

Australian Energy and Resources Update: April 2014

Welcome to our monthly update on Australian energy and resources-related legal developments.

National and state programmes to reduce "red tape" and regulation are in evidence again this month, while the Government is pushing ahead with preparations for the Emissions Reduction Fund, despite a critical Senate report.

This update is intended as a snapshot and not specific legal advice (nor an exhaustive coverage of all relevant issues). If you would like further information on any specific issue, please let us know.

Australian Senate Report questions Government plans to tackle carbon emissions

The Australian Senate has formally declared its strong disapproval of the Australian Government's Direct Action Plan to combat carbon emissions.

A report by the Senate's Environment and Communications Reference Committee, "Direct Action: Paying polluters to halt global warming?" recommended that the Australian Government adopt the emissions reduction target set by the Australian Climate Change Authority for 2020 – namely 15% below the aggregate 2000 emission levels, and maintain the Clean Energy Package introduced by the previous Government, including:

- the carbon pricing mechanism or emissions trading scheme that is now approaching its first full year

of operation (which the current Government wishes to dismantle);

- a legislated cap on carbon emissions;
- industry assistance to help emission-intensive trade-exposed industries;
- the Carbon Farming Initiative (which is being retained); and
- establishment of a number of bodies to advise the Government and administer the carbon pricing mechanism (many of which have already been disbanded or are planned for closure by the Government).

Under the Direct Action Plan, the Government plans to set up an Emissions Reduction Fund to fund projects that will lead to an overall reduction in carbon dioxide emissions. However, the report found no evidence that the Emission Reduction Fund would be able to achieve any substantial emission reductions at a reasonable cost.

Key issues

- Australian Senate Report questions Government plans to tackle carbon emissions
- Emissions Reduction Fund White Paper released
- Release of national environmental standards for one-stop shop reforms
- Consultation on targets for electricity generated by renewables
- ERA draft report on Microeconomic Reform in WA
- Changes proposed to WA Dangerous Goods Safety Act

The Committee's report can be accessed here:

[http://www.aph.gov.au/ParliamentaryBusiness/Committees/Senate/Environment and Communications/Direct Action Plan/Report/index](http://www.aph.gov.au/ParliamentaryBusiness/Committees/Senate/Environment%20and%20Communications/Direct%20Action%20Plan/Report/index).

Emissions Reduction Fund White Paper released

Environment Minister Greg Hunt has released the Government's long-awaited White Paper on the proposed Emissions Reduction Fund (ERF), despite criticism of the fund voiced by the Australian Senate (see previous story).

The ERF is the centrepiece of the Government's Direct Action Plan. The White Paper follows the Government's consideration of over 600 public submissions on a Terms of Reference document and the ERF Green Paper in 2013.

There is no opportunity to comment on the White Paper, although comments will be invited on the draft legislation to implement the ERF which will be released in the coming months.

According to the White Paper, the ERF will be based on three basic principles:

- Genuine emissions reductions: the White Paper notes that business has identified a wide range of productivity-enhancing activities to reduce emissions. The ERF will set the rules (methods) for verifying and crediting emissions reductions from different activities. A new independent expert committee, the Emissions Reduction Assurance Committee, will assess proposed methods and advise the Environment Minister;
- Purchasing emissions reductions at the lowest cost: the existing Clean Energy Regulator will conduct quarterly auctions to purchase emissions reductions at the lowest cost. The Regulator

will set a benchmark price for each auction. Bids above the benchmark will not be accepted. The Government has set aside A\$2.55 billion for purchases under the ERF over the budget forward estimates; and

- Safeguarding reductions: to ensure emissions reductions will not be offset by increases in emissions in other sectors of the economy, the proposed safeguarding mechanism will ensure that Australia's largest emitters will not increase their emissions above historical levels. The safeguarding mechanism will apply to facilities with direct emissions of 100,000 tonnes of CO₂-e per year or more, based on emissions data reported through the existing National Greenhouse and Energy Reporting Scheme.

The White Paper makes reference to building on existing State and Territory energy efficiency and reduction methodologies to develop the methods to be accredited under the ERF and notes that the current Carbon Farming Initiative will be folded into the ERF.

