

Australian Energy and Resources Update

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

Highlights this month include the announcement of an inquiry into the nuclear industry in South Australia and arrests made over the alleged bribery of foreign government officials.

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.

Royal Commission on South Australian nuclear industry

The South Australian Premier Jay Weatherill has announced a Royal Commission to investigate the future role that South Australia should play in the nuclear industry. The Commission will be headed by former Governor Kevin Scarce and is supported by the Federal government.

Australia has the largest share of uranium resources globally, with South Australia already producing two-thirds of the country's uranium exports.

Draft terms of reference for the Commission were released on 23 February 2015 and are open for public comment until 13 March 2015. The proposed terms require the Commission to report on:

- whether current levels of exploration, extraction or milling of radioactive materials can be expanded

- the feasibility of processing and manufacturing radioactive and nuclear materials (excluding for military uses), with a particular focus on conversion, enrichment, fabrication and re-processing
- the feasibility generating electricity from nuclear fuels
- the feasibility of establishing facilities for managing, storing and disposing of nuclear and radioactive waste from the use of nuclear and radioactive materials (excluding for military uses).

The draft terms of reference also require the Commission to consider the impact of the nuclear industry on the South Australian economy, the environment and the broader community, including regional, remote and aboriginal communities.

The draft terms of reference can be accessed here:

<http://www.yoursay.sa.gov.au/yoursay/royal-commission-our-role-in-nuclear-energy>.

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Screening threshold lowered for foreign acquisitions of agricultural land

The Australian Government has announced that, from 1 March 2015, the screening threshold for scrutiny by the Foreign Investment Review Board (FIRB) of acquisitions of interests in Australian agricultural land by private foreign investors will be lowered from A\$252 million to A\$15 million.

The new threshold will apply to the cumulative value of agricultural land owned directly or indirectly by private foreign investors, including the value of the proposed purchase. Consistent with Australia's free trade agreement commitments however, the cumulative threshold will not apply to investors from the United States, New Zealand, Chile, Singapore and Thailand. Instead:

- Singaporean and Thai investors will require approval if they acquire a substantial interest in a primary production business valued above A\$50 million
- United States, New Zealand and Chilean investors will require approval if they acquire a substantial interest in a primary production business valued above A\$1,094 million.

The Government has also announced the establishment of a foreign ownership register of agricultural land. From 1 July 2015, the Australian Taxation Office will collect information on new foreign investment in agricultural land and begin stocktaking existing foreign agricultural land ownership.

FIRB has released a revised version of Australia's foreign investment policy to reflect these changes.

It can be accessed here:

http://www.firb.gov.au/content/downloads/AFIP_2015.pdf.

The Australian Government has also released an options paper seeking feedback on other proposed changes to the foreign investment framework, including the amendments to the *Foreign Acquisitions and Takeovers Act 1975* (Cth). It can be accessed here:

<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Strengthening-Australias-foreign-investment-framework>

Australian Police lay charges for bribery of a foreign public official

Three men have been charged by the Australian Federal Police (AFP) with conspiracy to bribe a foreign public official and money laundering offences under the *Criminal Code Act 1995* (Cth).

Following investigations into allegations that employees of an Australian-based construction company paid bribes to government officials in Iraq, the AFP alleges that A\$1 million was transferred overseas for the purposes of payment of foreign bribes.

A person is guilty of bribing a foreign public official if:

- they provide or offer to provide a benefit to another person
- the benefit is not legitimately due to the other person; and
- the benefit is provided with the intention of influencing a foreign public official in order to obtain or retain business or illegitimate business advantage.

A person will be guilty of dealing with the proceeds of crime if:

- they deal with money or other property
- the money or property are, and the person believes them to be, proceeds of crime or the person intends the money or property to become an instrument of crime; and
- the value of the money or property at the time of the dealing is worth A\$1 million or more.

If found guilty of bribery, the maximum penalty for an individual is 10 years' imprisonment while the maximum penalty for dealing with the proceeds of crime is 25 years' imprisonment.

The use of these particular provisions in the Criminal Code Act is rare and the arrests have attracted media attention in Australia. A media release by the Australian Federal Police can be found here:

<http://www.afp.gov.au/media-centre/news/afp/2015/february/media-release-man-arrested-for-foreign-bribery>

Clean Energy Regulator announces first Emissions Reduction Fund auction

The Australian Clean Energy Regulator (CER) has announced that the first Emissions Reduction Fund (ERF) auction will open on 15 April 2015.

The auction will commence at 9am AEST and run until 5pm AEST on 16 April 2015. It will have the following features:

- it will have a single-round, pay-as-bid format – there will be no sequential bidding
- each bid must relate to a project registered by the CER

- all participants in the auction must be recognised by the CER as qualified and registered
- all bids are sealed – bidders will not see what others are bidding
- all bids must be submitted through Austender (the Australian Government's online procurement information system).

