

## Legal Alert



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### For more information:

John Mollard  
Partner  
+61 3 9617 4450  
[john.mollard@bakermckenzie.com](mailto:john.mollard@bakermckenzie.com)

David Ryan  
Partner  
+61 2 8922 5291  
[david.ryan@bakermckenzie.com](mailto:david.ryan@bakermckenzie.com)

Against a backdrop of slowing economic growth, in the last quarter the State and Federal governments have continued legal reforms which negatively impact the mining sector in Australia. The predicted battle between the State and Federal Treasurers for resource related revenue has begun, with Queensland introducing significant increases in coal royalties, which will likely undercut the Federal Treasurer's MRRT revenue forecasts further.

This edition of the MLU reviews proposed regulatory changes to the reporting requirements of ASX listed mining companies, as well as providing commentary on the changes in State legislation which affect project evaluation in Australia.

## Mining investment report: Local challenges, global implications

In September, Baker & McKenzie released our Thought Leadership Report entitled "Mining investment - local challenges, global implications". The report examines the opportunities and challenges facing our clients in the world's key mining destinations.

Baker & McKenzie surveyed more than 300 senior industry leaders across six key mining jurisdictions - Australia, Brazil, Canada, China, Indonesia and South Africa.

The report highlights the sample's views on the investment risks in each jurisdiction and provides an insight to which jurisdictions are gaining favour with investors, and which are not.

The key themes that influenced decision makers were:

- complexity of legal and regulatory environment
- political stability
- resource nationalism
- access to infrastructure and skilled labour.

Please click [here](#) for a copy of the report.

## National and Industry Regulation

### ASX listing Rules

#### Developments

ASX has released draft amendments to the ASX Listing Rules (and associated Guidance Notes) which would enhance reserves and resources

reporting to investors of ASX-listed mining and oil & gas exploration and production companies. The new proposed amendments are the result of a two year consultation with JORC, industry and ASIC and aim to align Australia's reporting framework with other major mining and oil and gas markets.

The draft amendments propose measures that would affect mining companies, including:

- new requirements for the disclosure of additional information when exploration results, estimates of mineral resources and ore reserves and production targets are disclosed for material projects;
- streamlining of the requirement of prior written consent for the competent person of public reports; and
- companies may report historical or foreign estimates of mineralisation for material projects (subject to certain conditions being satisfied).

The ASX is proposing a 12 month transition period for affected companies to comply with the modified ASX Listing Rules, following regulatory clearance.

The ASX is seeking submissions on the draft amendments by 26 October 2012.

Please click [here](#) for a copy of the draft amendments

## JORC Code

### Developments

The Joint Ore Reserves Committee (JORC) has published an exposure draft of the revised and updated JORC Code. These amendments, in part, underpin the proposed amendments to the ASX listing rules discussed above.

Please click [here](#) for a copy of the proposed amendments

## State and Territory

### Queensland

#### Queensland coal royalties increase

The latest Queensland government budget announced an increase in coal royalties effective 1 October this year. The new coal royalty rates are:

- 7% for coal prices of less than \$100 a tonne
- 12.5% for coal prices > \$100 and < \$150 a tonne
- 15% for coal prices >\$150 per tonne

The Queensland Treasurer stated that the State required additional funds to help fund important mining infrastructure, such as the Abbott Point Port.

As an attempt to comfort investors the Government has guaranteed in its

budget paper that coal royalties will not be increased again until the end of 2022.

As previously discussed, State royalties are a permitted allowance against MRRT calculations, therefore the projected \$1.6 billion of increased revenue for Queensland from this hike in royalties will come directly off the Federal MRRT revenue projections.

While there has been significant media speculation as to whether the large Australian mining companies will have MRRT liabilities in the short term, the increase in royalty will hit every coal producer in Queensland equally.

Please click [here](#) for our client alert on the MRRT  
Please click [here](#) for the Budget paper

### **Environment approval for Alpha Coal project**

GVK's Alpha Coal project have received environmental approval at both Federal and State government level for the proposed pit-to-port rail development. The application process has taken some four years, which delay was due in part to concerns over port dredging and ship traffic along the Great Barrier Reef. While the project obtained environmental clearance from the Queensland government in May, it is the Federal Government approval under the Environment Protection and Biodiversity Conservation Act 1999 which was recently been obtained, subject to 19 conditions.

GVK can now focus on the fund raising necessary to undertake the construction of the Alpha Coal project in the Galilee Basin and a railway line between the mine and the Abbot Point Port. Together with Adani's nearby Carmichael project, the two projects could be "game changing" for the local coal industry, opening the way for development of the estimated combined 15.8 billion tonnes of JORC compliant thermal coal resource in the Galilee Basin.

