

Energy and resources update May 2013

Welcome to our monthly roundup of news and legal developments from the Australian energy and resources sector. Each month, we cover news from around the country, including new legislation, commercial developments and judgments affecting the industry.

Environmental approval for uranium project in Western Australia

Western Australia has approved its first uranium project since lifting a six-year ban on uranium mining in 2008.

Toro Energy has received State and Commonwealth environmental approval to develop a uranium mine 30 km south of Wiluna in the centre of the state. The mine will produce about 1,300 tonnes of uranium oxide concentrate per year over 14 years.

The environmental approval for the uranium mine is subject to 36 wide-ranging conditions, such as:

- monitoring of radioactive releases and management of radioactive substances and waste
- ensuring that mining does not have a significant adverse impact on groundwater dependent flora and fauna or downstream environmental values

- the development of extraction of groundwater outside of the mining lease
- the development of a Mine Closure Plan
- construction of a tailings storage facility
- the details of the financial bond arrangements for ensuring adequate rehabilitation
- consultation with indigenous people and submission of a Cultural Heritage Management Plan
- the development, approval and review of an Environmental Management Plan incorporating the objectives and issues listed above.

Renewable Energy Target confirmed

The Federal Government has accepted most of the Climate Change Authority's (CCA) 34 recommendations published in its review of the Renewable Energy

In this issue

- The Federal Government has accepted most of the Climate Change Authority's (CCA) 34 recommendations
- Iron ore companies producing magnetite in Western Australia (WA) can now apply for a discount of up to 50%
- The Northern Territory (NT) government will not impose a gas reservation policy
- Queensland's Small Scale Mining Code came into effect on 31 March 2013.

Target and its associated framework last year.

The key recommendations accepted include:

- the retention of the Renewable Energy Target – which is 20% of Australia's electricity to come from renewable energy sources by 2020. The CCA forecast that reductions in electricity usage

would mean a target of 25% was achievable but acknowledged that the need for regulatory certainty was more important. The Liberal Party which is currently in opposition, has also reaffirmed its commitment to the "20% by 2020" Renewable Energy Target;

- to largely maintain the existing framework for the Renewable Energy Target;
- the frequency of scheduled reviews of the Renewable Energy Target should be extended from two years to four years to maximise regulatory certainty – the next review in 2016 would be an appropriate time to consider the targets and framework beyond 2020 in light of policy and economic conditions prevailing at the time; and
- the small-scale scheme and the large-scale Renewable Energy Target are to be kept separate to retain certainty and consistency in the industry.

The Federal Government agreed in principle to allowing large electricity consumers to opt in to assume direct liability for RET obligations; however it was concerned that this would lead to increased administrative burdens on the Clean Energy Regulator and would increase uncertainty for electricity retailers in relation to their liabilities. The Federal Government will consult affected stakeholders on the design of a possible opt-in scheme.

The Federal Government will implement the accepted recommendations in stages: those recommendations that do not require legislative change will come into force in 2013, those requiring legislative change will be introduced through a

package of amendments and circulated for consideration later in 2013, and those requiring further review will be subject to further consultation and analysis in the first half of 2013.

A copy of the Federal Government's response to each of the CCA's recommendations can be found at: <http://www.climatechange.gov.au/government/initiatives/~media/publications/renewable-energy/governmentt-response-to-cca-review-pdf.pdf>

WA announces 50% discount on first-year magnetite royalties

Iron ore companies producing magnetite in Western Australia (WA) can now apply for a discount of up to 50% discount (by way of rebate to the producer) on the magnetite royalty for the first 12 months of production.

The full royalty rate is 5%, and companies can make an application on a project-by-project basis. The rebate is expected to assist the WA iron ore industry to recover the massive investment required to achieve production.

The discount policy was announced at the official opening of the first WA magnetite producing project, the Karara Iron Ore Project, and will apply for a three-year period from April 2013.

A fact file attached to the government media release (link below) notes that there are 29 potential magnetite projects at varying stages of development in WA. Commentators speculate that these projects have slowed down or stalled due to the lack of investor confidence resulting from the fall in iron ore pricing.

The WA Government media release can be found at:

<http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=7283>

NSW Land and Environment Court throws out mine extension plans on environmental grounds

The New South Wales (NSW) Land and Environment Court has overturned the NSW Minister of Planning and Infrastructure's approval of a mining project following an appeal by local residents.

Bulga is a small community of 300 people in the State's Hunter Valley. The proposed Warkworth mine to be operated by Rio Tinto subsidiary Coal & Allied, would have yielded 18 million tonnes of coal each year.

The basis for Bulga's appeal was that there would have been significant and unacceptable impacts on biological diversity, including on endangered ecological communities, noise impacts and dust emissions on the residents of Bulga and the surrounding countryside, social impacts on the community of Bulga, economic issues (including that the full environmental costs were not internalised by the project), and the public interest.

The Minister and Warkworth both submitted that the project could be approved based on modified conditions, which they suggested would lead to acceptable impacts.

