

# Recent Developments in the Australian Mining Sector – National

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*There has been positive growth in the Australian mining sector and many recent developments since our last mining update. A summary of the key national developments follows.*

## Commonwealth

### Mining sector outlook

The Australian mining sector has reportedly had mixed performance. On the negative side, exploration expenditure fell 6.8% to AU\$655 million in the June 2020 quarter and revenue has fallen by an estimated 14.1% over 2019-20. The largest decrease by minerals sought during exploration activities came from expenditure on selected base metals. Additionally, Australia's aluminium is being priced out of the global market due to high energy costs as global demand has slumped causing aluminium producers to consider the viability of their facilities.

This is contrasted with strong iron ore prices and record gold prices. The iron ore industry is the largest segment of the Australian mining sector and the high prices and growth in output has allowed the generation of an estimated AU\$103 billion in iron ore export revenue in 2019-20, according to the Australian Office of the Chief Economist. Major iron ore players, such as Fortescue Metals and BHP, have ramped up production and continued to invest in new production capacity.

Australia remains the world's second largest gold producer and has experienced a strong recovery during the June 2020 quarter which has been driven by rising economic uncertainty. In the gold space, there is a high level of activity across investment – capital raising and initial public offerings – to greater exploration and production. Australia's largest gold producers for the 2019-20 financial year were Newcrest Mining's Cadia, Newmont's Boddington and Tanami, Kirkland Lake Gold's Fosterville and AngloGold Ashanti and IGO's Tropicana joint venture.

The COVID-19 pandemic continues to cause less disruption to the mining sector compared to other parts of the Australian economy. The mining sector has fuelled the 1.1% growth in Western Australia's economy in 2020 and has been an important contributor to the Australian economy.

### **The move to net zero emissions**

Over the past year, Japan, China and South Korea – Australia's largest fossil fuel customers – have each announced their commitment to achieve net zero emissions by 2050 or 2060. In 2019, Japan, China, and South Korea accounted for AU\$75.6 billion (around 73%) of Australia's total exports of coal and gas which totalled AU\$103 billion. If these nations implement their commitments by curbing coal-fired power generation, Australia will face a dramatic reduction in thermal coal demand, which will also be driven by the shift to renewable energy supplemented by nuclear power and hydrogen.

In a similar vein, mining companies around the world are working to reduce greenhouse gas emissions in an effort to align their goals with international targets to reach net-zero emission by 2050. Increasingly, mining companies will need to be able to demonstrate tangible emissions reductions programs whilst maintaining offtake or supply. Other measures taken by mining companies include the establishment of their own sustainability committees which signal that the mining industry is joining the wave of corporate sustainability reporting and activity. Reporting on emissions and understanding decarbonisation pathways are believed to be the first steps toward reducing emissions. In the longer-term, many of the largest mining companies may need to rebalance their portfolios by reducing exposure to commodities with a substantial carbon footprint and/or increasing exposure to commodities used in renewable technologies.

While demand for coal may be in decline, new technologies supporting decarbonisation such as wind turbines, solar photovoltaics, electric vehicles, and energy storage, will increase demand for other minerals. In particular, the rise of electric vehicles and the use of battery storage will likely create growth markets for lithium, nickel and cobalt. Further, emerging technologies in hydrogen fuel cells and carbon capture could boost demand for platinum, palladium and other related materials.

### **Expansion of the Exploring for the Future program**

The Exploring for the Future Program is dedicated to exploring Australia's resource potential and boosting investment. Led by Geoscience Australia, the program launched in 2016 with AU\$100.5 million in funding and was initially focussed on northern Australia. In June 2020, the Commonwealth Government announced that an additional AU\$125 million of funding over four years to expand the program across the whole of Australia.

As part of the program, Geoscience Australia are utilising innovative techniques to collect new scientific data and information, on an unprecedented scale, about the mineral, energy and groundwater resource potential concealed beneath Australia's unexplored surfaces.

On 11 August 2020, the Commonwealth Minister for Resources, Water and Northern Australia, Keith Pitt announced that two new resource potential corridors spanning the length of mainland Australia would be the focus of a AU\$125 million expansion of the Exploring for the Future program. At these early stages, Geoscience Australia have suggested that both corridors have potential for new resource discoveries of groundwater, conventional and unconventional oil and gas, and a wide range of minerals including gold, base metals and critical minerals. Both corridors stretch across thousands of kilometres and together cross through five States and the Northern Territory. Fieldwork over the corridors is expected to start in the 2020-21 financial year. Over the past years Geoscience Australia has worked across northern Australia to deliver data about the region's mineral, energy and water resource potential to industry, government and communities.

