

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 a new Clean Energy Innovation Fund and the introduction of new legislation in Queensland with far-reaching implications for mining companies and their related entities and the announcement of a new policy in relation to fly-in fly-out mining operations in that State.

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.

Australian Government announces Clean Energy Innovation Fund

On 23 March, the Prime Minister Malcolm Turnbull and the Australian Environment Minister Greg Hunt announced the establishment of a A\$1 billion Clean Energy Innovation Fund intended to support emerging energy technologies making the leap to commercial implementation.

The Fund will be administered jointly by the Clean Energy Finance Corporation (CEFC) and the Australian Renewable Energy Agency, using their complementary expertise, and will commence operation in July this year.

Money in the Fund will target businesses that use technologies (including renewable energy, energy

efficiency or low emissions technologies) that are beyond the research and development phase but are not yet established enough to attract private sector investment. The Fund's investment will be by way or debt or equity or a combination of both.

The Fund will be established by the CEFC redirecting some of its existing funding to the program. A\$100 million will be made available in the 2016/2017 financial year with A\$100 million to be made available in subsequent years until the A\$1 billion total is reached.

The Ministerial press release with further information on the Fund is available here: <http://www.environment.gov.au/minister/hunt/2016/mr20160323.html>

Key issues

- Australian Government announces Clean Energy Innovation Fund
- Queensland introduces legislation to compel mining companies to take responsibility for environmental impacts
- No more 100% FIFO resources projects for Queensland
- Western Australian government responds to Parliamentary report on fracking
- Fraser Institute says Western Australia is number 1 mining destination
- Western Australia examining Australia's biggest microgrid
- Northern Australia Infrastructure Facility to reside in North Queensland
- Resources administration harmonised in New South Wales

Queensland introduces legislation to compel mining companies to take responsibility for environmental impacts

On 15 March, the Queensland Government introduced the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 into Parliament.

The Bill is controversial because it introduces far-reaching amendments which would directly affect resources companies with operations in Queensland. It extends the existing power of the Queensland Department of Environment and Heritage Protection to issue environmental protection orders (EPOs) to a holding company, a landowner or a person that the Department decides has a relevant connection (generally a financial or management connection) with either the company carrying out the environmental activity or a 'high risk' company. A 'high risk' company is a company in external administration and includes associated entities of the company in external administration.

The significance of these amendments is that a parent company or executive officer of a company or 'high risk' company may be required to take action to prevent environmental harm from occurring. Failure to comply with an EPO is an offence and carries a maximum penalty of A\$530,000. The Department may also recover costs for monitoring compliance with the EPO from the recipient.

The Bill also enhances the Department's capacity to enforce compliance with environmental obligations, particularly in the current

economic climate where many resources companies are in financial distress and are thus at risk of failing to comply with environmental obligations. The inclusion of the concept of 'associated entities' of a high risk company is intended to prevent the company transferring operation of the environmental activity to another member of its corporate group or other associated entity. The provisions will also apply retrospectively, which means that companies cannot avoid the impact of these proposed changes by changing ownership structures.

The Bill has been referred to the Agriculture and Environment Committee for consideration, which is due to report on the Bill by 15 April 2016.

The Bill may be located at: [https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0049_Environment_al_Protection_\(Chain_of_Responsibility\)_Amendment_Bill_2016E.pdf](https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0049_Environment_al_Protection_(Chain_of_Responsibility)_Amendment_Bill_2016E.pdf)

No more 100% FIFO resources projects for Queensland

In early 2015 the Queensland Government commissioned a parliamentary inquiry into Fly In-Fly Out (FIFO) and other long distance commuting work practices in regional Queensland. A report was prepared by the Infrastructure, Planning and Natural Resources Committee and an independent FIFO review panel, which made 27 recommendations aimed at increasing the benefit received from large resource projects by workers and regional communities.

In response, the Queensland Government has now announced plans to develop an overall policy framework and introduce legislation

this year to end 100% FIFO mine employment schemes where nearby regional towns have a capable workforce. The legislative regime will also require existing 100% FIFO operations to consider locals for employment.

