

Australian Energy and Resources Update

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

Highlights this month include an overview of infrastructure spending and asset sale commitments made by the Federal and Western Australian governments in their new budgets and the release of a new discussion paper on the reform and modernisation of Australia's foreign investment framework.

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.

Federal Budget funding commitments for infrastructure

The Federal Government released its budget for the upcoming 2015-16 financial year on 12 May 2015.

The Federal Budget makes several funding commitments to infrastructure. These include:

- **Deal pipeline in Northern Australia:** A funding commitment of A\$3.7 million over four years from 2015-16 to develop a new infrastructure projects pipeline for Northern Australia. The pipeline is to be informed by the priorities identified in Infrastructure Australia's Northern Australia Infrastructure Audit and is likely to include roads, rail, water, electricity, ports, airports and communication projects. It is envisaged that these measures will form part of the Government's White Paper on Developing

Northern Australia due to be released in May 2016.

- **Concessional loans for Northern Australia:** A\$5 billion in the form of a concessional loan facility to be offered to the private sector and governments of Western Australia, the Northern Territory and Queensland for the construction of ports, pipelines, electricity and water infrastructure in Northern Australia. The loan facility is due to be open for applications from 1 July 2015.
- **Global Infrastructure Hub:** Affirming Australia's commitment as a G20 participant to the Global Infrastructure Hub, there is a funding commitment of A\$30 million for the establishment and operation of the Global Infrastructure Hub until 2018. A key objective of the Hub is to unlock A\$2 trillion in global infrastructure capacity by 2030.

Key issues

- Federal Budget funding commitments for infrastructure
- New asset sales announced in Western Australia
- Modernising Australia's foreign investment framework
- FIFO inquiry underway in Queensland
- Deal finally reached on the Renewable Energy Target
- **Infrastructure deficit in Asia Pacific:** A funding commitment of \$10 million over two years from 2015-16 to the Asia Development Bank's Asia Pacific Project Preparation Facility (AP3F). The AP3F is to be used to drive investment in infrastructure via public private partnerships in Asia Pacific by providing financial

assistance to governments and public sector agencies to assist them in preparing and structuring transactions.

- **Asset Recycling Initiative:** State and Territory governments will continue to be incentivised to privatise their assets using the Asset Recycling Initiative which has a funding commitment of approximately A\$6.8 billion, comprising the uncommitted balances of the Building Australia Fund and Education Investment Fund. Deals have already been struck with the governments of Australian Capital Territory and New South Wales that will see the Federal Government contribute more than A\$2 billion to proposed new infrastructure projects including a light rail public private partnership project in Canberra and rapid transit and light rail projects in Sydney.

The slump in iron ore prices combined with a decreased share of federal tax revenue has created a considerable funding shortfall for Western Australia. As a result, the Federal Budget includes a funding commitment of A\$499.1 million for economic infrastructure projects in Western Australia, including 9 road projects. The Federal Government has also encouraged Western Australia to sell assets and take advantage of the Asset Recycling Initiative (including its ports and electricity generation assets).

A copy of the Federal Budget papers can be found here: <http://www.budget.gov.au/2015-16/index.htm>.

New asset sales announced in Western Australia

The Western Australian government released the new State budget on 15 May 2015 and for the first time in 15 years, it will be in deficit.

The budget responds to the risk of a credit rating downgrade, flagged by ratings agency Standard and Poor in April, by expanding its asset sales program and adding a number of State assets to the list of assets now up for sale, including:

- the Forest Products Commission's softwood plantations;
- Fremantle Port (sale by way of a 49 year lease);
- the portfolio of Government Regional Officer Housing stock;
- the State's transport fleet (by way of sale and lease back);
- Government office buildings (by way of sale and lease back);
- specific LandCorp land holdings; and
- individual generation assets of Horizon Power and Synergy and non-core assets of Western Power.

The announcement of these proposed sales follows an earlier announcement of the proposed sale of the Kwinana Bulk Terminal, Utah Point Bulk Handling Facility and the Perth Market Authority.

Industry groups have welcomed and supported the expansion of the State's asset sales program as a mechanism to reduce growing debt levels. The sales were also recommended by the Steering Committee in Phase One of the Electricity Market Review.