In the next four years, Geoscience Australia will partner with these jurisdictions as well as continue to engage with a range of stakeholders (government agencies, local councils, pastoral leaseholders, local indigenous groups and local councils) to fill in the data and knowledge gaps of

where new resources are located. It aims to combine all the regional-scale data it collects over the next four years to create continental-scale maps of resource potential.

### **Senate Inquiry into Rio Tinto site destruction**

The Senate has referred the inquiry into Rio Tinto's destruction of 46,000 year old caves at the Juukan Gorge (in the Pilbara region of Western Australia) to the Joint Standing Committee on Northern Australia for inquiry and reporting by 30 September, which has now been extended to 9 December 2020.

The two sacred Aboriginal shelters were destroyed in May as part of Rio Tinto's expansion of the Brockman 4 iron ore mine, its flagship iron ore operation which generates more than 90% of its earnings. The Aboriginal shelters are located on the ancestral lands of the Puutu Kunti Kurrama and Pinikura (PKKP) people in the Pilbara region and previous studies indicated that the caves were of great archaeological significance and contained an enormous wealth of information about the PKKP people's ancestors' work and lives.

The Senate enquiry was announced amidst global outrage at Rio Tinto's decision to destroy the ancient site. The terms of reference for the Senate inquiry include, amongst others, the operation of the *Aboriginal Heritage Act 1972* (WA), Rio Tinto's consultation efforts with Indigenous peoples prior to the destruction, Rio Tinto's decision-making processes, resultant loss or damage to the Traditional Owners and PKKP people, heritage and preservation work conducted at the site and interaction between, effectiveness and suggested improvements to State, Territory and Commonwealth heritage laws.

The destruction occurred with the authority of Rio Tinto's board of directors and pursuant to an agreement with the PKKP people in 2012 which secured their consent and support for Rio Tinto's future operations including consent to any necessary approvals for the destruction of Aboriginal cultural heritage. The Senate inquiry revealed that Rio Tinto was presented with four options to develop the mine, three of which would have avoided destroying Juukan Gorge. Rio Tinto chose the only option destroying Juukan Gorge to gain access to higher volumes of high-grade iron ore worth around AU\$135 million.

Both the Commonwealth Government and the Western Australian Government are reviewing its respective Aboriginal heritage protection laws (see below in relation to the draft *Aboriginal Cultural Heritage Bill 2020* (WA)).

### **Rio Tinto executives resign after Aboriginal site destruction**

Rio Tinto's executives have been forced to resign after the company's failure to stave investor backlash over the destruction of the Juukan Gorge caves. Chief Executive Officer – Jean-Sebastien Jacques, Head of Iron Ore – Chris Salisbury and Corporate Affairs Chief – Simone Niven, will leave Rio Tinto. This was subsequent to clear calls by its key stakeholders about the inadequacy of the board's initial proposal to limit penalties to the executives to about AU\$7 million in bonus cuts and keep all three executives to rebuild the company's reputation. As Rio Tinto seeks to repair strained relationships following the destruction, leading superannuation funds and Indigenous groups represented by the National Native Title Council have warned that the executive exit is only the first step to rebuilding trust with the Traditional Owners, the PKKP people, and the wider Australian community.

Rio Tinto has also faced pressure to release in full the internal review of its destruction of Juukan Gorge, originally stating it would only provide key findings of the review to the Government. Rio Tinto has appointed former Australian High Commissioner to the United Kingdom, Michael L'Estrange, to lead the review. Mr L'Estrange has been a non-executive director of Rio Tinto. The

review would investigate the company's heritage management processes in light of this incident and would allow recommendations to be made to improve its internal governance. The review will gather input from Rio Tinto employees and the PKKP people.

Rio Tinto has pledged its support to reform Aboriginal heritage laws and is said to be working with traditional owners to ensure its processes are appropriate for the protection of culturally important sites and that it has appropriate internal accountabilities.

