

Australian Energy and Resources Update

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

Highlights this month include a proposal for a new national register of foreign ownership of Australian water access rights, the release of tentative findings from the South Australian inquiry into the nuclear fuel cycle and the commencement of a parliamentary inquiry into petroleum exploration in the Great Australian Bight.

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.

Register of foreign ownership of water rights under consideration

In late 2015, the Federal Government implemented wide-ranging reforms of Australia's foreign investment regime (see the November/December 2015 edition of the Australian Energy and Resources Update). The next stage of these reforms is a proposal to establish a register of foreign ownership of water access entitlements (WAEs). The Federal Treasury released a consultation paper for public comment until 11 March.

Currently water rights information is held by the Australian states and territories under different registers, not all of which record foreign ownership. The purpose of the WAE register is to provide more complete and accurate information to

government and the community about the level of foreign ownership to help inform water and foreign investment policy and identify any emerging investment trends. As the purpose of the WAE register is very similar to the Agricultural Land Register established late last year, it is proposed that the existing Agricultural Land Register be expanded to include WAEs. The Government expects that this expansion will reduce the regulatory burden and compliance costs on foreign investors and result in a consistent set of timeframes, penalties and reporting obligations.

The proposed register is intended to capture WAEs used by all industry sectors, not just the agricultural sector as is the case with the Agricultural Land Register. According to the consultation paper, after agriculture (62%), the mining industry is the single biggest industry consumer of

Key issues

- Register of foreign ownership of water rights under consideration
- Nuclear Fuel Cycle Royal Commission Tentative Findings: a sign of things to come?
- Australian Parliamentary inquiry launched into petroleum exploration in the Great Australian Bight
- Major Mining Act reforms in Western Australia referred to committee
- Draft Guideline for Master Planning for Priority Ports in Queensland released
- Western Australia to host new Energy Resources Growth Centre
- Australian Government launches inquiry into steel dumping

water (4%) in Australia, followed by manufacturing (3%) and electricity and gas (2%).

The consultation paper proposes that foreign persons must register WAEs only, not all types of water rights. A WAE is a perpetual or ongoing entitlement to access a share of the water from a particular water resource, rather than an entitlement to a fixed volume of water. WAEs (and accompanying water use rights) are used in most Australian States (Western Australia is the notable exception where the relevant legislation grants licences to take and use the volume of water set out in the licence). Water allocations are excluded under the current proposal, as are irrigation and water use rights. However, it is intended that all WAEs will be listed in the register, irrespective of volume or monetary value.

The consultation paper proposes that the WAE register will collect:

- details of the foreign investor, including name, address, nationality and whether the investor is a foreign government investor
- level and type of foreign interest; and
- details of the WAE, including WAE number, water resource area/system, WAE type (reliability/security, surface – regulated/unregulated or groundwater) and volume entitlement.

Information from the register will only be published in aggregate at the catchment, region, state and national level. Information about individual holders will be kept confidential.

The Federal Government has indicated it intends to have the WAE

Register in place by 1 December 2016. Once established, new foreign investors will have 30 days to register acquisition of a WAE. Existing foreign investors will have six months to register their WAEs during a 'stocktake' period, which will be announced by the Government.

A copy of the Treasury consultation paper can be accessed here: <http://treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2016/National%20register%20water%20access%20entitlements/Key%20Documents/PDF/Consultation-Water-access-register.ashx>

Nuclear Fuel Cycle Royal Commission Tentative Findings: a sign of things to come?

On 15 February 2016, the Commissioner of the Nuclear Fuel Cycle Royal Commission in South Australia released his tentative findings on the State's prospects for increased involvement in the nuclear fuel cycle. The closing date for public responses to the tentative findings is 5pm on 18 March 2016. The final report is to be released on 6 May 2016.

The tentative findings relate to South Australia's participation in four key activities that form part of the nuclear fuel cycle and can be summarised as follows:

- Exploration, extraction and milling: It is currently not viable for South Australia to participate in these activities because uranium prices are low, there is uncertainty regarding future price increases, there are significant costs associated with identifying new uranium deposits and there would need to be new regulatory

approvals obtained at a State and Federal level to facilitate these activities (which would have knock on effects from both a time and cost perspective)

- Further processing and manufacture: It is currently not viable for South Australia to participate in these activities because the existing legislative framework prohibits them from being carried out (which means a new regulatory regime would need to be put in place) and the market for uranium conversion and enrichment services is in oversupply with limited potential for future growth.
- Electricity generation: It is currently not viable for South Australia to participate in these activities (whether on-grid or off-grid) because the economics and the demand curve are unfavourable, but this assessment remains subject to a total systems cost analysis of the electricity supply system and the role that nuclear power plays in it (which is outside the Commissioner's terms of reference).
- Management, storage and disposal of waste: It is currently viable for South Australia to participate in these activities because it contains some important attributes which offer a safe, long term capability for the disposal of nuclear waste (including high level waste) including a geological structure which facilitates disposal at the appropriate depths, low levels of seismic activity, acid environment and a mature and stable political, social and economic structure. However, the identification of potential sites is outside the

Commissioner's terms of reference (refer below).

