

Australian Energy and Resources Update

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

The highlight this month is the release of the independent panel review of the Australian renewable energy target which has intensified the debate around climate change policy in Australia and the future of renewable energy sources in the Australian electricity mix.

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.

Long awaited review of Australia's Renewable Energy Target released

The independent panel appointed by the Australian Government to review Australia's Renewable Energy Target (RET) released its report on 28 August 2014.

Prior to the report's release, there was considerable public debate about whether the RET would be modified or abolished entirely and the likely response of the Abbott Government.

The independent panel noted in its report that the current RET would require A\$22 billion in cross-subsidies to the renewables sector in net present value terms and an additional A\$15 billion of additional investment, and that such investment in additional generation

capacity is not required to meet electricity demand.

The panel has recommended that the RET should be "amended in light of the changing circumstances in Australia's main electricity markets and the availability of lower cost emission abatement alternatives".

The panel has recommended that the Large-Scale RET (LRET), which applies to major renewable energy providers such as windfarms, be amended in one of two ways.

The first option is to close the LRET to new entrants and set an annual target based on estimated output from accredited power stations with LRET's last year of operation being 2030.

The second option is to allocate an annual LRET target as a share of electricity demand growth. Under

Key issues

- Long awaited review of Australia's Renewable Energy Target released
- Responses to ACCC carbon tax notices due in September
- Electricity Market Review discussion paper released in Western Australia
- A new water resource for the Pilbara?
- Repeal of the Queensland Wild Rivers legislation
- New CSG rules proposed in Victoria
- Strategic Assessment Reports on the Great Barrier Reef released
- Review of biodiversity legislation in New South Wales
- Environmental advice on development impacts in the Pilbara to shape future approval process.

this option, the Clean Energy Regulator would set the LRET target each year, increasing annually by an amount up to 50% of the increase in national electricity demand to 2020 with a final year of operation of 2030. Since the release of the report, most peak industry bodies have been supportive of the second option. The formal government response to the panel's report is not expected until September.

A copy of the report is available here: <https://retreview.dpmc.gov.au/ret-review-report-0>.

Responses to ACCC carbon tax notices due in September

Following the July repeal of Australia's carbon pricing mechanism, the Australian Competition and Consumer Commission (ACCC) issued 250 carbon tax substantiation notices to gas and electricity retailers, electricity generators and bulk importers of synthetic greenhouse gases.

Notices require a response to the ACCC no later than 8 September.

The same entities had until 18 August to provide carbon tax removal substantiation statements to the ACCC and have those statements displayed on their company website.

The ACCC is encouraging customers to report any non compliance with the publication obligations.

The ACCC has published guidance material on carbon tax statements: <http://www.accc.gov.au/business/carbon-tax-repeal/requirements-for-suppliers-of-regulated-goods>.

Electricity Market Review discussion paper released in Western Australia

The Western Australian Electricity Market Review Steering Committee has sought industry feedback on the structure and performance of the State's wholesale electricity market (WEM).

The committee has released a discussion paper on the reasons for the substantial increase in regulated retail electricity prices in Western Australia since 2006 (86 per cent) and the growth of taxpayer funding through operating subsidies to electricity utilities. Submissions are due by 12 September 2014.

The discussion paper asks six questions:

- Why is the cost of supplying electricity to retail customers so high that it requires a significant taxpayer subsidy to keep tariffs at levels comparable to those in other Australian states? The Steering Committee considers that some specific reasons for higher generation costs in the WEM appear to be high imbedded costs in bilateral contracts, the weak competition between generators, and the non-existence of full retail contestability.
- Why can high volumes of generation capacity be added each year, with the costs passed through to customers, when there is clearly no requirement for it? The Steering Committee believes that the WEM Reserve Capacity Mechanism is a major contributor to the high generating costs in the market.

- Are network costs reasonable and does the network access code enable long-term efficient entry and exit of plant?
- What does the current primary fuel situation indicate for the availability and price of fuel for future generation? Western Australia relies more heavily on the use of gas for electricity generation than other states and Western Australia's gas prices are increasing, which will place upward pressure on electricity tariffs in the future.
- Is the current trajectory of electricity costs and taxpayer subsidies sustainable? The Committee does not believe that the current system is sustainable.
- Could the current industry structure, that is the number of separate generators and retailers, result in a competitive market under any market mechanism? The Steering Committee has considered two market mechanisms for the WEM. The first is to amend the current market mechanism, by either changing the existing administration based capacity price to one based on auctions, or transferring the responsibility for procuring capacity to retail market participants.

A copy of the discussion paper can be accessed here: http://www.finance.wa.gov.au/cms/uploadedFiles/Public_Utility_Office/Electricity_Market_Review/electricity-market-review-discussion-paper.pdf.