### **Social licence to mine**

Following from the events at Juukan Gorge, a coalition of global investors managing assets worth around AU\$14 trillion have written to Australia's biggest mining companies calling them into account and demanding assurances about their relationship with the traditional custodians of the land on which they operate. On 29 October 2020, the coalition investor group, including America's Fidelity, the Church of England Pensions Board and other top Australian super funds, wrote in a letter that in order to maintain their long-term mining investments they needed to have confidence in how mining companies obtained and maintained their social licence with the First Nations People. The letter was largely addressed to miners with operations in Australia such as BHP, Glencore, Fortescue Metals Group, South32, OzMinerals, Newmont, Anglo American and Northern Star.

In the letter, the investor group stated that the Juukan Gorge incident had exposed investors to material investment risk. To mitigate such risk, the investor group seeks to understand how mining companies are managing cultural heritage and First Nations and Indigenous community relations to ensure that a similar destruction is not repeated. The investor group stated that it intends to gather responses from mining companies before initiating a dialogue involving input from community representatives and mining executives.

The Rio Tinto site destruction has been a turning point for mining companies and investors making long-term decisions about the importance of appropriately managing risks associated with Indigenous heritage. Not only will this mitigate financial risk for investments and reputational risk for mining companies, it will also ensure that fairer and sustainable outcomes are reached for Indigenous communities and mining companies.

### **Senate report recommends passing of Native Title Amendment Bill**

The Senate Legal and Constitutional Affairs Legislation Committee released a report on 19 August 2020 on the *Native Title Amendment Bill 2019* (Cth) (Bill), recommending the Bill be passed by the Commonwealth Government. The Bill has been subject to consultation and has general support across the native title sector.

The Bill contains a number of reforms to the *Native Title Act 1993* (Cth) which is said to create greater efficiency in the operation of the legislation. Of particular importance, the long awaited validation of section 31 agreements would provide certainty to agreements entered into between mining companies and native title parties. Further, the provision for a section 47C would allow extinguishment of native title over parks to be disregarded, provided agreement is reached. The amendments give native title groups greater flexibility around its own internal processes, amends processes relating to indigenous land use agreements, allows for compensation applications over areas where native title has been extinguished and clarifies the role of the Commonwealth Government to intervene in native title proceedings. The Bill also amends the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) to increase transparency and accountability of registered native title bodies corporate.

For further information about the *Native Title Amendment Bill 2019* (Cth), see our [previous mining update](#).

### **Reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)**

On 20 July 2020, the Interim Report on the independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was released. The Interim Report as part of the statutory review led by Professor Graeme Samuel AC, undertaken every 10 years and examines the operation of the EPBC Act in light of its objectives. The Interim Report contains momentous reform recommendations that aim to ensure effective environment protection and biodiversity conservation in addition to the efficient regulation of business.

The Interim Report provides the following proposals:

- development of legally enforceable National Environment Standards for matters of national environmental significance (MNES), decision-making processes, compliance and enforcement so that they are concise and outcomes focused benchmarks;
- development of 'single touch' bilateral approval agreements with willing States and Territories;
- development and implementation of regional and strategic national plans to manage landscape-scale threats to MNES;
- establishment of a publicly available, national environment information database to inform decision making and enhance transparency;
- legislative amendments to the EPBC Act in the near future to address inconsistencies, gaps and conflicts and to better facilitate administration of bilateral agreements;
- legislative amendments to the EPBC Act further in the horizon to substantially redraft the act to reduce complexity and remove unnecessary regulatory burden;
- establishment of an independent compliance and enforcement regulator equipped with a range of powers and empowered to impose higher penalties; and
- establishment of a clear, market-based environmental offsets framework.

The Final Report on the review will be provided to the Commonwealth Environment Minister by 31 October 2020.

In response to the Interim Report the Commonwealth Environment Minister, Sussan Ley on 27 August, introduced the first tranche of reforms to the EPBC Act through the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Approvals Bill 2020)* (Cth) (Bill). The Bill seeks to streamline environmental approvals which are enabled by bilateral agreements between the Commonwealth and the States and Territories; one of the recommendations in the Interim Report. Under these agreements, States and Territories assume responsibility for a single process for environmental assessment and approvals that incorporated both state requirements and Commonwealth MNES. After the Interim Report was released in July, all State Premiers agreed in principle to enter into bilateral agreements with the Commonwealth. The Bill aims to cement the legal force of these agreements.