A copy of the White Paper can be downloaded here: <http://www.environment.gov.au/topics/cleaner-environment/clean-air/emissions-reduction-fund>.

Release of national environmental standards for one-stop shop reforms

Environment Minister Greg Hunt has continued the Government's programme for streamlining environmental approvals with the release of a Standard for Accreditation that will form the basis

for bilateral agreement negotiations with State and Territory governments.

As reported in previous *Energy and Resources Updates*, the Commonwealth, State and Territory Governments have entered into a series of MOUs to develop formal bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) that, once ratified, will delegate responsibility to State and Territory Environment Ministers to assess and approve environmentally significant proposals for the purposes of the EPBC Act.

The Standards set out:

- The environmental and systems outcomes to be achieved through the proposed bilateral agreements;
- The specific accreditation requirements of the EPBC Act and requirements of Commonwealth law that will be important for the Government to be satisfied that high environmental standards will be maintained by individual States and Territories; and
- Additional guidance on areas that the Commonwealth Environment Minister may take into account in considering whether to enter into a bilateral agreement with a State or Territory.

A copy of the Standard can be downloaded here: <http://www.environment.gov.au/resource/standards-accreditation-environmental-approvals-under-environment-protection-and>.

Consultation on targets for electricity generated by renewables

On 5 April 2014, the expert panel appointed to review the Commonwealth Renewable Energy Target (RET) scheme made a call for public submissions.

The RET scheme's initial goal was to have 2% of national electricity generation being sourced from renewable technologies by 2010. In 2010, the scheme was expanded to target 20% of electricity generation from renewables by 2020.

The review panel sought submissions on the operation, cost and benefits of the RET scheme. The panel asked a number of questions including:

- How well the RET has performed against the objectives in the *Renewable Energy (Electricity) Act 2000* (Cth);
- How the RET scheme has shaped the development of the renewable energy industry;
- Whether any other energy sources should be included in the Large-scale Renewable Energy Target which encourages the creation of large-scale renewable projects such as solar and wind farms.

Despite the significance of the RET scheme to the sector, the deadline for submissions closed quickly on 17 April 2014. However, the Government has established a dedicated website on the RET scheme review to allow interested people to stay up to date: <http://retreview.dpmc.gov.au/>.

ERA draft report on Microeconomic Reform in WA

A new report makes a number of recommendations for infrastructure development and regulatory reform in Western Australia in order to improve economic efficiency.

The Economic Regulatory Authority's (ERA) draft report on its Microeconomic Reform Inquiry covers a wide range of areas, including the taxi industry, potato marketing and deregulation of retail trading hours.

The largest number of recommendations were made on infrastructure and regulation reduction.

In infrastructure, the ERA called for consistent application of project evaluation processes by the State Government, full investigation into the divestment of assets that pass the threshold criteria for private ownership, and to expand the use and scope of PPPs.

Under the heading of red tape reduction, ERA recommended 25 measures, audits, units and programmes be established in order to reduce the regulatory burden in Western Australia.

The draft report is open for public comment until 9 May 2014, and submissions may be made via email to publicsubmissions@erawa.com.au. All public submissions made to date can be found at: <http://www.erawa.com.au/economic-inquiries/west-australian-microeconomic-reform/public-submissions>.

The final report is to be delivered to the Western Australian Treasurer Mike Nahan by 30 June 2014.

Changes proposed to WA Dangerous Goods Safety Act

The Western Australian Department of Mines and Petroleum has proposed changes to its dangerous goods legislation to reduce regulatory overlap.

An information paper released suggests that the Mines Safety and Inspection Act, which regulates workplace health and safety on mine sites, will be amended to incorporate the regulation of Major Hazard Facilities, currently regulated under the Dangerous Goods Safety Act, and assume all workplace health and safety regulation at mine sites from WorkSafe WA, thus removing one area of regulatory uncertainty and overlap that currently exists.

The review, which is required under section 69 of the Act, is being carried out against a background of the Department's current drive to improve the efficiency and operational effectiveness of its functions and the commitment to conform Western Australian laws to the national model workplace health and safety legislation.

A copy of the information paper can be downloaded at: <http://www.dmp.wa.gov.au/6626.aspx#19806>.

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HK-1042990-v1

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