In addition, the Government detailed a range of measures to be adopted, including:

- improved social impact assessments by mining companies;
- workforce plans that maximise the opportunity for local workers to get jobs;
- workers to live in local existing housing, or in purpose-built villages, where there is community support; and
- accommodation that provides a safe, clean and healthy environment for workers.

The Queensland Resources Council has expressed concern that the plans could pose a serious threat to investor confidence in the State and that many of the proposed changes will impose additional costs on resource companies and hinder their ability to compete in current difficult global market conditions.

The Government's proposals can be accessed here:

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T381.pdf>.

Western Australian government responds to Parliamentary report on fracking

On 18 March, the Western Australian Government formally responded to recommendations handed down in a report on hydraulic fracturing (fracking)

for unconventional gas in Western Australia by the Parliamentary Standing Committee on Environment and Public Affairs. Our summary of the Committee's report is in the November /December 2015 Energy and Resources Update (available [here](#)).

The Government will adopt 10 out of the 12 recommendations made by the Committee, including the recommendations to amend the State's Petroleum and Geothermal Energy Resources Act 1967, to prohibit the deliberate addition of BTEX (benzene, toluene, ethylbenzene and xylene) compounds to fracking fluids and to consider the need for a fund similar to the Mining Rehabilitation Fund to be established to cover onshore petroleum activities.

The Government chose not to adopt the Committee's recommendation to establish a statutory body similar to the Queensland GasFields Commission to act as an independent arbiter for land owners and resources companies in land access negotiations involving fracking. The Government noted that it has already developed mechanisms to assist negotiations and will continue to improve them, including the use of independent mediation.

The government's response can be accessed here: [http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913895c7a06d337d5c9ab7048257f79000e5c77/\\$file/tp-3895.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913895c7a06d337d5c9ab7048257f79000e5c77/$file/tp-3895.pdf)

Fraser Institute says Western Australia is number 1 mining destination

Western Australia has been named as the most attractive jurisdiction in

the world for mining investment, according to the annual global survey of mining executives conducted by the Fraser Institute released on 1 March.

The companies surveyed rate each jurisdiction based on 15 policy factors, such as geological endowment, government policies, time taken to get approvals, taxation, security, quality of infrastructure and attitude towards exploration investment.

This year Western Australia improved four places on its previous ranking to come out on top. Western Australia's Minister for Mines and Petroleum, Bill Marmion said the rating was a welcome surprise, adding "We've been working very hard, getting rid of red tape through the approvals process, that's both in my department and also in Aboriginal Heritage".

Chamber of Minerals and Energy chief executive, Reg Howard-Smith stated the excellent result does not mean the Western Australian or Federal Governments can rest on their laurels and went on to say, "As we approach a Federal election in 2016 and subsequent State election in 2017 it is important Western Australia's high international ranking in attractiveness for investment is not taken for granted nor jeopardised by political party platforms which are to the detriment to the resources sector and potentially the broader economy."

The entire Fraser Institute Report is available here: <https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2015.pdf>

Western Australia examining Australia's biggest microgrid

The Western Australian Government has announced that it is investigating the development of an electricity microgrid to support the Kalbarri community. Kalbarri is located in the Mid-West region of the State and the microgrid would need to serve approximately 2,000 customers.

A key role of the microgrid will be to increase network reliability and energy sustainability, while reducing network costs. The 140 km network between Geraldton and Kalbarri is commonly affected by extended power outages due to windborne salt and dust.

The State-owned electricity utility, Western Power, has agreed to contribute A\$300,000 to cover the cost of a feasibility study to be carried out by Enerjy Limited. The feasibility study will consider the development of a solution incorporating solar and wind generation and battery storage to push excess power generated down the line and receive energy when stored energy is insufficient to meet demand. This would also allow disconnection from the larger network if a fault occurred.

If developed, the microgrid is likely to be Australia's largest edge-of-grid solution. It is intended that the microgrid could be used as a model for further projects across the rural edges of the electricity network.

