the IMA, RMA and SOZ, and that CSG production tenure holders may undertake activities outside of these areas, subject to safety considerations and the ability to agree otherwise. (White Paper 3.3.1 and 3.3.5)	The Bill provides that a Petroleum Resource Authority (**PRA**) Holder and an ML holder may carry out an authorised activity in an overlapping area only if the activity is consistent with each agreed joint development plan that applies to the relevant holder (ss 131(2); 142(2)). It does not take into account the agreed industry position that the PRA holder may undertake authorised activities outside the area of the IMA/RMA/SOZ at any time at its own discretion (subject to not adversely affecting safe and efficient production activities of the overlapping production tenure). The PRA tenure holder shall have advance notice before an IMA/RMA/SOZ takes effect and will otherwise have unfettered rights to conduct CSG-related activities on the basis that PRA tenure holders can be everywhere that ML holders are not. The CSG activities undertaken outside the IMA/RMA/SOZ are subject to the relevant SSM. Where a PL is granted after the commencement of the new provisions and subsequent to its grant, an ML is granted, then section 131(2) seems to require the PL holder to cease any activities until there is an agreed joint development plan with the

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
		ML holder as the activities under the PL would otherwise not be consistent with an agreed joint development plan. APPEA respectfully deems that the PRA holder should be entitled to commence or continue authorised activities under the PRA unless and until there is an agreed joint development plan.
10.	The White Paper provided details on how ICSG was to be offered by the ML holder to the overlapping PRA holder, the ability in certain circumstances of the PRA holder to refuse, contribution by the PRA holder to extraction costs, and a requirement to re-offer the ICSG on an annual basis. (White Paper 3.11.2) The White Paper also proposed changes to legislation concerning royalties and carbon charges for the ICSG (White paper 3.12)	The Bill does not address all these matters in the detail required by the White Paper. Certain matters concerning what the contract for supply of ICSG must contain are to be specified in regulations. (White Paper 3.11.3) The petroleum tenure holder accepting the ICSG must pay the royalties under the MRA.

Ref.	White Paper – A New Approach to Overlapping Tenure in Queensland	*Mineral and Energy Resources (Common Provisions) Bill 2014*
11.	The White Paper requires that periodic offers of Undiluted ICSG must be made. It was suggested that this occur on an annual basis unless and until the ML holder develops a plan for its own use or commercialisation of that ICSG. (White Paper 3.11.2)	Section 135 of the Bill only requires this to be done if ML holder does not use ICSG within 12 months of making the offer to the overlapping petroleum tenure holder. The White Paper articulates that as part of the trade-off associated with the 'right of way' principle for coal is that the ML holder must offer any ICSG produced from an area of sole occupancy (IMA and RMA) to the overlapping PRA holder at no cost other than a contribution to the costs of producing the ICSG. Where the PRA holder has declined its first right of refusal to the initial offered supply of undiluted ICSG, the ML holder must re-offer undiluted ICSG on an annual basis unless and until the ML holder develops a plan to use or commercialise the ISCG. (White Paper 3.11.15). Section 135 should include the wording 'make a reasonable' in the wording of s135 (1) to read "An ML (coal) holder must *make a reasonable* offer to supply…". The definition of 'reasonable' should be included as part of s135 to include the parameters described in the White Paper at section 3.11.3.
12.	The White Paper provides that offers for ICSG are to be made for a single transfer point and that costs beyond this transfer point are borne by the gas party. (White Paper 3.11.3)	The Bill does not include this specification. Although the contract for the supply of gas must include matters prescribed by regulation. (s 135(5)). The contract for delivery of the ICSG would form statutory criteria (although alternative arrangements may be made). The contract of delivery will require the parties to negotiate for either class of ICSG to be supplied on an agreed volume, quality and deliverability basis

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		to align with the disposal facilities provided by the PRA tenure holder. Any ICSG offered to the PRA holder is to be offered at a single transfer point for each class of ICSG with the cost of transferring the gas from the transfer point to be borne by the PRA holder. In the event the PRA holder accepts a first right of refusal offer but is unable to take the gas then the ML holder may recover the costs it subsequently incurs in disposing of such gas (including carbon costs, royalties and any essential capital investment it makes in facilities to deal specifically with this contingency).
13.	The White Paper (3.3.8) articulates land access principles between an ML holder and CSG tenure holder. A CSG tenure holder is a PL and ATP holder.	Land access has only been partly addressed with respect to the overlapping of an ATP with a ML (section 146). The provisions do not deal with land access for overlapping production tenures where a production tenure holder (or a related entity) owns the underlying land. The Bill should be amended to reflect this.
14.	The White Paper (3.2.3 and 3.3.6) and as defined under Schedule 2 of the White Paper describes that to ensure the workability of the White Paper framework and to facilitate the efficient conduct of overlapping coal and CSG activities, an overriding obligation be placed on both coal and CSG tenure holders to exchange relevant operational and planning information.	Section 147(1) of the Bill is too wide and imprecise in respect of the information the overlapping tenure holders need to exchange. The obligation should be limited to the specific types of information in section 147(2) of the Bill (and as prescribed under the regulation).
15.	The White Paper provides that "Minor Gas Infrastructure" would include minor facilities associated with, and servicing, Major Gas Infrastructure, where the Major Gas Infrastructure itself does not	The definition of "PL minor gas infrastructure" does not include the minor facilities associated with, and servicing, Major Gas Infrastructure, where the Major Gas Infrastructure itself does not

