

# Australian Energy and Resources Update

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

Highlights this month include a number of new policy and budget announcements in Queensland that will impact the mining industry in that State and new renewable energy investment mandates for Australian Government funding bodies.

## New Queensland Government Budget impacts the resources and infrastructure sectors

The recently elected Queensland Labor government led by Annastacia Palaszczuk has handed down its first State Budget which has some repercussions on the resources and infrastructure sector:

- The “Building our Regions” program has been given A\$200 million over two years starting in 2015/2016 to fund infrastructure projects by local government authorities in rural Queensland. This funding is in addition to funding allocated to the operation of Building Queensland, a new independent statutory body tasked with delivering whole-of-government advice to infrastructure planning in the State, and the development of the Queensland Infrastructure Plan

- Funding to support Queensland government actions under the Great Barrier Reef 2050 Long Term Sustainability Plan and the operation of a new Office of the Great Barrier Reef to oversee all Reef management programs
- A\$6.2 million to fund the Abandoned Mines Land Program to manage the public safety risks associated with abandoned mine sites across Queensland
- A\$3.6 million to fund the activities of the Coal Seam Gas Compliance Unit in the Department of Natural Resources and Mines, including investigation of landholder concerns about the impact of CSG operations; and
- A\$2.2 million to help accelerate the resolution of all outstanding Queensland native title claims through the Federal Court.

Funding for the Collaborative Drilling Initiative has been terminated making Queensland the only Australian state without a co-funded drilling program to encourage mineral exploration.

## Key issues

- New Queensland Government Budget impacts the resources and infrastructure sectors
- Third party review rights on mining projects restored in Queensland
- Investment mandates for clean energy corporations announced
- Economic benefit no longer paramount for mining approvals in New South Wales?
- Second stage of New South Wales’ Integrated Mining Policy released for public comment
- Streamlining assessment of petroleum projects in South Australia and the Northern Territory
- New Gas Supply and Demand Action Plan for Queensland
- New Resources Safety Bill for Western Australia
- First unconventional gas application granted in South West Western Australia

Further information about the Queensland budget can be accessed here: <http://www.budget.qld.gov.au/>.

### Third party review rights on mining projects restored in Queensland

On 17 July 2015, the Queensland Parliament passed a bill introduced by the State Development Minister, Dr Anthony Lynham, restoring the rights of landholders and communities to object to mining developments on environmental grounds.

The State Development and Public Works Organisation and Other Legislation Amendment Act 2015 delivers on an election commitment to restore community objection rights removed by the previous State government. The Amendment Act repeals section 47D of the State Development and Public Works Organisation Act 1971 which prevented third parties from making an objection to the grant of an environmental authority for a proposed mining activity if the Coordinator-General had previously assessed the activity. The Coordinator General assesses most major mine projects in Queensland. The Amendment Act took effect on 22 July.

People who make submissions on environmental impact statements will now be able to request their submission to be taken as an objection which then triggers the jurisdiction of the Queensland Land Court to resolve the objections. Dr Lynham said the “legislation will help to set the scene for a productive relationship with resource companies by helping to lessen anxiety towards resource development among landholders and agricultural stakeholders”.

A copy of the Act can be accessed here: [www.legislation.qld.gov.au/LEGISLTN/ACTS/2015/15AC008.pdf](http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2015/15AC008.pdf).

Dr Lynham has also announced the establishment of a Community Ministerial Roundtable to give agricultural, landholder, conservation, indigenous and community groups and local government a voice on resource issues. The Roundtable reflects a commitment to consult with all stakeholders involved in the sustainable development of Queensland's resources. It is expected that the Community Roundtable will meet for the first time in August. Dr Lynham has already established a Ministerial Resources Roundtable, which includes representatives from companies and peak bodies representing the mineral, coal, petroleum, gas and exploration sectors as well as government and department heads from Natural Resources and Mines and State Development. The terms of reference for the Ministerial Roundtable include promoting innovation and technology adoption in the resources sector and streamlining regulatory frameworks.

### Investment mandates for clean energy corporations announced

On 24 June, the Australian Government provided the Clean Energy Finance Corporation (CEFC) with a draft Investment Mandate direction which is expected to exclude wind energy and small-scale solar investments.

While the draft Investment Mandate does not impact on existing CEFC investments and co-financing programs, it is significant to the CEFC because approximately 46% of its portfolio consists of investment in

wind and solar photovoltaic technology.

In March this year, the Australian Government changed the CEFC's mandate to direct it to increase its benchmark performance rate by 2% above the existing benchmark without increasing the risk profile of its portfolio.

The CEFC has yet to respond to the draft mandate but it has a month to do so. Any submission made will be tabled in Parliament in accordance with the process set out in the Clean Energy Finance Corporation Act 2012 (Cth) and the CEFC's submission must be considered before the mandate can be finalised.