Under section 39 of the Land and Environment Court Act 1979 (NSW), the court has the power to re-exercise the statutory power of the Minister to approve or not approve the project and is able to consider new evidence. The court found in favour of Bulga, determining that the application for the approval of the project should be

refused having regard to the impacts described above. Chief Justice Preston was not persuaded by the information provided with the application that the impacts were mitigated to a sufficient extent.

Commentators suggest that lessons to be learned from this case include the following:

- address each impact specifically and comprehensively, including social impacts and impacts on biodiversity;
- offset and compensatory measures alone will not be sufficient; and
- economic modelling is of limited assistance to the review of the balance between economic benefits and environmental and social impacts.

An appeal from the Land and Environment Court's decision may be made to the Supreme Court of New South Wales with respect to a question of law – that is, the decision cannot be remade again on its merits. For example, the court must have been mistaken as to what the law was, or the court was mistaken in which considerations to take into account as part of the decision making process. The Supreme Court may remit the decision on the question of law back to the Land and Environment Court or make the decision itself.

The judgment can be accessed at: <http://www.caselaw.nsw.gov.au/action/pjudg?jgmid=164038>

Northern Territory rules out gas reservation

The Northern Territory (NT) government will not impose a gas reservation policy, citing investment as a key consideration.

In response to calls for gas companies to reserve supplies for local use, NT Chief Minister Adam Giles stated that his Government's plan was to attract investment and realise the Territory's potential.

The decision drew support from the Federal Minister for Resources and Energy. In its Energy White Paper 2012, the Federal Government stated that reservation policies should be a last resort and that policies should focus on developing more competitive and efficient gas markets.

As the overseas price of gas is currently higher than domestic prices, those who argue for the adoption of gas reservation policies are concerned that domestic gas prices will rise with increased overseas demand on Australian gas supplies. However, gas prices in Western Australia have continued to rise despite the state government's policy of reserving 15 per cent of gas production for domestic use.

You can read the media release by the Federal Minister for Energy and Resources at: <http://minister.ret.gov.au/MediaCentre/MediaReleases/Pages/gas-reservation-policy-not-the-answer.aspx>

New code reduces of administrative burdens for small scale mining in Queensland

Queensland's Small Scale Mining Code came into effect on 31 March 2013, the latest in a suite of reforms passed by the Queensland Parliament to simplify administrative processes and reduce fees for small miners.

The Code regulates mining claims recently introduced into the Mineral

Resources Act 1989 (Qld) and those exploration permits recently exempted from environmental authorities pursuant to amendments to the Environmental Protection Act 1994 (Qld).

Mining claims can be up to one hectare and have an initial term not exceeding ten years. Aimed at the opal and gemstone sector, mining claims entitle the holder to prospect and hand-mine for specified minerals, which can be any mineral other than coal.

You can download a soft copy of the Small Scale Mining Code at: <http://mines.industry.qld.gov.au/assets/mines/small-scale-mining-code.pdf>

Southern Cross Renewable Energy Fund invests in new hydrogen energy storage solution

The Southern Cross Renewable Energy Fund has committed A\$4.5 million to a A\$9.25 million investment in novel Australian hydrogen storage technology by Queensland company Hydrexia Pty Ltd.

The technology is to be commercialised in existing industrial gas markets with a view to applying it to hydrogen refuelling and renewable energy generation and storage in the future. The financing has been co-led by Air Liquide, which will provide Hydrexia with an opportunity to capture a share of the existing industrial market.

The Southern Cross Renewable Energy Fund is a 13-year venture capital fund managed by the Australian Renewable Energy Agency. The Fund's A\$200 million comprises a A\$100 million investment by the Australian Government, matched dollar for dollar by Softbank China

Venture Capital. Its first investment in September 2012 went towards the commercialisation of high-performance anti-reflective coatings that increase the efficiency of solar panels.

You can read the media release by the Minister for Resources and Energy at:

<http://minister.ret.gov.au/MediaCentre/MediaReleases/Pages/advancing-renewable-energy-storage-options.aspx>

Contacts

Mark Pistilli

Partner
T: +61 2 8922 8001
E: mark.pistilli@cliffordchance.com

Jane Ann Gray

Special Counsel
T: +61 2 8922 8013
E: janeann.gray@cliffordchance.com

Deniz Tas

Associate
T: +61 2 8922 8066
E: deniz.tas@cliffordchance.com

Amanda Digby

Associate
T: +61 2 8922 8018
E: amanda.digby@cliffordchance.com

Michael Lishman

Partner
T: +61 8 9262 5502
E: michael.lishman@cliffordchance.com

Justin Harris

Partner
T: +61 8 9262 5503
E: justin.harris@cliffordchance.com

Paul Vinci

Partner
T: +61 8 9262 5504
E: paul.vinci@cliffordchance.com

Tracey Renshaw

Partner
T: 61 8 9262 5505
E: tracey.renshaw@cliffordchance.com

Robyn Glindemann

Counsel
T: +61 8 9262 5558
E: robyn.glindemann@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Level 16, No. 1 O'Connell Street, Sydney, NSW 2000, Australia

Clifford Chance, Level 7, 190 St Georges Terrace, Perth, WA 6000, Australia
© Clifford Chance 2013

Clifford Chance is a law firm with liability limited by a scheme approved under Professional Standards legislation

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.