

Australian Energy and Resources Update: May 2014

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

Federal Budget highlights

The Abbott Government tabled its first Federal Budget on 13 May 2014, with a number of announcements made relating to projects covered in previous Energy and Resources Updates.

Funding commitments announced or confirmed in the Budget include:

- A\$1.1 billion over the next 3 years for the Emissions Reduction Fund, with a further A\$1.5 billion in the following 5 years;
- A\$525 million over 4 years for the “Green Army” of volunteers and young people to participate in land management activities;
- A\$100 million for the Exploration Development Incentive to assist junior miners engage in exploration for new mineral deposits;
- A\$22.6 million to develop a business case for long term management of radioactive waste in Australia; and
- A\$50 billion towards infrastructure projects, with A\$6.6 billion of investment to be fast tracked in the short term.

However, the Government also reversed a pre-election commitment, made as part of its Direct Action Plan on climate change, by dropping its “1 million solar roofs” program intended to encourage the uptake of solar panels on residential and community buildings. The Australian Renewable Energy Agency (ARENA) has also been defunded and the Australian Climate Change Science program, which has been running since 1989, has also been abolished with its funding being directed to a new National Science Program.

Full details of the Budget can be found at: <http://www.budget.gov.au/2014-15/index.htm>.

One stop shop update

The Australian Government’s one stop shop program has moved to the next stage in Queensland and New South Wales with the release of draft approval bilateral agreements for public comment until 13 June 2014.

Under both draft agreements, proposed developments that fall within the categories listed in the schedule to each agreement and are assessed in accordance with the

Key issues

- Federal Budget highlights
- One stop shop update
- Energy efficiency schemes to be terminated
- ACCC seeking carbon price information
- Western Australian Report on Floating LNG
- Draft Emissions Reduction Fund legislation released
- Advanced coal projects to receive Commonwealth funds
- Draft UNESCO decision on the Great Barrier Reef
- NSW Government restructure

appropriate State environmental impact assessment process will not require referral, assessment or approval under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act).

Each draft agreement requires the State government to consider and apply various Commonwealth standards and policies when undertaking assessments to ensure that the requirements of the EPBC Act are met. The State is also

required to meet specified requirements in relation to consultation of indigenous people and the publication of information.

Each agreement will be reviewed at the end of the first year of operation, with 5-yearly reviews thereafter.

Once the text of each agreement is settled, it will be laid before each House in the Commonwealth Parliament for a period of 15 days and if no motion of disallowance is made, the agreement will become effective.

A new bilateral assessment agreement between the Commonwealth and Western Australia has also been released for public comment until 27 June 2014. This agreement, once finalised, will replace the current assessment bilateral agreement which accredits the West Australian environmental impact assessment process for the purposes of the EPBC Act.

To facilitate the operation of these bilateral agreements, on 14 May 2014 the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 was introduced into the Commonwealth Parliament. Among other things, the Bill:

- makes it clear that if a proposal is covered by a bilateral approval agreement, no referral, assessment or approval under the EPBC Act will be required;
- allows for States and Territories to be accredited to make decisions in relation to large coal mining developments and coal seam gas developments with a potential impact on water resources. This provision

reverses an amendment made to the EBPC Act in 2013 to make decisions in relation to these types of projects incapable of being made at the State or Territory level;

- creates “step in” rights for the Commonwealth to complete an assessment of a project if a State process loses its accreditation;
- ensures that minor changes made to State or Territorial assessment process will not invalidate assessment processes underway or require such processes to begin again.

The Bill also clarifies that approval bilateral agreements can apply to projects that were approved before the Commonwealth Minister accredits the State or Territory environmental impact assessment process (as long as the action was approved in accordance with the accredited process) and allows approval bilateral agreements to include approvals made by any person or organisation authorised by the State or Territory (such as local governments).

The Bill has been referred to the Senate Environment and Communications Legislation Committee for inquiry and report by 23 June 2013.

Information on the draft bilateral agreements that are open for comment can be found at <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/one-stop>.

A copy of the Amendment Bill can be found at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5231.

