

Australian energy and resources update: September 2013

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.

Post-election changes to Commonwealth departments

The new Coalition Government has wasted no time in bringing in changes to the Commonwealth department structure to implement the government's reform agenda.

First, the Department of Resources, Energy and Tourism has been absorbed into a new Department of Industry. The department will be led by Glenys Beauchamp (formerly Secretary of the Department of Regional Australia, Local Government, Arts and Sports).

The former "super-department" of Industry, Innovation, Climate Change, Science, Research and Tertiary Education has been broken up, with the Climate Change portfolio moving back to the now (simply) named Department of Environment.

The Department of Environment is headed by Dr Gordon de Brouwer. The new Environment Minister, Greg Hunt, has also abolished the Climate Commission, which was established by the previous Labor Government to

provide independent advice on climate change issues to the public.

Regional affairs have been brought into a new Department of Infrastructure and Regional Development, which will also deal with maritime and land-based transport matters and non-defence major projects.

Native title matters have been transferred from the Attorney-General's Department to the Department of the Prime Minister and Cabinet, which reflects the Prime Minister's personal interest in these issues.

Royalty rate review by the West Australian Government

In its 2012-13 State Budget, the Western Australian Government announced a review of Western Australia's mineral royalty arrangements.

The review will:

- examine the efficacy and appropriateness of the current royalty benchmark which is broadly equivalent to 10 per cent

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of the total mine-head value of the mineral;

- if the current benchmark is retained, examine the extent to which revenues from the current royalty rates structure differ from that benchmark and identify

adjustments to take revenues closer to the benchmark;

- if an alternative benchmark is proposed, examine royalty rate structures that would achieve the new benchmark; and
- address any anomalies identified in the royalty structure.

Premier Colin Barnett said the aim of the review was to ensure the State's minerals royalties operated fairly and efficiently, both for the mining industry and the State. The review does not address petroleum royalties.

The WA departments of State Development and Mines and Petroleum are conducting the review and have released a short stakeholder consultation paper to facilitate public submissions. Submissions will be accepted until 31 October 2013.

Copies of the terms of reference for the review and the stakeholder consultation paper are available at <http://www.dsd.wa.gov.au/royaltyrates>.

Inquiry into microeconomic reform in Western Australia

The West Australian Treasurer, Troy Buswell, has asked the Economic Regulation Authority (ERA) to undertake an inquiry into microeconomic reform in Western Australia and develop a package of recommendations that the Western Australian Government could implement.

The inquiry's terms of reference were released on 19 August 2013 and require the ERA to focus on:

- improved productivity and flexibility of the Western Australian economy;

- increased choice for consumers and business, leading to net economic benefits to Western Australia;
- increased opportunities for Western Australian businesses to effectively compete for national/international market share; and
- removal or streamlining of unnecessary regulation.

The inquiry will not look at any macroeconomic policy adjustments, such as interest rates, economic stimulus, the Goods and Services Tax, or whether to have a budget surplus or a deficit.

In developing its recommendations, the ERA must give consideration, but not be limited, to:

- the current level of efficiency of Western Australia's economy, including by comparison with other relevant national and international economies;
- those areas in the economy where reform could enhance their contribution to the overall Western Australian economy;
- options for improving economic efficiency of the key areas identified above;
- key areas of reform based upon the potential impact on overall economic efficiency and future growth; and
- a small number of specific key reforms or sectors that require further investigation by the ERA and policy development by the government.

The ERA has already sought public comment on an issues paper (comment closed on 13 September 2013) and will next publish a discussion paper to provide more detail on its proposals and seek

further public input on specific topics. The ERA's final report must be presented to the Treasurer by 30 June 2014.

Copies of the issues paper and terms of reference for the inquiry are available at <http://www.erawa.com.au/inquiries/inquiry-into-microeconomic-reform-in-western-australia/>.

Exploration incentive scheme funding round announced

On 3 September 2013, the West Australian Mines and Petroleum Minister announced the start of round eight of the WA Government's Co-funded Exploration Drilling programme. The programme is four years old and offers two rounds of co-funding a year under the Exploration Incentive Scheme (EIS).

As the flagship programme of the EIS, the Co-funded Drilling programme refunds up to 50 per cent of direct drilling costs to explorers who have been successful in a competitive online application process.

The grants are paid to successful applicants in two tranches: once the drilling project is completed, explorers are eligible for a refund of 80 per cent of the grant on submission of the interim report; with the final 20 per cent refund available on submission of the final report.

Multiple applications from the same applicant will be handicapped and only one application can be made per tenement/combined reporting group or geothermal or petroleum title.

Applications for grants under the EIS for drilling in the 2014 calendar year opened on 3rd September 2013 and will close at 5pm on 11 October 2013.

For further information, go to <http://www.dmp.wa.gov.au/eisdrilling>.

Proposed amendments to West Australian mining legislation

On 27 August 2013, the West Australian Department of Mines and Petroleum (DMP) released a consultation paper on proposed amendments to the State's Mining Act 1978 and Regulations and the Mining Rehabilitation Fund Act 2012 and associated Regulations.

The amendments aim to facilitate transparency, streamline approvals and strengthen compliance. The first stage of the proposed amendments cover five key areas:

1. recovery of expenditure from the Mining Rehabilitation Fund (MRF) in some circumstances;
2. the issue of infringement notices under the MRF Regulations;
3. issuing a single MRF assessment notice, instead of individual notices where there is more than one tenement holder;
4. streamlining the authorisation processes in the department; and
5. improving public transparency.