### **Queensland coal mine closures**

Due in part to softening in the Newcastle coal price, BHP Billiton has announced in the past few months the temporary closure of its Gregory coking coalmine and the Norwich Park coking coalmine and shelved plans to proceed with the Saraji East coal development. It reminds the industry that marginal projects come on line with high prices, but may not continue to be viable in times of price volatility.

BHP Billiton's closures join a number by Rio Tinto (including the early closure of the Blair Athol coal mine) and by Anglo American Coal and Xtrata.

## **Victoria**

### **Victoria places a moratorium on fracking**

The Victorian Government has announced a moratorium on approvals for coal seam gas exploration wells involving fracking techniques. The ban does not affect current coal seam gas exploration that do not involve fracking.

While there currently is no coal seam gas production in Victoria, a number of

companies believe that the potential in the vast lignite belts is significant. The moratorium also captures tight gas exploration wells.

The Minister for Energy and Resources has stated that the moratorium in Victoria may last until there is a national approach developed. The new national guidelines are expected to be finalised at the end of the year.

The recent ban on fracking in NSW was lifted in mid-September this year in association with the introduction of the new Strategic Regional Land Use Policy (discussed below). The ban has been replaced by a Code of Practice for fracking.

Please click [here](#) for the link to the Code of Practice.

## Western Australia

### Mine rehabilitation fund

The Western Australian government has introduced the *Mining Rehabilitation Fund Bill 2012 (WA)* (MRF Bill) and the *Mining Rehabilitation Fund Amendment Bill 2012 (WA)* (MRF Amendment Bill). These two pieces of legislation are the result of a four year review into the current regime of environmental securities in respect of mining tenements in the State.

The proposed legislation will impose a new annual levy on holders of 'mining authorisations' (including mining tenements and rights of occupancy) that have been issued in Western Australia. Funds raised by the levy are to be paid to the Mining Rehabilitation Fund, a new government-administered fund, which will be available for rehabilitating land affected by mining operations on abandoned mines. The levy will generally replace the unconditional performance bond regime which currently exists in the State, although the existing performance bond system may persist in respect of certain mining tenements (for example, those granted under Government agreements). The repeal of the performance bond regime and the transitional provisions will have to be implemented by amendments to the Mining Act 1978 (WA).

The MRF Bill does not detail the practicalities of the operation of the new system. The MRF Bill is silent regarding the size of the levy although the Second Reading Speech has indicated that the levy may initially be calculated at 1% per annum of the total mine closure cost. Detail will be provided by regulations made under the Act, which have not yet been drafted.

Please click [here](#) for the MRF Bill

Please click [here](#) for the MRF Amendment Bill

## New South Wales

### Strategic Regional Land Use Package released

The New South Wales Government has released its Strategic Regional Land Use Plans (SRULPs) for the Upper Hunter and New England North West regions. It has also released an Aquifer Interference Policy that will apply to

the whole of NSW and two coal seam gas codes of practice. These measures are intended to protect strategic or valuable agricultural land and its water sources from inappropriate mining and coal seam gas projects.

The SRULPS map land as being "Biophysical Strategic Agricultural Land" or as being part a "Critical Industry Cluster". The SRULPS introduce a Gateway Process for the approvals for coal seam gas and mining projects. The Gateway Process will apply to mining and coal seam gas projects that are significant developments; require a new mining lease (or petroleum production lease); and which are located in Biophysical Strategic Agricultural Land or a Critical Industry Cluster.

For the SRULP to apply, the project will be subject to a site inspection for verification that the land falls within one of the two protected categories of land. If positively verified, the project must apply for and lodge a gateway certificate before the project can proceed for assessment under the New South Wales planning legislation as a State significant development. The gateway certificate application will be assessed by an independent Mining and Coal Seam Gas Gateway Panel (Panel), to be comprised of industry experts, which will assess the application according to criteria set out in the SRULP.

Interestingly, the Panel may not refuse to issue the gateway certificate, rather it may issue a conditional certificate where all of the assessment criteria have not been met. The project owners may still apply for a permit under NSW planning regulations with a conditional certificate but must, in the meantime, address the conditions imposed in the gateway certificate in an environmental impact assessment. No or limited compliance with the conditions of the gateway certificate will be taken into account in determining whether approval is given.

The New South Wales SRULPs echo the Queensland Strategic Cropping Act 2011 (Qld) which protects areas of land falling under certain "Strategic Cropping Land".

Please click [here](#) for our April MLU which discusses the issue in further detail.

Please click [here](#) for documents relating to NSW Strategic Land Use Package.

## **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)