

MinterEllison

Cooperation Agreements in NSW



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General introduction



Legislation/Background

It is possible to obtain a mining lease over land subject to a title granted under the *Petroleum (Onshore) Act 1991* ('**PO Act**').

However, you cannot add petroleum to a mining lease for coal under section 78 of the *Mining Act 1992* ('**Mining Act**') if the land to it is also subject to a petroleum title.

The consequences of this are not clear but it would appear that it means that the holder of a mining lease may only be able to extract petroleum (e.g. coal seam methane) for safety purposes, and not for commercial purposes.

It is possible for a petroleum title to be granted over land subject to a mining title, even a mining lease to which petroleum has been added under section 78 of the Mining Act.



Legislation/Background (cont)

There is no regime under the PO Act or Mining Act to manage situations where titles under either Act overlap or are adjacent. Industry and Investment NSW ('**DI**') has no policy in respect of the overlapping of titles other than to deal with the issue on a first come first served basis and to require title holders, via conditions of title, to enter into cooperation agreements in respect of their operations.

In respect of disputes arising between the holder of the petroleum title and the person authorised under the Mining Act about the operations carried out or proposed to be carried out by either party, section 73 of the PO Act provides that either person may refer to the Land and Environment Court of NSW for 'determination'.



Cooperation Agreement

The lease holder must make every reasonable attempt, and be able to demonstrate their attempts, to enter into a cooperation agreement with the holder(s) of any overlapping title(s). the cooperation agreement should address but not be limited to issues such as:

- Access arrangements
- Operational interaction procedures
- Dispute resolution
- Information exchange



Cooperation Agreement (cont)

- Well location
- Timing of drilling
- Potential resource extraction conflicts and (cont)
- Rehabilitation issues.

Likely overlapping scenarios

- PEL/EL overlap
- PPL/EL overlap
- PPL/ML overlap – underground coal mine
- PPL/ML overlap – open cut coal mine





Some issues to consider when drafting a co-operation agreement

- Existing infrastructure and operations
- Future Infrastructure
- Sterilisation of coal
- Sterilisation of CSM
- Dealing with regulators



Some issues to consider when drafting a co-operation agreement (cont)

- Pollution incidents
- Safety
- Area of land agreement applies to
- Compensation
- Flexibility for changes to mine design
- Rehabilitation of land