The Federal Government has also released a shortlist of six possible sites for a new National Radioactive Waste Management Facility to host the first permanent low and intermediate level nuclear waste dump in Australia in November 2015 – three of which are located in South Australia. The formal public consultation period ended on 11 March 2016 following which time a single site will be chosen.

A copy of the Commission's tentative findings can be accessed here:

<http://nuclearrc.sa.gov.au/app/uploads/2016/02/NFCRC-Tentative-Findings.pdf>

Australian Parliamentary inquiry launched into petroleum exploration in the Great Australian Bight

On 4 February 2016, a parliamentary inquiry was announced into the potential environment, social and economic impacts of BP Developments Australia's proposed exploration drilling program in the Great Australian Bight (GAB) and any future oil or gas production generally in the GAB.

The inquiry is to be conducted by the Senate Standing Committee on Environment and Communications. The closing date for public submissions to the inquiry is 1 April 2016 and the Committee is to make its report to the Senate by 12 May 2016.

Terms of reference for the Committee's inquiry make particular reference to the impact of drilling on marine and coastal ecosystems, tourism, commercial fishing activities and the capacity (or lack thereof) of

government or private interests to mitigate the effect of an oil spill. The motion to refer the matter to the Committee was brought by two Senators from South Australia, the State whose coastline would be most likely to be affected by any major oil spill from petroleum production activity in the GAB.

As previously reported in the November/December 2015 edition of the Australian Energy and Resources Update, BP's original environment plan for its proposed drilling program had been rejected by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and BP was given the opportunity to modify and resubmit its plan. In the meantime, a number of environmental groups voiced their opposition to petroleum exploration activity in the GAB.

The GAB is regarded as a hot spot of frontier exploration and its deep waters are largely unexplored. Since BP's investment in the region in 2011, Chevron, Santos and Murphy Oil have each secured permits in the GAB and in 2013, Statoil took an equity interest BP's exploration licences.

Details of the Committee's inquiry can be accessed here:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Oil_drill_Great_Aus_Bight

Major Mining Act reforms in Western Australia referred to committee

The Western Australian Mining Legislation Amendment Bill 2015 has been referred for committee examination by the Western Australian Legislative Council. It is

expected that the committee will report by 10 May 2016.

The Bill amends the Mining Act 1978 (WA) to consolidate and clarify the requirements on tenement holders relating to environmental management. The Bill will insert a new chapter into the Mining Act to consolidate all environmental management provisions and separate them from those provisions of the Mining Act dealing with the grant and administration of mining tenure. The primary intention of this new chapter is to provide a legislative structure for a risk-based and outcomes-focused approach to environmental regulation of the mining industry. The Bill also makes consequential amendments to the Environmental Protection Act 1986 and the Mining Legislation Amendment Act 2014 and minor amendments to the Mining Rehabilitation Fund Act 2012.

A new Part IVAA will deal with environmental management of mining tenements, including:

- requiring certain activities to be approved by submitting a programme of works or mining proposal (including mine closure plans)
- allowing certain activities to be carried out without approval, but in accordance with prescribed requirements, if they are low-impact activities (with the definition of low-impact activities still being considered); and
- providing for conditions to be placed on mining tenements for preventing, reducing or remediating environmental harm, and directly imposing certain other conditions to do with environmental management.

The Bill also inserts new sections into the Mining Act to address an anomaly that has arisen with processing exploration licence applications. Some applicants have been making more than one application over the same or substantially the same ground, and then withdrawing the initial application. This has the effect of tying up the ground to the detriment of other applicants. The new subsections clarify that this cannot occur unless the Minister agrees there are special circumstances for doing so.

A copy of the Bill, as referred to the committee, can be accessed here: <http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=7430D0303AFC2DD248257E2E004707BF>.

Draft Guideline for Master Planning for Priority Ports in Queensland released

The draft Guideline for Master Planning for Priority Ports was released for public comment on 2 February 2016, in line with the Sustainable Ports Development Act 2015 (Qld) and the Queensland Government's commitment to the Reef 2050 Long Term Sustainable Plan. The closing date for public responses to the draft Guideline is 14 March 2016.

