

Australian Energy and Resources

Update: June 2014

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

This month, the Australian Government continued to actively pursue its climate change policy reform agenda, while significant legislative reforms for the entire resources sector in Queensland were also in the spotlight.

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.

Resources legislation reform underway in Queensland

A major reform of resources legislation is underway in Queensland, with five current acts to be replaced by a single resources act in three to four years.

The much-anticipated Mineral and Energy Resources (Common Provisions) Bill 2014 (Qld) signals the beginning of the state's "Modernising Queensland's Resources Acts Program" (MQRA Program), a major reform initiative for the resources sector that will seek to combine administration of titles across all sectors of Queensland's resources industry.

The MQRA Program plans to replace the five existing resources acts and their associated regulations¹ with a

single act, the Mineral and Energy Resources (Common Provisions) Act.

Once enacted, the Common Provisions Act will operate alongside the existing resources legislation until a final "Common Resources Act" is drafted and passed, and the existing five resources acts are repealed.

The bill sets out a new approach to:

- managing overlapping coal and CSG resource titles
- land access, including the introduction of an "opt-out agreement" to enable landowners to opt out of the requirement to enter a conduct and compensation agreement or deferral agreement
- managing sensitive land by introducing a concept of "restricted land" to all resource titles.

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The MQRA Program is expected to take three to four years to complete.

A copy of the Bill can be accessed at: <https://www.legislation.qld.gov.au/Bills/54PDF/2014/MinEnergyResCPB14.pdf>

Green paper on development of Northern Australia released

The Australian Government has released a green paper on the development of Northern Australia, and has invited public comment until 8 August 2014.

The green paper is the next step in the implementation of the government's "2030 Vision for Developing Northern Australia" and sets out the government's view on the major policy directions to develop this region, including:

- infrastructure
- land
- water
- business, trade and investment
- education, research and innovation
- governance.

In developing these policies, the government intends to focus on economic development, trade, investment and employment while ensuring that the actions that are taken are consistent with national approaches and will deliver benefits to other parts of Australia.

The paper seeks feedback on a number of policy options, such as the establishment of a Water Project Development Fund to fund water infrastructure, development of a 15-year rolling infrastructure priority list, and relocation of some sections of government agencies and departments to the north of the country.

The green paper can be accessed here:

<http://northernaustralia.dpmc.gov.au/green-paper>.

Plan for new Pilbara iron ore port revealed in Western Australia

The Western Australian Government has unveiled its vision for the Anketell Port project, potentially the largest deepwater port in Australia.

Located on the State's Pilbara coastline, the port will be a multi-user facility comprising a port precinct, a common user infrastructure corridor with associated facilities, and an 800-hectare industrial area for supporting industries.

Once completed, the port will have an export capacity of not less than 350 million tonnes a year through up to eight berths. This is 20 per cent higher than total current shipments through Port Hedland.

Premier Colin Barnett believes that the project will assist in the further development of the Pilbara Region. "This Master Plan is a clear guide for proponents who are seeking additional routes to bring ore to market...[t]his may well be the last major new port in the Pilbara," he said. The government is now negotiating with potential port builders and users.

The Anketell Port Master Plan was jointly developed by the WA Department of State Development and the Dampier Port Authority. The completed port will be managed by the Port Authority, or its proposed successor entity, the Pilbara Ports Authority. The industrial areas will be owned and managed by LandCorp – WA's land agency. A A\$20 million native title agreement has already been signed with the Ngarluma people that will facilitate the creation of the necessary land tenure for the port.

A copy of the Master Plan can be accessed here:

<http://www.dsd.wa.gov.au/8381.aspx>.

Emissions Reduction Fund legislation before Parliament

Following our story in last month's *Energy and Resources Update*, the Australian Government has now introduced its Emissions Reduction Fund legislation into Parliament.

A number of changes were made to the bill, compared to the exposure draft legislation released in May 2014. These changes include eligibility requirements for projects in the Fund and crediting and reporting periods for sequestration projects.

