

# Mining Law Update

Australia

BAKER & MCKENZIE

## Legal Alert



February 2013

National and Industry

Federal

State and Territory

Queensland

Western Australia

NSW

Victoria

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The year 2013 was forecast to be a challenging year for the Australian economy, but the latest economic data from the US and China at the end of January is promising.

We are seeing continued interest from North Asia and India in Australian agricultural and mineral resources, as well as the development of related infrastructure. At the same time, the Australian Federal Governments and most State Governments are implementing strategies to enhance our economic and cultural links with Asia.

## Asian Century White Paper

At the end of October 2012, the Federal Government released the *Australia in the Asian Century White Paper* (White Paper)- a "roadmap" of how to better integrate the Australian economy with those of Asia from now until 2025. The White Paper sets out five pillars of productivity innovation, 25 national objectives and selects 5 Asian countries of key importance to Australia's Asian Century - China, India, Indonesia, Japan and South Korea.

The White Paper has been well received by most in the business community and Baker & McKenzie has already held two events in Melbourne and Sydney to analyse the White Paper and facilitate discussion of its contents.

The White Paper gives credit to the mining sector for playing a central role in Australia's current and future economic engagement with Asia. In addition, the White Paper sets out two national objectives which have a general application to the resources sector:

— to implement a national framework to develop, finance and maintain nationally significant infrastructure.

— to facilitate a more open and integrated Australian economy in which the flow of goods, services, capital, ideas and people will be easier.

Pathways of achieving these objectives include having greater private sector involvement in major resource and infrastructure projects, co-ordinated government regulatory review, as well as a more streamlined and well-planned pipeline of major projects.

Please click [here](#) for our White Paper client alert.

Please click here for a [link](#) to the White Paper.

## National and Industry Regulation

### Class 888 'Significant Investor Visa' launched

On 24 November 2012, the Australian Government introduced the 'Significant Investor Visa' a new class of visa available to high net worth individuals who wish to obtain Australian permanent residence. The

key application criterion of the visa is an investment of at least A\$5 million in certain specified classes of Australian investments including:

- ASIC regulated managed funds with a mandate to invest in Australia;
- Commonwealth, State or Territory Bonds; and
- Direct investment into Australian proprietary companies.

The visa has no upper age limit, no points test requirement nor English language threshold for applicants but standard health and character requirements apply as well as a statement from the applicant that the funds used for the investment are unencumbered and legally acquired.

Successful applicants will obtain a 4 year visa after which time the applicant will be eligible to apply for Australian permanent residency. The 4 year visa is dependent on the maintenance of the investment for that 4 year period and complying with the residence requirements of the visa. The residence requirements of the visa equate to approximately 40 days per year. Investments in 'complying investment classes' made prior to an application for the 'Significant Investor Visa' count towards the A\$5 million investment, as long as these are maintained for the 4 year visa period.

It is expected that up to 700 visas will be granted annually. An applicant requires an Australian State as a sponsor. Each State has started to issue guidelines.

Please click [here](#) for our client alert on this issue.

## ASX listing Rules

ASX has finalised its amended disclosure rules for listed mining and oil and gas exploration and production companies. The amended Chapter 5 rules are substantially the same as those contained in the September exposure draft. ASX have published two associated guidance notes: Guidance Note 31 for mining companies and Guidance Note 32 for oil and gas companies.

The changes are subject to a transition period and will take full effect on 1 December 2013.

Please click [here](#) for a link to our previous MLU article on the issue.

Please click [here](#) for a link to the amended Chapter 5 rules and [here](#) for Guidance Note 31.

## Updated JORC code released

On 20 December 2012, the 2012 JORC code (**2012 Code**) was released, following the release of an Issues Paper and an exposure draft released in September 2012.

The 2012 JORC Code is substantially the same as the exposure draft, with amendments made to resolve ambiguity and to prevent misinterpretation.

The updated Code will take full effect on 1 December 2013. In the meantime, companies are encouraged to voluntarily comply with the additional disclosure required by the 2012 JORC Code but compliance with the current ASX Listing rules and the 2004 JORC Code is acceptable. If a Competent Person wishes to take advantage of any of the provisions of the 2012 JORC Code, it must also comply with the 2012 JORC Code in full as well as the updated version of the Listing

Rules.

ASX and JORC intend to provide an extensive program of seminars to assist the industry with the implementation of the revised Listing Rules and Code. Baker & McKenzie is hosting two of these sessions in Sydney and Melbourne in February.

Please click here for a [link](#) to the 2012 JORC Code.

## Increase in the indexed notifiable thresholds to FIRB

As of 1 January 2013, the notification threshold requirement for foreign investment proposals into Australia were increased to **A\$248 million** for non-US investors and **A\$1,078 million** for US investors.

The increase comes about as a result of the annual indexation increase provisions built into the *Foreign Acquisitions and Takeovers Act*.

The notification threshold for foreign investment into non-heritage listed developed non-residential commercial real estate in Australia has also been increased as a result of indexation to **A\$54 million**.

All investment proposals by foreign parties above the above thresholds are required to notify the Foreign Investment Review Board ("**FIRB**") and seek prior approval for the relevant investment.

Please click here for a [link](#) to the FIRB website.

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## Federal Energy White Paper

On 8 November 2012, the Federal Government released the *Energy White Paper -Australia's Energy Transformation (Paper)*, following the release of a draft paper in 2011. The Paper contains a strategic policy framework to assist Australia to transition into a cleaner and more productive energy economy. The Paper is essentially concerned with the delivery of secure, reliable, clean and competitively priced energy to consumers whilst supporting the sustainable development of Australia's natural energy resources.

The Paper identifies four areas as a priority: the delivery of better energy market outcomes to consumers, the acceleration of the development of clean energy, developing critical energy resources (gas in particular) and making Australia's energy policy framework more resilient.