A copy of the CEFC's media release is located at: <http://www.cleanenergyfinancecorp.com.au/media/releases-and-announcements/files/statement-from-the-cefc.aspx>.

The Australian Renewable Energy Agency (ARENA) has announced that it will be prioritising investment in activities that support:

- the integration of renewables and grids
- renewables for use in industrial processes (for examples, activities that displace fossil fuels in industrial processes, reduce exposure to future volatility in energy prices and reduce technical and commercial risks associated with renewable energy deployment)
- off grid areas (for example, activities that integrate renewable energy with existing supply in remote off-grid areas for industrial use and remote communities)
- fringe of grid and constrained sections of the grid; and

- large scale solar photovoltaics (for example, activities that reduce the gap in commercial competitiveness between large-scale solar PV and wind generation).

Notably, ARENA's investment plan states that investment in wind power will be limited to reducing back-end grid and plant costs and overcoming 'social licence' challenges. However, exceptional proposals will still be considered for funding even if they fall outside the defined investment priorities.

Organisations interested in obtaining ARENA funding should consider the Investment Plan which can be downloaded here:

<http://arena.gov.au/files/2015/07/Investment-Plan-July-2015.pdf>.

### **Economic benefit no longer paramount for mining approvals in New South Wales?**

On 7 July, the New South Wales Government announced a proposal to repeal a controversial provision in a State Environmental Planning Policy that requires the significance of a resource and the economic benefits of a mining proposal to be the principal consideration when development approval is being considered.

Clause 12AA of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) (SEPP) was inserted in November 2013 following the decision of the New South Wales Land and Environment Court in April that year to refuse Rio Tinto's application to expand its Warkworth Coal Mine in the Hunter Valley because the adverse environmental

impacts outweighed any economic benefit from the expansion. The Court's decision was upheld by the New South Wales Supreme Court on appeal.

The proposed amendment to the SEPP, which deletes Clause 12AA in its entirety, was released for a two week public consultation period that closed on 21 July. Once the amendment becomes effective, economic, environmental and social matters will once again be equally important considerations when a planning authority is deciding whether to issue a development approval for a mining proposal.

A copy of the SEPP amendment can be accessed here:

[http://planspolicies.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7151](http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=7151).

### **Second stage of New South Wales' Integrated Mining Policy released for public comment**

On 28 July, the New South Wales Department of Planning and Environment released Stage 2 of the State's new Integrated Mining Policy for public comment until 7 September 2015.

As reported in our June Australian Energy and Resources Update, the New South Wales Government has embarked on a reform program to streamline the process for assessing and regulating mining development across the State. Stage 1 reforms were open for public comment until 9 July. Stage 2 reforms comprise:

- Best practice guidelines for planning agreements between the relevant planning authority and the proponent of a State

significant mining development where the proponent agrees to make a financial or in kind contribution to a public benefit

- Guidelines on the preparation of annual environmental compliance reports required by the conditions attached to development approvals and mining leases
- Guidelines on how mining companies should publish project information on their websites where required to do so by conditions imposed under the Environmental Planning and Assessment Act 1979, the Protection of the Environment Operations Act 1997, the Mining Act 1992, the Water Act 1912 and the Water Management Act 2000
- Guidelines on the conduct of independent audits required by development and environmental approvals or mining tenement conditions; and
- A summary guidance document that explains the regulatory framework for water resource management in mining operations. The summary document sets out the relevant legislation, policies and guidelines, the types of approvals that may be required and what water-related issues are considered in the environmental assessment process.

Detailed information about the stage 2 reforms and copies of the draft guidelines can be accessed here:

[http://planspolicies.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7123](http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=7123).

## Streamlining assessment of petroleum projects in South Australia and the Northern Territory

Fifteen months after the successful introduction of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as the sole environmental regulator for petroleum activities in Australian offshore areas, NOPSEMA, the Commonwealth Department of Industry and the governments of South Australia and the Northern Territory have announced the first step in a similar streamlining process for petroleum activities in certain coastal waters in South Australia and the Northern Territory.

The proposed streamlining process involves three phases:

- Amendments to the State and Territory offshore petroleum legislation to ensure it substantially corresponds with the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006 and to confer powers and functions on NOPSEMA for the regulation of petroleum operations in designated coastal waters. These powers and functions include powers in relation to occupational health and safety, integrity (including well integrity) and environmental management
- A strategic assessment of the authorisation process for petroleum activities in those coastal waters in accordance with Part 10 of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act); and

- Consideration of the State and Territory environment assessment processes to further streamline regulatory arrangements.

While no decision has yet been made to refer powers under State and Territory legislation on NOPSEMA, the parties have signed strategic assessment agreements under the EPBC Act with the intention of developing a program that would see NOPSEMA as the sole regulator of environmental issues associated with oil and gas projects in coastal waters off South Australia and the Northern Territory.