Energy efficiency schemes to be terminated

The Commonwealth Government has introduced a bill to repeal the Commonwealth Energy Efficiency Opportunities (EEO) Program. The Energy Efficiency Opportunities (Repeal) Bill 2014 was immediately referred to the Senate Economics Legislation Committee which is due to report on the Bill by 14 July 2014.

The EEO Program commenced in 2006 and required large users of energy, such as electricity generators, mine sites and large industrial and manufacturing facilities, to issue annual public reports on their energy use and greenhouse gas emissions and the measures being adopted to reduce such energy use.

The Government has justified the repeal of the EEO Program by saying that as energy efficiency was now a core activity for many Australian businesses, it was not for government to legislate how companies should be managing their energy usage.

The Victorian Government has also announced that it will abolish its Victorian Energy Efficiency Target. The decision is based on a business impact assessment prepared by the Victorian Department of State Development and Business Innovation stating that the costs of the scheme outweigh its benefits.

A copy of the Commonwealth Repeal Bill can be found at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5232.

ACCC seeking carbon price information

As a consequence of the proposed repeal of the carbon pricing scheme,

the Australian Competition and Consumer Commission (ACCC) announced that it had issued voluntary information requests in March 2014 to 113 firms liable to pay the carbon price, as well as 238 suppliers, seeking information relating to their pricing, costs and profits.

The key issue for energy generators (and other companies liable to pay the carbon price) is that if a carbon price component is included in contracts covering any period from 1 July 2014 (which is the intended date for the repeal of the carbon pricing scheme) and the carbon pricing scheme is in fact repealed, those companies will not have a carbon price liability in 2015 thus generating a windfall of approximately A\$180 million a month at the expense of retailers and customers.

The windfall will not arise if the carbon pricing scheme is repealed prior to 1 July 2014 but, as has been noted in previous Energy and Resources Updates, this is extremely unlikely given the current makeup of the Australian Senate.

ACCC Chairman Rod Sims has said that if companies continue to charge a carbon component after 1 July 2014, then the ACCC will be “knocking on the door” to require companies, particularly electricity generators, to find a way to pass any windfalls back to retailers and consumers. He was quoted as saying that the ACCC is asking the energy industry to work out ways to make sure that money gets refunded.

The ACCC's report to the Commonwealth Treasurer Joe Hockey on carbon price monitoring dated April 2014 can be found here: <http://www.accc.gov.au/system/files/Carbon%20tax%20report.pdf>.

Western Australian Report on Floating LNG

On 15 May 2014, the Economics and Industry Standing Committee of the Western Australian Legislative Assembly released a report titled “The economic impact of floating LNG in Western Australia”. The Report examines the implications of adopting floating liquefied natural gas (FLNG) technology off the West Australian coast.

Natural gas and its conversion to LNG is an important part of the Western Australian economy. During 2012, twenty million tonnes of LNG was exported from Western Australia at a value of A\$12.5 billion. This quantity is likely to grow by more than 250% over the next four years to 50 million tonnes.

The Report highlights that shifting processing and liquefaction of gas offshore will have significant and possibly devastating impacts on certain sections of the Western Australian economy and on local employment. The Report also expresses concern that an FLNG project will result in a complete loss of natural gas stock for domestic consumption.

Retention leases, containing provisions relating to commercial viability, have limited the potential for proponents to warehouse reserves. Now, the potential for a proponent to adopt FLNG technology will make it less likely that reserves may be locked away solely on commercial viability grounds. The Committee proposed a review of the process for granting and renewing retention leases.

The Report also notes that the Commonwealth and the State now

have a less consultative approach to decision making. The Report criticises the unilateral decision by the Commonwealth to remove the condition from the Browse retention leases in Commonwealth area reserves requiring onshore processing at James Price Point.

The Report recognises the potential for Perth to become a centre of excellence in FLNG. The Report also recognises that Western Australian industry must be in a position to capitalise on as many opportunities as possible. The Committee intends to table a separate report on this subject.

A copy of the Report can be viewed here: [http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/38F15CACBDE6E04148257CD90007E2A1?opendocument](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/38F15CACBDE6E04148257CD90007E2A1?opendocument).

Draft Emissions Reduction Fund legislation released

Hot on the heels of the White Paper explaining some of the detail on its Emissions Reduction Fund (ERF), the Australian Government released exposure draft legislation for the ERF on 9 May 2014 for a 2 week consultation period.