A new water resource for the Pilbara?

The Western Australian Government's plan to diversify development of the State's north has received a boost with the potential discovery of a significant new groundwater resource in the Hamersley Range in the Pilbara region.

Funded by the WA Government's Royalties for Regions programme, the recently announced Water for Food programme accelerates water resource investigation in the State and optimises the use of pastoral land tenure to expand agricultural and pastoral opportunities.

While Stage 1 of this four-year, cross-department programme is focussing on projects in the Kimberley region in the far north of the State, the announcement of a groundwater resource with the potential to supply up to 30GL of water annually is significant.

According to the media release issued by the WA Ministers for Water and Regional Development, water from two sources has the potential to be piped south to Onslow and north to be fed into the existing West Pilbara water supply scheme managed by the Water Corporation.

Information about the Water for Food programme is available here: <http://www.water.wa.gov.au/Future+water/Water+for+food/Default.aspx>.

Repeal of the Queensland Wild Rivers legislation

Queensland's controversial Wild Rivers Act is set to be repealed with the passage of the State Development, Infrastructure and Planning (Red Tape Reduction) and

Other Legislation Amendment Bill 2014 through the Queensland Parliament on 5 August 2014.

The repeal will be effective on a date to be proclaimed.

The Wild Rivers Act was introduced in 2005 to protect environmentally significant rivers and surrounding areas from development through declarations that prohibited certain activities or imposed additional regulatory or permitting requirements for activities within the area covered by the declaration.

Declarations were made (and some were subsequently declared invalid) over large areas of northern and central Queensland. While green groups and some Aboriginal communities supported the legislation, other Aboriginal groups, pastoralists and other business interests were critical because of the restrictions it placed on environmentally sustainable development that would otherwise benefit local communities.

However while the Wild Rivers Act will be repealed, its objectives have been incorporated into the new Regional Planning Interests Act 2014 (Qld) (RPI Act) which commenced in June 2014.

Part 2 of the RPI Act makes it an offence to carry out a "resource activity", such as mining or oil and gas activities, in an area of "regional interest" without a regional interests development approval. An area of regional interest includes a strategic environmental area as defined by regulation. The Regional Planning Interests Regulations 2014 lists many of the areas previously declared under the Wild Rivers Act as strategic environmental areas for the purposes of the RPI Act.

The new RPI Act can be accessed here:

https://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_R.htm.

New CSG rules proposed in Victoria

A new bill to ban the use of BTEX chemicals in hydraulic fracturing has been proposed in the State of Victoria.

The Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014 was introduced into the Victorian Parliament on 5 August 2014.

While there is a moratorium on hydraulic fracturing activities in Victoria until at least July 2015, the introduction of the bill is regarded a first step towards the Victorian government lifting the moratorium.

BTEX refers to the chemicals benzene, toluene, ethylbenzene and xylene, which are naturally occurring compounds found in petroleum products. The BTEX chemicals have been found to be harmful to human health.

The bill implements this ban through the amendment of the Geothermal Resources Act 2005 (Vic), the Greenhouse Gas Geological Sequestration Act 2008 (Vic) the Mineral Resources (Sustainable Development) Act 1990 (Vic) and the Petroleum Act 1998 (Vic).

The bill passed the lower house of Parliament on 21 August and is now being considered by the upper house.

A copy of the bill can be found at: http://www.legislation.vic.gov.au/domi/no/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/3dc70c8f6b09fb48ca257d2b0020b5df!OpenDocument.

Strategic Assessment Reports on the Great Barrier Reef released

Management of the Great Barrier Reef has reached a significant milestone with the completion of two strategic impact assessments covering the management of the Great Barrier Reef World Heritage Area and the adjacent Queensland coast.

The results of the assessments will underpin decision making on future projects that may impact the heritage values of the Great Barrier Reef.

The Queensland State Government, the Great Barrier Reef Marine Park Authority and the Australian Government started the two assessments under the terms of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) in 2012.

After 18 months of detailed scientific assessment and public review, the assessments have resulted in the production of two detailed "Program Reports" which outline the management tools that are or will be used by the Authority to manage the Reef itself and by the Queensland Government to manage the impact of development on the coast and the manner in which matters of national environmental significance (regulated by the EPBC Act) will be considered.

Both Program Reports have been formally endorsed by the Australian Environment Minister.

The next step for the Australian and Queensland governments is the development of a long-term sustainability plan for the Great Barrier Reef World Heritage Area.

The plan, which will guide the protection and management of the Area to 2050, together with the completed assessments will be presented to the United Nations World Heritage Committee at its 39th session meeting in 2015.

Further information about both assessments and the 2050 sustainability plan can be accessed here:

<http://www.environment.gov.au/protect/on/assessments/strategic/great-barrier-reef>.