The CER will set a benchmark price for the auction and has stated it will purchase 80% of the volume of emissions reductions offered below this benchmark. After the auction the CER will publish the volume weighted average price, but the benchmark price will be kept confidential.

All participants will be notified by the CER of the outcome of the auction by 22 April 2015. Successful bidders will automatically enter into a contract with the CER at the price they bid at auction. Unsuccessful bidders may re-bid at subsequent auctions.

Despite the CER's announcement of the auction, at the time of writing, the Commonwealth Environment Minister is yet to table legislation setting out the rules of ERF auctions, without which the announced auction cannot proceed.

A guide to the auction process can be found here:

<http://www.cleanenergyregulator.gov.au/Emissions-Reduction-Fund/Want-to-participate-in-the-Emissions-Reduction-Fund/step2/Auctions/Pages/Default.aspx>

New fees for assessing mining documents in Western Australia

From 1 July 2015, the Western Australian Department of Mines and Petroleum (DMP) will impose fees for assessing mining proposals (MP) and

programmes of work (PoW) as part of its Reforming Environmental Regulation programme.

The fees have been set at A\$6950 for MPs and A\$590 for PoWs and fees will be waived under certain conditions.

Fees for exploration or prospecting work deemed "low impact" will be waived. Initially, on an interim basis, activities will be deemed "low impact" if they disturb less than 0.25ha and do not occur on reserve land. Following DMP consultation with industry, a formal legislative definition of low impact activities will be introduced.

The DMP has indicated there will be further exemptions for MPs in the future.

Assessment fees may be refunded where an application is withdrawn within five days of its submission and where the assessment process is yet to commence. Fees will not be refunded when applications are refused. Modifications to existing approvals will also attract a fee, although there will be no fees for applications for extensions of time only.

The introduction of the assessment fees has been the subject of lengthy consultation with the mining industry in Western Australia. Following concerns raised during this process, the originally proposed fees were cut by nearly 50% and the DMP abandoned a proposal to introduce annual charges. The Minister for Mines and Petroleum has also capped the amount of revenue to be generated from the fees at A\$2.7 million per year.

Further information about the fees can be found here:

http://www.dmp.wa.gov.au/documents/Mining_Proposal_Program_of_Work_Fact_Sheet.pdf.

Tasmania announces moratorium on hydraulic fracturing until 2020

The Tasmanian Government has announced a moratorium on hydraulic fracturing (fracking) activities for five years from 26 March 2015 to enable it to further review the practice in Tasmania.

The announcement follows a report into fracking by the Tasmanian Department of Primary Industries, Parks, Water and Environment.

When announcing this moratorium, the Tasmanian Government noted:

- ongoing mineral and energy exploration and development was important for the Tasmanian economy
- fracking is currently only a possibility (and not a probability), with Tasmania unlikely to have economically viable coal seam gas resources
- there is concern amongst agricultural industries and the broader community about the protection of Tasmania's rural communities and regional landscapes.

During the period of the moratorium, the State Government intends to consult with all stakeholders. It has also stated it will monitor developments such as:

- national and international policy on fracking regulations
- scientific understanding of fracking, including environmental and public health issues
- industry practices in other jurisdictions
- energy needs and market developments.

More information can be found here: [http://dpiwwe.tas.gov.au/about-the-department/government-policy-on-hydraulic-fracturing-\(fracking\)-in-tasmania](http://dpiwwe.tas.gov.au/about-the-department/government-policy-on-hydraulic-fracturing-(fracking)-in-tasmania).

House of Representatives reports on streamlining environmental legislation

On 23 February 2015, the Australian House of Representatives' Standing Committee on the Environment tabled its report on the Abbott Government's program for streamlining environmental regulation and reducing "green tape".

The inquiry was set up in February 2014 with broad ranging terms of reference to consider areas for improved efficiency and effectiveness of the regulatory framework and the balance between regulatory burdens and environmental benefits.

The committee comprising five Liberal, four Labor and one Nationals members made 13 recommendations on:

- the "one stop shop" reforms and the accreditation of State and Territory Governments to approve proposals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- streamlining the National Greenhouse and Energy Reporting Scheme and building energy efficiency disclosure obligations
- further streamlining of the enforcement and maintenance responsibilities of the National Offshore Petroleum Safety and Environmental Management Authority
- reduction of duplication and harmonisation of laws through

National Environmental Protection Measures and other mechanisms

- enhanced disclosure of environmental data.

The Labor members of the committee released a short dissenting report reiterating the Labor Party's opposition to the "one stop shop" reforms and the use of bilateral agreements to delegate Commonwealth decision making to the States and Territories.

A copy of the committee's report can be downloaded here: http://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment/Green_Tape/Report

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