The State's media release in relation to the project is available here: <https://www.mediastatements.wa.gov.au/Pages/Barnett/2016/03/Powering-the-way-for-nations-biggest-microgrid.aspx>

Northern Australia Infrastructure Facility to reside in North Queensland

The Federal Government has recently announced that the city of Cairns in North Queensland will host the Northern Australia Infrastructure Facility (NAIF). The NAIF forms part of the Federal Government's broader strategy for the development of Northern Australia as set out in the "Our North, Our Future: White Paper on Developing Northern Australia". Through the NAIF, the Government is seeking to partner with the private sector and State and Territory governments to provide concessional loans to finance major economic infrastructure projects in Northern Australia.

In November 2015, the Government released a Consultation Paper setting out the policy framework for the A\$5 billion NAIF. Feedback received during the consultation period was reflected in the exposure draft of the Northern Australia Infrastructure Facility Bill 2016 which was introduced into Parliament on 17 March 2016.

The Bill contemplates, among other things, that investment decisions will be governed by an Investment Mandate - a draft of the Investment Mandate was released for public comment last month with final submissions due by 29 March 2016. It is currently unclear when the final Investment Mandate will be released.

Under the draft Investment Mandate, there are seven mandatory criteria which must be satisfied for a project to be eligible for financial assistance through the NAIF. Specifically these are as follows:

- the project must involve the construction or enhancement of economic infrastructure;
- the project must for the public benefit;
- the project must be unlikely to proceed or will be significantly delayed without NAIF assistance;
- the project must be located in, or has significant benefit for, northern Australia;
- the NAIF must not exceed 50% of debt funding for the project;
- the loan must be able to be repaid, or refinanced; and
- the project proponent must provide an indigenous engagement strategy reflective of the Indigenous population in the region of the project.

The draft Investment Mandate also includes two non-mandatory criteria, which if satisfied, will give a project preferential status. These include where the project seeks more than A\$50 million of NAIF financing or where the project meets an "infrastructure need" identified through a Commonwealth, State or Territory assessment process.

A copy of the final bill can be accessed here:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r5631_first_reps/toc_pdf/16029b01.pdf;fileType=application/pdf

A copy of the draft Investment Mandate can be accessed here:

<http://www.industry.gov.au/industry/Northern-Australia-Infrastructure-Facility/Documents/NAIF-Investment-Mandate-Direction.pdf>

Resources administration harmonised in New South Wales

Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015 to amend and harmonise certain provisions of the Mining Act 1992 and the Petroleum (Onshore) Act 1991 (NSW) came into effect on 1 March this year. The Harmonisation Act changes the administration of titles and harmonise the compliance and enforcement powers in the Mining and Petroleum Acts.

The amendments to both the Mining and Petroleum Acts have been introduced to establish consistent, clear and transparent requirements for mining and petroleum title applications and assessments. This includes providing guidance as to the basis on which title applications are granted, renewed, suspended, cancelled, varied or transferred, for example:

- specifying items that may be accounted for in considering an application
- providing broader powers to impose and vary conditions on titles
- imposing a requirement for a titleholder to obtain an "activity approval" to undertake exploration activities that are not exempt developments under the State planning framework
- setting out a non-exhaustive list of grounds on which applications can be refused
- requiring the lodgement of reports in relation to all mining and petroleum operations; and
- providing for mandatory codes of practice to be developed.

The Harmonisation Act also harmonises the differing compliance and enforcement powers under the Mining and Petroleum Acts including:

- bringing the inspection, investigative and enforcement powers under the Petroleum Act into line with the stronger powers provided for under the Mining Act;
- providing for the use and disclosure of information, work programs and samples provided under either Act, including introducing information sharing arrangements with other regulatory agencies;
- creating a wider range of offences; and
- providing for enforceable undertakings in relation to contraventions of statutory provisions.

A copy of the Harmonisation Act can be accessed here:

[http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/735713b8450c173bca257edf0013afa7/\\$FILE/65342016.pdf/b2014-150-d35-House.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/735713b8450c173bca257edf0013afa7/$FILE/65342016.pdf/b2014-150-d35-House.pdf)

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