The Carbon Farming Initiative Amendment Bill 2014 has been referred to the Senate Environment and Communications Legislation Committee, which is due to report on 7 July 2014.

A copy of the Bill can be accessed here:

http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5280

The government has also released a draft Carbon Abatement Contract and discussion paper for public comment until 18 July 2014.

The contract will be used by the government to purchase Australian Carbon Credit Units from successful bidders at the reverse auctions contemplated by the Emissions Reduction Fund.

The discussion paper seeks comment on specific aspects of the contract, including obligations around delivery of carbon credit units, the application of conditions before an individual contract becomes effective, and the definition of "force majeure" that should be used in the contract.

The draft contract and discussion paper can be accessed here: <http://www.cleanenergyregulator.gov.au/About-us/news-and-updates/Pages/2014-06/27-June-2014-Exposure-draft-Carbon-Abatement-Contract-and-discussion-paper-released-for-public-consultation.aspx>.

Government repeals energy efficiency rules

As reported in our May 2014 *Energy and Resources Update*, the Australian Government has now taken its first steps towards the repeal of the Energy Efficiency Opportunities Scheme.

The Energy Efficiency Opportunities (Repeal) Bill 2014 has been referred to the Senate Economics Legislation Committee for inquiry and report by 14 July 2014. In anticipation of the act's repeal, on 12 June the Energy Efficiency Opportunities Repeal Regulation 2014 (Cth) removed the detailed rules supporting the Energy Efficiency Act as a first step towards abolition of the EEO Scheme.

In the explanatory statement accompanying this regulation, the government stated its intention to remove regulation where the desired outcomes could be achieved through measures other than regulation, such as market forces.

The new regulation and the associated explanatory statement can be found at: <http://www.comlaw.gov.au/Details/F2014L00703>

Buru Energy wins fracking appeals

Buru Energy Limited has been given final approvals to undertake 'fracking' activities in the Kimberley region of

Western Australia without undergoing an environmental impact assessment, following a key decision of the Western Australian Environment Minister.

The Perth-based company intends to use hydraulic fracturing stimulation (fracking) to test tight gas flows at four existing wells along its prospect known as the Laurel Formation.

Western Australian Environment Minister Albert Jacobs rejected over 40 appeals against the decision by the WA Environmental Protection Authority not to assess Buru Energy's fracking programme, stating that the potential environmental impacts (such as vegetation clearing and the pollution of groundwater) could be evaluated, monitored and mitigated by the State's departments of mines and petroleum and water.

Following the Environment Minister's decision, Buru Energy received final approval to start drilling from the WA Department of Mines and Petroleum, and has also received the support of the traditional owners of the land, the Yungngora community at Noonkanbah station, for the drilling programme.

Draft amendments to the WA Aboriginal Heritage Act released

The Department of Aboriginal Affairs in Western Australia has released long-overdue draft amendments to the *Aboriginal Heritage Act 1972*, representing the largest change to the management of Aboriginal heritage in the state in decades.

The draft amendments are open for public comment until 6 August 2014. Key changes to the act include:

- setting out a formal process for applying for permission to destroy or disturb an Aboriginal site, and redefining the roles of the CEO of the Department, the Aboriginal Affairs Minister and the Aboriginal Cultural Material Committee (ACMC) in determining whether a permit to destroy or disturb a site should be given. The CEO is also given power to declare that there is no Aboriginal site on a particular area of land and to issue a permit without reference to the ACMC in certain circumstances.
- allowing the transfer of a permit to destroy or disturb an Aboriginal site with the approval of the CEO. The current inability to transfer permits issued under the Act has been one of the biggest issues for energy and resources companies operating in Western Australia.
- increasing the penalty for destroying Aboriginal sites from A\$50,000 to A\$500,000 for companies. All penalties are doubled for subsequent offences. Individuals who destroy a site face a A\$100,000 fine and 12 months' imprisonment. The penalties for other offences under the Act are also increased.
- new provisions formally establishing the Aboriginal Sites and Objects Register and a new Register of Declarations and Permits issued under the Act. Both registers are to be publicly available.