The Bill, which amends the current *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth), proposes to expand the Carbon Farming Initiative (CFI) to cover any type of emissions reduction project which is approved by the Clean Energy Regulator.

Under the Bill:

- existing CFI projects will transfer to the ERF without amendment;
- existing CFI projects can also reduce their permanency period

from the current 100 years to 25 years with a corresponding reduction in the number carbon credits capable of being generated by the project;

- ERF projects will have a crediting period of 7 years (15 years for sequestration projects) unless another crediting period is specified in the reduction project methodology approved by the Clean Energy Regulator; and
- Australian Carbon Credit Units generated under existing CFI projects will be able to be sold to the Clean Energy Regulator (acting on behalf of the Commonwealth Government) either through the proposed auction process or in the voluntary carbon credit market.

A copy of the Bill can be found here: <http://www.environment.gov.au/topics/cleaner-environment/clean-air/emissions-reduction-fund/draft-legislation>.

Advanced coal projects to receive Commonwealth funds

The Australian Government announced on 16 May 2014 that it will fund two new brown coal projects in the Latrobe Valley in Victoria to the tune of A\$50 million.

The Commonwealth Minister for Industry, Ian Macfarlane, announced that A\$30 million has been allocated to Coal Energy Australia for the development of a A\$143 million demonstration plant that will produce fertiliser, pyrolysis oil – which may be distilled to produce diesel for industrial heating – and high value coal to be used in steelmaking.

The remaining funds will be allocated to Ignite Energy Resources for the development of a A\$84.3 million pre-commercial plant producing upgraded coal products for local or export markets and synthetic oil which can be refined into fuel sources such as diesel and petrol.

These funds will be provided to both projects as part of the 50:50 State-Commonwealth Advanced Lignite Demonstration Program.

Draft UNESCO decision on the Great Barrier Reef

On 30 April 2014, the UNESCO World Heritage Committee released its draft decision in relation to the Australian Great Barrier Reef.

The World Heritage Committee welcomed the progress made by Australia in managing and protecting the Great Barrier Reef. Specifically, the Committee was impressed by the progress towards improved water quality and the Commonwealth's commitment to protect greenfield areas from the impacts of port development.

However, the Committee also expressed concern that that major decisions had been made in relation to coastal development before the relevant Strategic Impact Assessment and Long-Term Plan for Sustainable Development had been completed and that dumping of dredged material from the Abbot Point development had been approved despite more environmental friendly alternatives being potentially available.

The Committee intends to consider the removal of the Great Barrier Reef from the List of World Heritage in Danger in its' 39th session meeting in 2015.

A copy of the draft decision can be found at <http://whc.unesco.org/archive/2014/whc14-38com-7B-en.pdf>.

NSW Government restructure

Following the resignation of former Premier Barry O'Farrell on 15 April 2014, there has been a Parliamentary Cabinet reshuffle and departmental restructure under the new Premier, Mike Baird.

The Department of Planning and Infrastructure has been renamed the Department of Planning and Environment and will now include the Division of Local Government (formerly part of the Department of Premier and Cabinet) as well as the Office of Environment and Heritage. As part of the restructure, former Minister for Planning and Infrastructure, Brad Hazzard, assumed the role of Attorney-General and Minister for Justice while Pru Goward was appointed as the new Minister for Planning. Within hours of assuming office, Ms Goward abolished the long-standing position of Director-General of Planning and Infrastructure and replaced it with the office of Secretary, which will have wider responsibilities, serving three ministers - Planning, Environment (Rob Stokes), and Local Government (Paul Toole).

The new department has the aim of delivering strategies and decisions which balance planning and environmental issues, with the goal of facilitating sustainable growth and employment in NSW. New Minister for the Environment, Rob Stokes, said that arrangement would ensure environmental concerns were no longer considered an afterthought in

coastal development proposals. As a result of the departmental amalgamation, he hopes to introduce legal protections for councils that face the threat of being sued by developers whose plans are blocked or restricted.

It remains to be seen how the restructure will affect the implementation of the Government's new planning policy (embodied in the Planning Bill 2013 (NSW)), which stalled in Parliament late last year after the upper house made

substantial amendments to the proposed legislation.

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