The next step in the strategic assessment process is the finalisation of terms of reference for the assessment. The draft terms of reference for both strategic assessment processes have been released for public comment until 14 August 2015.

Information about the strategic assessment agreements and the broader streamlining process can be found here:

<http://www.industry.gov.au/resource/UpstreamPetroleum/OffshorePetroleumEnvironment/Pages/StrategicAssessmentAuthorisationOfPetroleumActivitiesInDesignatedCoastalWaters.aspx>.

## New Gas Supply and Demand Action Plan for Queensland

The Queensland Government has announced the development of a Queensland Gas Supply and Demand Action Plan, to be completed early in 2016. A terms of reference document has been released, prior to the release of an issues paper for public consultation later this year.

The Queensland Government describes the gas action plan as part

of an overarching strategy to "maximise exploration, drive development, keep gas costs down and get maximum economic and job benefit for Queensland".

The issues paper and gas action plan will be developed according to four principal themes:

- characterising the Queensland gas sector
- identifying barriers to achieving least cost supply
- ensuring markets have transparent market mechanisms; and
- ensuring Queensland capitalises on all possible demand opportunities.

Queensland's petroleum and gas industry has production worth \$1.9 billion. Global demand for Queensland gas, led by Asia, is increasing. Domestically, natural gas demand on the east coast of Australia is forecast to grow at 16.5% per year.

The terms of reference can be accessed here:

<https://www.dnrm.qld.gov.au/our-department/policies-initiatives/mining-resources/gas-supply-demand-action-plan/terms-of-reference>.

## New Resources Safety Bill for Western Australia

The Western Australian Department of Mines and Petroleum (DMP) has started the next stage of resources safety reform in the State with the release of a draft Work Health and Safety (Resources) Bill and consultation paper for public comment until 14 August 2015.

The renewed focus on reforming safety legislation in Western Australia is timely in light of three mining-related deaths so far this year. The

current workplace safety regime covering mining, petroleum and major hazard facilities for dangerous goods is spread across six different pieces of legislation. The draft Bill, which will initially replace the *Mines Safety and Inspection Act 1994* (WA) in its entirety, is less prescriptive with a greater focus on risk management. It is based on the national model Work Health and Safety legislation that has been adopted in most other Australian jurisdictions and will incorporate the best elements of the National Mine Safety Framework. However, the DMP has made it clear that the Bill amends those aspects of the model legislation to make it more appropriate for Western Australian conditions.

The draft Bill will also transfer worker safety responsibilities in relation to major hazard facilities from WorkSafe, which is a division of the Department of Commerce, to the Resources Safety Division at DMP.

A final regulatory impact statement prepared by Marsden Jacob Associates, which has been advising the DMP on the safety reform project, will be released in early 2016 with the Work Health and Safety (Resources) Bill intended to be passed by mid-2016.

A copy of the draft Bill and the consultation paper can be accessed here:

<http://www.marsdenjacob.com.au/work-health-safety-resources-bill/>.

## First unconventional gas application granted in South West Western Australia

On 15 July 2015, the Western Australian DMP announced that it had selected Unconventional Resources

Pty Ltd as its preferred applicant for 11 on-shore petroleum exploration blocks to the south and east of the City of Bunbury.

The 11 blocks comprise an area of 650 square kilometres across the shires of Capel, Dardanup and Donnybrook-Balingup and include parts of the City of Bunbury and the City of Busselton. Before on-shore exploration activities can commence, Unconventional Resources will need to obtain native title agreements over the areas of the permit. This process can take anywhere from 6 months to a number of years.

It is understood that the company plans to conduct seismic surveying before making any decisions about further exploration activities.

Before undertaking any exploration activities, the company will need to:

- submit a proposed work program to the DMP, including an environment plan assessing the potential impact of any work on flora and fauna and groundwater
- submit mandatory well and field management plans including baseline water quality monitoring before any drilling commences and a continued monitoring plan
- provide full disclosure of all chemicals to be used, including chemicals that might be used in any hydraulic fracturing activities, which will be then be published on the DMP website; and
- enter into land access agreements with farmers and land owners to conduct any activity on their land.

A copy of the DMP media release can be accessed here:

[http://www.dmp.wa.gov.au/7105\\_21687.aspx](http://www.dmp.wa.gov.au/7105_21687.aspx).

## 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

#### Nadia Kalic

Counsel, M&A and Corporate, Infrastructure  
T: +61 2 8922 8095  
E: nadia.kalic@cliffordchance.com

### Perth

#### 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: +61 8 9262 5558  
E: robyn.glindemann@cliffordchance.com

#### Jenni Hill

Partner, Litigation and Dispute Resolution  
T: +61 8 9262 5582  
E: jenni.hill@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.

Clifford Chance, Level 7, 190 St Georges Terrace, Perth, WA 6000, Australia

© Clifford Chance 2015

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

[www.cliffordchance.com](http://www.cliffordchance.com)

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.