A copy of the draft amendments can be accessed here:

<http://www.daa.wa.gov.au/en/Heritage-and-Culture/Aboriginal-heritage/Aboriginal-Heritage-Legislative-Changes/>.

Directors face penalties for misleading the EPA in New South Wales

In New South Wales, a hard rock quarry company and its directors have been found guilty of supplying the NSW Environment Protection Authority with misleading information.

Wyanga Holdings Pty Ltd held a licence under the *Protection of the Environment Operations Act 1997* (NSW) (the POEO Act) to extract gravel and rock. The maximum amount that could be quarried under the licence was 50,000 tonnes per year. The company had in fact extracted approximately 96,597 tonnes of quarry material in the period between 1 February 2011 and 31 January 2012, breaching its licence conditions.

The directors, on behalf of the company, filed the annual return required by its licence which disclosed non-compliance with other licence conditions but omitted the fact that it had not complied with the 50,000 tonne extraction limit.

Justice Craig found the company and its directors guilty of contravening section 66(2) of the POEO Act by supplying information to the regulatory authority that was false or misleading in a material respect. The judge said that the failure to disclose the non-compliance was “misleading in a material respect” because the omission to identify the non-compliance in the Annual Report was itself material and the extent to which the maximum extraction limit had been exceeded was substantial.

While the judgment did not comment on the fines to be imposed, the maximum penalty for this offence is A\$1,000,000 for companies and A\$250,000 for directors.

The decision is a timely reminder that company directors who sign annual return forms - which are a requirement of environmental licences in most Australian jurisdictions - must ensure that the forms are completed accurately or risk personal liability under environmental protection laws.

Directors should be satisfied that there are appropriate record keeping and reporting procedures in place so that non-compliances can be recorded and relevant information provided to the board prior to signing off on annual returns and similar statements that are required by regulators. The decision may be found at:

<http://www.caselaw.nsw.gov.au/action/PJUDG?jgmtid=171862>.

WA State Planning Strategy released

The West Australian Minister for Planning has released a new State Planning Strategy, intended to provide the basis for the integration and coordination of planning and development decisions throughout Western Australia to 2050.

The strategy will feed into regional and local level strategic plans and strategies as well as state, regional and local planning policies and schemes developed under the *Planning and Development Act 2005*. The strategy will also guide and inform:

- project approvals through the Government's Lead Agency Framework
- planning for the coordination of physical and community infrastructure
- regional planning and infrastructure frameworks, regional investments and service delivery programmes

- investment proposals into areas and sectors of the state most likely to generate a return in the public interest.

Supporting the strategy are six fundamental principles focussed on community, economy, environment, infrastructure, regional development and governance.

A copy of the strategy can be accessed here:

<http://www.planning.wa.gov.au/publications/6561.asp>.

Biodiversity legislation passed in Queensland, but defeated in Victoria

The Queensland Parliament has passed the Environmental Offsets Act 2014 (Qld), designed to simplify the administration of environmental offset requirements imposed as a condition of an authority granted under Queensland legislation for certain activities.

The new act also creates the potential for regulatory actions to create a market for the trading of environmental offsets that will mature at a future date. A copy of the new Act can be found at:

<https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2014/14AC033.pdf>.

In contrast, the Native Vegetation Credit Market Bill 2014 (Victorian Bill), introduced into the Victorian Parliament in late May, has been defeated. The bill was intended to create a tradeable offset credit market in the state.

Offset credits would have arisen as a result of the implementation of long-term plans to improve the quality and extent of native vegetation in Victoria. Offset credits were to be recorded and tracked in the Native Vegetation Credit Register.

¹ *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923, Greenhouse Gas Storage Act 2009 and the Geothermal Energy Act 2010.*

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