A key objective of the Sustainable Ports Act is to provide for the protection of the Great Barrier Reef World Heritage Area through managing port related development in and adjacent to the area including with respect to certain "priority ports", being Port of Abbott Point, Port of Gladstone, Ports of Hay Point and Mackay and Port of Townsville.

Under the Sustainable Ports Act, the Minister must make a master plan for each priority port and must be satisfied that the master plan adequately considers the principles of ecologically sustainable development.

The draft Guideline identifies matters that may be considered in preparing or reviewing a master plan for a priority port including:

- a history of the development of the port and surrounds if it impacts upon the current or proposed development
- outstanding universal value of the Great Barrier Reef World Heritage Area
- matters of national environmental significance or matters of state or local significance
- management of cultural heritage values (both indigenous and non-indigenous) and the social impact of proposed expansions and planned proposals within the proposed master planned area; and
- current and proposed projects, regional or state economic indicators, supply chains, trade volumes and values and industry trends, forecasting and scenarios.

The master planning process is already underway for Port of Gladstone with draft planning documentation due to be released for public comment in mid-2016.

A copy of the draft Guideline can be accessed here: <http://www.statedevelopment.qld.gov.au/resources/ports/draft-guideline-master-planning-for-priority-ports.pdf>

Western Australia to host new Energy Resources Growth Centre

The Australian Government has announced that it will establish a new not-for-profit Growth Centre to drive innovation, competitiveness and productivity across the oil, gas, coal and uranium sectors.

The Growth Centre will officially be known as National Energy Resources Australia (NERA) with its vision for the sector to be a world leader, growing, sustainable, innovative, globally competitive and productive by 2025.

The chair of the Growth Centre, Ken Fitzpatrick recently emphasised the strength of the Australian resources sector by noting that it is forecast to generate A\$66 billion of export earnings, directly employing 120,000 people.

The Australian Government has recognised the importance of the sector by committing to invest A\$15.4 million in the Growth Centre over the next four years.

The Growth Centre will aim to drive sector competitiveness and productivity through the following six strategies:

- connecting industry to promote collaboration and innovation
- facilitating deeper engagement between industry and research
- reducing regulatory burden
- promoting increased research into social, economic and environmental consequences of industry activity
- promoting initiatives to support development of the work skills of the future; and
- identifying and facilitating growth of new opportunities for energy

industry supply chain domestically and globally.

The Growth Centre will connect common interests across the sector on a national scale, including by setting up collaboration spaces to allow industry to engage with start-ups, research organisations and service providers.

It will be located in Perth, Western Australia, together with the WA Energy Research Alliance (a partnership between the CSIRO, Curtin University and the University of Western Australia). Nodes in Brisbane and Adelaide are planned to open later this year.

Australian Government launches inquiry into steel dumping

On 18 February 2016, the Federal Minister for Industry, Innovation and Science, Christopher Pyne, announced the second stage of the Australian Government's anti-dumping reforms with the commissioning of a report on the impact of Asian steel makers in the Australian market (the potential "dumping" of Asian steel in Australia).

The report will be driven by the Anti-Dumping Commissioner, Dale

Seymour, under the recently created Anti-Dumping Information Service (ADIS). ADIS was created to provide support and a central point of contact for Australian manufacturers involved in the anti-dumping system. ADIS has a market research function to enhance the capability of the anti-dumping investigators. According to Minister Pyne, 80% of all the cases being investigated by the Anti-Dumping Commission are in relation to steel and aluminium and 41 measures are already in place for imported steel products.

The report will:

- identify trends in dumping and circumvention behaviour in Asian steel and aluminium markets
- identify existing dumping duties across steel and aluminium markets; and
- make recommendations on the most effective measures where there is evidence of these activities.

The findings of the report are expected to be delivered in early April 2016 and will guide the next round of reforms.

Media reports have stated that many Asian steelmakers are displeased with the commissioning of the report,

which comes after a similar decision by the European Commission.

The first stage of the anti-dumping reforms was implemented in 2015 with a suite of reforms aimed at ensuring Australian manufacturers and producers are able to compete on a level playing field with imported goods. Minister Pyne said the first round of reforms is already having a positive impact by:

- increasing pressure on uncooperative exporters;
- addressing the practice of overseas businesses avoiding paying dumping duties by slightly modifying their products; and
- improving the way the Anti-Dumping Review Panel undertakes merits review of anti-dumping decisions.

The Minister's press release announcing the inquiry can be accessed here:

<http://minister.industry.gov.au/ministers/pyne/media-releases/asian-steel-makers-face-anti-dumping-enquiry>

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