With a date yet to be set for the debate of the Bill in the Commonwealth parliament, other recommendations contained in the Interim Report to be implemented and the Final Report to be released, these oncoming developments will be of significant interest to industry stakeholders.



## Major Changes to Foreign Investment Review Framework

The Commonwealth Government has announced comprehensive reforms to Australia's foreign investment review framework which aim to address national security risks, strengthen compliance measures, streamline approval processes and implement administrative enhancements. The reforms were released in two tranches of exposure draft legislation amending the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth) (FATR) – the first tranche released on 31 July and the second tranche released on 18 September. These reforms are expected to commence on 1 January 2021, at which time the temporary changes in response to the COVID-19 pandemic will cease.

Significantly, the reforms require mandatory notification by a foreign investor of 'notifiable national security actions', regardless of its monetary value. A notifiable national security action means an action to acquire an interest in national security land or an action to acquire a direct interest in, or start, a national security business. National security land includes defence premises, land in which a national intelligence agency has an interest in or land over which the Treasurer has declared to be national security land. We note that mining tenure may overlap such land or be in close proximity to, for example, a Commonwealth defence area. National security businesses include, amongst other categories, an interest holder to a critical infrastructure asset or a business involved in critical goods intended for military end-use. Although mandatory notification currently applies to critical infrastructure assets (such as critical gas or electricity assets), this definition may cover other resource projects for example, where mineral resources are critical for supply chains related to military use.

The reforms vest in the Treasurer a power to review actions that are not already caught by the FATA. Referred to as 'reviewable national security actions', these actions can be called in at any time if the Treasurer considers the investment raises national security concern. The 'call in power' can only be exercised within 10 years from the date the action was taken. The new framework allows investors to voluntarily notify FIRB of the investment to avoid the possibility of being called in for review on national security grounds. It is anticipated that a greater number of foreign investors, generally and in respect of investments in the resources sector, may voluntarily notify FIRB as a precautionary measure. To support these reforms, the Government provides a pathway for foreign investors to apply for an exemption certificate for actions that would otherwise constitute a reviewable national security action (which is defined broadly) or a notifiable national security action. The reforms also introduce a 'last resort' power which allows the Treasurer to impose or vary conditions or in extraordinary circumstances, order disposal of an investment where national security risks emerge.

As part of technical amendments to the FATA, the reforms exempt exploration tenements acquired by private foreign investors from the FATA, regardless of whether the tenement grants a right to occupy. The reforms also exempt the acquisition of revenue streams of mining and production tenements from being a significant or notifiable action where the revenue stream does not include the rights to occupy or have direct control or influence over, land (this would rectify the current uncertainty as to whether grants of royalties would constitute an 'interest in land'). Both exemptions would not apply if the interest is an asset of a national security business or if the interest is in respect of national security land.

Foreign investment has been instrumental in the development of Australia's resources sector. As the proposed changes signify a massive reform to Australia's foreign investment regime, foreign investors should be prepared for closer Government scrutiny of foreign investments and are encouraged to submit comprehensive FIRB applications to ensure compliance with the enhanced regime.

For more information about the legislation, see our comprehensive publication titled, '[Major reforms to Australia's foreign investment framework to commence on 1 January 2021](#)'.

### **Development of the Critical Minerals Portal**

The Critical Minerals Facilitation Office is collaborating with Geoscience Australia to develop a web-based Critical Minerals Portal. The Portal will allow users to assess the economic and geological potential of selected critical minerals within Australia.

Australia has an abundance of critical minerals which are essential to advanced technology applications such as for the digital community, clean energy, transport and defence industries. The Portal aims to increase the visibility of Australia's quality critical mineral resources to international partners around the world and highlight Australia's major potential as an investment destination. The Portal will demonstrate Australia's significant critical mineral endowments and capture existing mines, tailing dams and associated infrastructure. The Portal will be progressively updated by Geoscience Australia using its world class data sets.

The development of the Portal is another significant step in establishing Australia as a key investment destination and reliable supplier of high-grade critical minerals.

### **State-focused recent developments**

For more information about state specific recent developments in the Australian mining sector, see our publication titled, '[Recent Developments in the Australian Mining Sector – around the States](#)'.

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