These proposed amendments are largely administrative in nature and are consistent with the State's broader red-tape reduction programme and the DMP's Reforming Environmental Regulation programme which has been underway for some time.

Stage two amendments are anticipated to involve more complex amendments to further streamline the approvals processes and reduce any remaining duplication. A third stage of amendments may be required to support the implementation of a risk-

based framework for environmental regulation. Both these stages will require a greater degree of public and stakeholder consultation, which is expected to occur in 2014.

The consultation paper may be accessed at <http://www.dmp.wa.gov.au/18685.aspx>. Comments on the paper closed on 27 September 2013.

ERA determination on the Pilbara Infrastructure Pty Ltd (TPI) Floor and Ceiling Cost Proposal

Western Australia's Economic Regulation Authority (ERA) has released its determination on The Pilbara Infrastructure Pty Ltd (TPI) Floor and Ceiling Cost Proposal for third-party access to a 200km long section of rail line in Western Australia's iron ore heavy Pilbara region.

TPI, a wholly owned subsidiary of the Fortescue Metals Group, is the owner of the rail line, linking a Fortescue mine in the eastern Pilbara to port facilities in Port Hedland. The ERA's determination was made in response to a proposal for access to the rail line made by Brockman Iron and sets the minimum and maximum amounts of recoverable revenue from all operators and other entities in respect of that section of the rail line.

TPI had argued it should be able to recover between A\$73 million to A\$576 million, but the ERA's determination provides TPI is only able to charge between A\$84.7 million and A\$316.9 million, amounting to a ceiling price 45 per cent lower than that requested by TPI.

Notwithstanding the release of the ERA's Determination, Fortescue has

indicated that it is not required to start negotiating a final price for access to the rail line with Brockman, as Brockman has yet to prove it has the necessary financial capacity to proceed with its iron ore project.

A redacted version of the Determination is available at http://www.erawa.com.au/cproot_download/11589/2/20130912%20D111515%20-%20TPI%20Floor%20and%20Ceiling%20Cost%20Determination%20-%20redacted.PDF.

Queensland Government moves to re-establish uranium mining

In October 2012, Premier Campbell Newman announced that the Queensland Government would support the recommencement of uranium mining in Queensland, which was banned in 1982, and established the Uranium Mining Implementation Committee to oversee this process.

The Committee released a report in March 2013, and recommended that, with minor amendments, uranium mining could resume under existing industry regulation and radiation safety systems.

The Queensland Government has considered the Committee's report and on 12 September 2013 released an "action plan" setting out the steps the government intends to take to develop a regulatory framework to recommence uranium mining in the State. The government aims to establish the framework and start assessing uranium mining applications from mid-July 2014.

The Committee's report and the action plan and outline of the regulatory framework can be accessed at

<http://mines.industry.qld.gov.au/mining/uranium.htm>.

Northern Territory flags potential petrochemical development and a new “use it or lose it” policy

The Northern Territory Government has flagged Glyde Point near Darwin as the possible location for a significantly sized petrochemical plant, which the government expects will boost the Northern Territory economy.

Speaking to delegates at the South East Asia Australia Offshore Conference on 12 September, the Northern Territory Chief Minister Adam Giles also told oil and gas explorers to either develop their exploration tenements or risk losing them. The government wishes to implement a “use it or lose it” regime for oil and gas exploration tenements to ensure that explorers do not simply bank their tenements.

Cutting red tape – Programmes of Work valid for longer in Western Australia

On 18 September 2013, the West Australian Mines Minister Bill Marmion announced that the validity period for Programmes of Work (PoW), where the scope of work has not changed, will be doubled from two to four years.

The Minister said PoW approvals ensured resource companies conducted exploration in an environmentally sustainable way and set out the timeframe for companies to complete exploration works. Mr Marmion said that the longer validity period “will improve efficiency and

reduce duplication for the resources industry, while at the same time ensuring strict environmental standards.”

The decision was a response to industry’s need for greater flexibility when managing exploration programmes to cope with unforeseen events such as extreme weather, workforce or equipment issues, or funding.

Cutting red tape – Assessment of NOPSEMA environmental approval processes

As previously reported, the federal government wants to remove duplication between the environmental approval processes administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS Act) and approvals required for offshore petroleum activities required by the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) managed by the former Department of Sustainability, Environment, Water, Population and Communities (SEWPAC).

It has been decided that the strategic impact assessment (SIA) provisions of the EPBC Act will be used to achieve this.

The EPBC Act provides for the strategic assessment of a policy, plan or programme – such as NOPSEMA’s approval processes – to determine the programme’s ability to assess the impacts of actions on matters of national environmental significance protected under the EPBC Act. If a

programme is endorsed under the SIA process, then individual actions taken pursuant to the endorsed programme do not require separate referral, assessment and approval under the EPBC Act.

The first step in the SIA process is agreement on the terms of reference, which will establish the scope of the assessment, what will be assessed and what must be addressed in the assessment report. Draft terms of reference were released by the Department of Industry for public comment until 13 September 2013.

When all submissions on the draft terms of reference have been considered, a consultation report will be published and the terms of reference will be finalised. If a decision is made to continue with the strategic assessment process, a strategic assessment agreement will be prepared in late 2013 and the public will be given further opportunities to comment on the assessment process.

The draft terms of reference are available at http://www.ret.gov.au/resources/upstream_petrochem/op-environment/streamlining/Pages/index.aspx.

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