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	require relocation. (White Paper 3.8)	require relocation. [s 155] The Technical Working Group for Compensation describes the agreed position between coal and coal seam gas as including "minor facilities associated with, and servicing, major gas infrastructure, where the major gas infrastructure itself does not require relocation". This is to be added to the definition of 'PL minor gas infrastructure'.
16.	The White Paper provides that if a CSG tenure holder does not accept Undiluted ICSG validly offered to the ML holder, then any compensation liability of the ML holder will be reduced by the amount of Undiluted ICSG offered except to the extent that it is not practicable for the CSG tenure holder, acting reasonably, to provide ICSG off-take infrastructure capacity aligned with the offered supply. (White Paper 3.11.4)	The Bill does not include this carve-out. Rather it simply provides that an ML holder's compensation liability to a PL holder is reduced to the extent the undiluted CSG offered to the PL is not supplied to the PL holder because the offer is not accepted. [s 161] There may be instances where it is simply not practicable for the PRA tenure holder to provide ICSG off-take infrastructure capacity to align with the offered supply. Such circumstances include the ability for the PRA tenure holder to transport the ICSG for subsequent processing due to a lack of transmission infrastructure in the area and the prohibitive or uneconomic cost or timeframe necessary to construct the necessary pipeline infrastructure.

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17.	The White Paper (3.6.7) refers to reconciliation for subsequent recovery of lost production where compensation for lost gas has been previously paid by the ML holder. The Technical Working Group on compensation were unable to agree how this would work.	Section 162 of the Bill recognises the concept of a reconciliation payment but also provides at section 162(2)(b) as an alternative ability for the PL holder to give the ML holder an amount of coal seam gas that is equal to the amount of coal seam gas recovered. This is likely not practical or preferable by either party and should be removed from the Bill.
18.	The White Paper contemplated the development of a **Code of Practice** for hazard minimisation in relation to gas drainage, the details of which would be included in the regulations. Compliance with the Code was to be mandatory for all tenement holders conducting gas drainage activities and represented the industry compromise in lieu of statutory compensation for the potential adverse effects of gas drainage operations on the coal resource.	The Bill does not allude to the Code of Practice for hazard minimisation in relation to gas drainage. This may be dealt with in regulations. Even if the Code is ultimately set out in the regulations, the Code may still need to be enshrined in the Act itself to effect compliance.
19.	The White Paper contemplates that disputes under the new overlapping tenure regime would be resolved by expert determination under a process that is fast, final and fair. The White Paper notes that there may be issues with the availability, qualifications, status, and independence of experts and suggests that the QRC could develop a register of "endorsed" experts who would be available to provide the proposed alternative dispute resolution service. The White Paper sets out a number of "key areas" which may require an expert determination, including disputes regarding: • the size of an IMA, SOZ or RMA panel;	Need to ensure the Mine Safety Bill addresses reference of disputes on hazard minimisation or safety to arbitration.

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	• the "exceptional circumstances" which may trigger an extended notice period; • the quantum of compensation and certification of production profiles in circumstances where a notice period is truncated; and • application of the Code of Practice for hazard minimisation in relation to gas drainage.	
21.	Transitional Arrangements – Chapter 7 of the Bill.	The White Paper proposed that existing production tenements and future overlapping applications would remain subject to the existing overlapping tenure regime with a right in the parties to opt-in. Chapter 7 Division 3 and Division 4 does not take into account the circumstance for transitional applications where lodged and consented to by the overlapping exploration tenure holder, or where the other party lost the right to seek a preference decision because it either did not have the prerequisite knowledge of its resource or it failed to comply with its obligations under sections 313 and/or 314 of the P&G Act or sections 318AW and 318AX of the MRA. The initial lease application must be accorded its legislative rights accrued under the P&G Act or MRA and be given priority. That is, where the overlapping exploration holder has foregone its rights the provisions described under the Bill should not apply and the lease should be granted without further reference to the overlapping exploration tenure holder. The exception being that the overlapping exploration tenure holder

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		may continue to explore under its exploration tenure where its activities do not adversely affect safe and efficient production activities on the overlapping production lease as described in the White Paper [3.3.5].