Further information on Western Australia's asset sales may be accessed here:

http://www.treasury.wa.gov.au/cms/TwoColumns_Content.aspx?pageid=13730&id=14150.

Modernising Australia's foreign investment framework

Following a February 2015 options paper, Prime Minister Tony Abbott and Federal Treasurer Joe Hockey released a new "Modernisation Options Paper" in early May 2015 setting out proposals to strengthen Australia's foreign investment framework and reduce red tape. Comments on the Options Paper closed on 29 May.

The proposals set out in paper include:

- incorporating the foreign government investor rules currently contained in the Australia's Foreign Investment Policy document into the legislative framework to increase legal certainty;
- updating the foreign investment legislation to reflect current administrative practices and other Australian regulatory concepts, including:
 - changes to key definitions such as what constitutes a "foreign person", "foreign government investor" and "associate" under the legislation;
 - raising the substantial interest threshold for notifiable business investments from 15% to 20% to be consistent with Australia's takeover rules thresholds;

- exempting compulsory acquisitions and buy-outs following takeover bids to reduce unnecessary regulatory burdens;
- importing selected exceptions from Australia's takeovers rules such as pro rata rights issues;
- modernising the money lending exception to reflect current lending approaches; and
- providing an exemption for acquisitions by foreign financial institutions in the ordinary course of underwriting;
- extending some existing exemptions for non-government investors to foreign government investors;
- exempting proposals that are unlikely to affect the national interest and increasing the consistency of exemptions across the different acquisition types; and
- introducing a number of general 'tidy-ups' to remove obsolete provisions and provide more clarity.

Although not yet law, the Options Paper provides a useful guide to the type of reforms we can expect to see in Australia's foreign investment rules.

A full copy of the paper can be accessed here:

http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Modernising%20Australia's%20foreign%20investment%20framework/Key%20Documents/PDF/DP_Australia's_FI_Framework_k.ashx

FIFO inquiry underway in Queensland

The new Queensland Government has followed through on its pre-election promise to inquire into the impact of Fly In – Fly Out (FIFO) operations on the community and economy with the announcement of the inquiry panel and terms of reference on 6 May.

The panel will be chaired by Leo Zussino, a former chair and chief executive officer of the Gladstone Ports Corporation, chair of the Gladstone Economic and Industry Development Board and chairman of the Australian Maritime Safety Authority. The other panel members are Anne Baker, Mayor of the Isaac Regional Council, which is the largest mining region in Queensland, Deirdre Comerford, Mayor of Mackay Regional Council and Dr Geoff Dickie, Chair of the Queensland Exploration Council.

The panel will investigate the use of FIFO during the operational phase of resource projects in Queensland and consider a number of specific issues including:

- existing approvals and approval processes for FIFO, including monitoring and reporting by resource companies;
- the economic costs and benefits for resource towns and regional communities, as well as source communities, from predominantly FIFO workforce arrangements;
- the economic costs and benefits for companies and individuals choosing a predominantly FIFO workforce as an alternative to a resident workforce or to a workforce with a FIFO component; and

- the circumstances where predominantly FIFO workforce arrangements may be appropriate, where a suitably skilled workforce is not available in a nearby resource town or a regional community, including consideration of the productivity impact on other resource projects and other industry sectors.

The panel will undertake targeted stakeholder consultations throughout May and June with a report due to be presented to the Queensland Minister for State Development, Natural Resources and Mines by 31 July 2015.

More information about the inquiry can be accessed here:

<http://www.statedevelopment.qld.gov.au/industry-development/fly-in-fly-out-fifo-review.html>

Deal finally reached on the Renewable Energy Target

After months of negotiation, on 18 May 2015 the Federal Government and the Opposition Labor Party announced an agreement on a revised Renewable Energy Target of 33,000 gigawatt hours by 2020, down from the 41,000 gigawatt hours target legislated in 2009.

The revised target represents a middle ground between the original positions adopted by the Government and the Opposition and is close to the 33,500 gigawatt hours compromise target recommended by the Clean Energy Council.

Further details of the agreement can be accessed here:

http://www.cliffordchance.com/briefings/2015/06/new_australian_renewable_energytargetret.html.

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