Indicating concern for sustainable energy prices at both State and Federal level, the NSW government released its report on the Economics of Electricity Generation on 21 November 2012.

Please click [here](#) for a link to the Paper.

Please click [here](#) for a link to the NSW report

## MMRT in debate

Debate over the Mineral Resource Rent Tax (**MRRT**) continues in the Australian media as large resources companies state that they will only pay minimal MRRT in its first year of its operation. The reasons for this include lower coal and iron ore prices and significant allowances for depreciating existing assets. The Government has not stated publicly

the revenue that it has obtained from the MRRT.

The Federal tax of 'super profits' of coal and iron ore miners had been projected to raise \$2 billion in taxes in the year 2012/2013. Media reports suggest that no revenue has been raised in the first 6 months of the operation of the tax and that some members of Parliament will put a motion in February 2013 to compel the Federal government to disclose the amount raised by the MRRT to date.

## Resources and Energy Major Projects Report Released

In October 2012, the Bureau of Resources and Energy Economics released its bi-annual report on resources, energy, infrastructure and processing projects and provided a snapshot of the pipeline of investment in the Australian resources and energy sector. The tenor of the Report is optimistic, noting that the nominal value of committed projects is at a historical high with a large proportion of this value in oil and gas 'mega' projects.

Please click [here](#) for link to the report.

## Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

On 9 November 2012, the Committee was established following amendments to the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) coming into effect. The Committee, largely comprised of members with scientific qualifications such as hydrology, will provide advice on whether coal seam gas and large coal mining developments will have a significant effect on water resources (including salinity). The effects need not be attributable to the project in isolation, but when considering the project in the context of past, present or reasonably foreseeable developments.

If the Commonwealth Minister for the Environment considers that the developments are likely to have a significant impact on water resources or may have an adverse impact on a matter of national environmental significance, the Minister must obtain and take the Committee's advice into account when deciding whether or not to approve the development. The requirement to consider the Committee's advice also applies to State and Territory approval processes.

The Committee also has other research and advisory responsibilities including advice under a National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development currently on foot between the Commonwealth, Queensland, New South Wales and South Australia.

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## State and Territory

### Queensland

#### Queensland lifts uranium mining ban

On 22 October 2012, the Queensland Government announced that it would end its 30 year ban on commercial uranium mining in the State. Uranium had been mined in the state up until 1982 and uranium

exploration has still been permitted, despite the ban.

An implementation committee (including the State's chief Scientist and members of industry) will oversee the resumption of uranium mining. The committee is due to report back to the State government by late January 2013. Holders of exploration permits for minerals which encompass commercial uranium deposits would need to apply for a uranium mining lease before that uranium deposit could be mined.

It is reported that Queensland holds approximately A\$10 billion worth of uranium reserves, on current pricing, but it is as yet uncertain whether uranium mined in Queensland will be permitted to be shipped through Queensland ports.

Queensland follows New South Wales, which overturned its 28 year ban of uranium exploration in September 2012. Uranium exploration is now only banned in Victoria and Tasmania.

## Western Australia

### Draft Tailings Code released

On 11 December 2012, the WA Department of Mines and Petroleum released for public comment a draft code of practice to assist in the design, construction, operation and decommissioning of tailings storage facilities (TSFs) in the State (Code).

The primary aim of the draft Code is to describe the variables operators must address when seeking approval for project management and mining plans under WA mining legislation. The Code also seeks to promote a proactive approach to identifying the requirements of a TSF throughout its life cycle in order to more clearly predict a facility's long term performance and environmental impact after closure. The draft Code covers surface tailings storage (for example in pits) but does not extend to waste dumps, heaps or underground mine fill.

The draft Code seeks to complement existing guidelines which will be reviewed in 2013. Public comment on the draft Code will close on 4 February 2013. As yet, it is the first tailings code of practice in Australia.

Please click [here](#) for a link to the draft Code.

## Amendments to WA Mining Regulations

On 10 November 2012, various amendments to the *Mining Regulations* 1981 (WA) came into force. Most notably, the regulations now provide that the cost of any rehabilitation activities may be included in calculating expenditure expended on or in connection with a mining tenement. The regulations also introduce some modifications into the process of proceedings before the Mining Warden and the Warden's Court.

## New South Wales

### CSG royalties now payable

On 25 October 2012, the NSW Parliament passed the *Petroleum (Onshore) Amendment (Royalties and Penalties) Bill* 2012 (Bill).

Amongst other things, the Bill also provides for increased penalties for breach of the *Petroleum (Onshore) Act* 1991 (NSW) and the *Mining Act* 1992 (NSW) including fines of up to \$1.1 million for mining without the

relevant authorisation or title.

The increase in penalties implemented by these amended appear designed to assist the recently introduced NSW Strategic Regional Land Use Policy (**Policy**) by deterring CSG producers from breaching relevant legislation in keeping with the Policy's stated aim of addressing community concern about the impact of CSG on agricultural land and water resources.

Please click [here](#) for our previous MLU discussing the Policy.

Please click [link](#) to the Bill.

## Victoria

### Update on Victorian moratorium on fracking

The Victorian Government has provided indications that it may review its moratorium placed on fracking in the State this year, pending the release of National Coal Seam Gas guidelines.

Please click [here](#) for our previous MLU for more information on the Victorian moratorium on fracking

### Victorian Brown Coal

Victoria has one of the world's largest potential resources of brown coal. It is understood that the Victoria Government will seek tender for new allocations of brown coal tenements late 2013 or early 2014.

## Past MLUs

Past MLUs and brochures published by Baker & McKenzie can be found at our website [www.bakermckenzie.com/australia](http://www.bakermckenzie.com/australia)

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