Review of biodiversity legislation in New South Wales

The New South Wales Office of Environment and Heritage and the Independent Biodiversity Legislation Review Panel is consulting on the State's review of its biodiversity powers.

The review considers the conservation tools currently available - four pieces of legislation and related regulations, policies and programmes. Submissions close on 5 September 2014.

An issues paper has been published, which asks questions across six themes:

- The objects and principles for biodiversity conservation
- Conservation action and the requirement to take positive actions to recover threatened species and address threats
- How biodiversity issues are dealt with in land use planning decisions
- Biodiversity conservation in development approval processes

- Wildlife management
- Information provisions and what type and quality of information should be collected and shared.

The panel will issue an interim report in mid-October with the final report due to the New South Wales Environment Minister by 18 December 2014.

A copy of the issues paper can be accessed here:

<http://www.environment.nsw.gov.au/resources/biodiversity/140603IssuesPaper.pdf>.

Environmental advice on development impacts in the Pilbara to shape future approval process

The Western Australian Environmental Protection Authority has provided formal advice to the State's Environment Minister under the Environmental Protection Act 1986 (WA) on the cumulative environmental impacts of development in the Pilbara region, the State's major iron ore-producing region.

The advice will provide the context for future assessments by the authority of proposed developments in the region. The authority prepared the advice due to its concerns about the impact of current and planned development, mainly around the iron ore sector and related large scale infrastructure projects, on the environment.

The advice makes a number of recommendations to the WA Minister, including:

- The development of a strategic plan for biodiversity conservation in the Pilbara by the State government

- The development of a strategic conservation initiative for the Pilbara as a mechanism to pool biodiversity offset funds and focus on broad scale biodiversity conservation outcomes. The authority suggests that government develop the initiative in consultation with industry
- Greater collation and publication of information about clearing and rehabilitation activities and current and potential mine pit lakes
- More collaboration between government agencies and industry on mine closure and rehabilitation.

A copy of the authority's advice is available here:

http://edit.epa.wa.gov.au/EPADocLib/Pilbara_s16e_advice%20_270814.pdf

Contacts

Sydney

Mark Pistilli

Partner, M&A and Corporate, Resources
T: +61 2 8922 8001
E: mark.pistilli@cliffordchance.com

Dave Poddar

Partner, Competition, Regulatory Access
T: +61 2 8922 8033
E: dave.poddar@cliffordchance.com

Richard Graham

Partner, M&A and Corporate, Resources,
Infrastructure
T: +61 2 8922 8017
E: richard.graham@cliffordchance.com

Diana Chang

Partner, Litigation and Dispute Resolution
T: +61 2 8922 8003
E: diana.chang@cliffordchance.com

Jane Ann Gray

Special Counsel, M&A and Corporate, Resources,
Infrastructure
T: +61 2 8922 8013
E: janeann.gray@cliffordchance.com

Amelia Horvath

Counsel, M&A and Corporate, Resources
T: +61 2 8922 8023
E: amelia.horvath@cliffordchance.com

Deniz Tas

Associate, M&A and Corporate, Resources
T: +61 2 8922 8066
E: deniz.tas@cliffordchance.com

Perth

Michael Lishman

Partner, M&A and Corporate, Resources
T: +61 8 9262 5502
E: michael.lishman@cliffordchance.com

Jon Carson

Partner, M&A and Corporate, Resources, Projects
T: +61 8 9262 5510
E: jon.carson@cliffordchance.com

Justin Harris

Partner, M&A and Corporate, Resources
T: +61 8 9262 5503
E: justin.harris@cliffordchance.com

Paul Lingard

Partner, M&A and Corporate, Resources, Projects
T: +61 8 9262 5575
E: paul.lingard@cliffordchance.com

Tracey Renshaw

Partner, M&A and Corporate, Resources,
T: +61 8 9262 5505
E: tracey.renshaw@cliffordchance.com

Philip Sealey

Partner, Project Finance
T: +61 8 9262 5542
E: philip.sealey@cliffordchance.com

Paul Vinci

Partner, M&A and Corporate, Resources
T: +61 8 9262 5504
E: paul.vinci@cliffordchance.com

Robyn Glindemann

Counsel, Environmental, Projects, Resources
T: +618 9262 5558
E: robyn.glindemann@cliffordchance.com

Nicole Ortigosa

Associate, M&A and Corporate, Resources
T: +61 8 9262 5530
E: nicole.ortigosa@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.

HK-1-1061625

www.cliffordchance.com

Clifford Chance, Level 7, 190 St Georges Terrace, Perth, WA 6000, Australia
Clifford Chance, Level 16, No 1 O'Connell Street, Sydney, NSW 2000, Australia

© Clifford Chance 2014

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

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ 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.

*Linda Widyati & Partners in association with Clifford Chance.