MINING SECTOR **UPDATE**

AUSTRALIA AND PAPUA NEW GUINEA

OCTOBER 2017

INTRODUCTION

Welcome to the October 2017 edition of the Mining Sector Update from Corrs Chambers Westgarth. Published each month, this briefing keeps you up-to-date with recent mining deals, market rumours, potential opportunities and relevant regulatory updates.

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IN THIS EDITION

- Corrs Partner Brent Lillywhite asks the Shadow Minister for Environment and Heritage Protection what a financial assurance framework might look like under a Queensland LNP Government
- Key changes to Queensland and NSW coal mining legislation – we review the landscape
- WA's new budget reforms – what impact will these have on the hip pocket of WA miners?

RECENTLY COMPLETED DEALS

PEABODY SELLS BURTON COAL MINE[1]

On 5 September 2017, **Peabody Energy** announced that it had entered into an agreement to sell the majority of its **Burton mine** and related infrastructure to the **Lenton Joint Venture (LJV)** for approximately US$11 million.

The LJV will assume the reclamation obligations associated with the assets being acquired by the LJV, reducing Peabody's asset retirement obligation by approximately US$53 million while also releasing an estimated $30 million of restricted cash. The Burton mine, located in Queensland's Bowen Basin, entered a care, maintenance and rehabilitation phase in December 2016.

The transaction is conditional on a number of regulatory and other requirements and completion is expected to take place in the first half of 2018.

YANCOAL COMPLETES COAL & ALLIED ACQUISITION

The *Australian Financial Review* and IHS Energy's *Australian Coal Report* have reported that **Yancoal Australia Limited** completed its $2.69 billion acquisition of **Coal & Allied** from **Rio Tinto**.

In completing the acquisition, Yancoal gained a 67.6% interest in the **Hunter Valley Operations mine**, an 80% interest in the **Mount Thorley mine**, a 55.6% interest in the **Warkworth mine**, a 36.5% interest in **Port Waratah Coal Services** and a number of undeveloped assets. *Australian Coal Report* noted that Glencore intends to acquire a 49% stake in Hunter Valley Operations (16.6% from Yancoal and 32.4% from **Mitsubishi Development**).

RAMELIUS TO TAKE EDNA MAY

Ramelius Resource Limited's acquisition of the **Edna May gold mine** from **Evolution Mining** was announced on 18 September 2017. Ramelius will pay up to $90 million for the Edna May mine, comprising up to $50 million of contingent consideration comprising a royalty and cash and / or Ramelius shares and a $40 million cash payment payable on completion. The transaction is expected to close on 3 October 2017.

1 Corrs partners Bruce Adkins and Robert Clarke led the team which advised Peabody in relation to this transaction.

MARKET RUMOURS AND OPPORTUNITIES

Spring has long been touted as the best time to sell a house but judging by the number of coal projects that have just come onto the market, it looks like a few miners also consider it to be the perfect season to sell a coal mine.

RIO DIVESTMENT OF KESTREL AND HAIL CREEK ON THE STARTING BLOCKS

The *Australian Financial Review* has reported that the data room for **Rio Tinto**'s sale of its interests in the **Kestrel underground** and **Hail Creek open cut coal mines** will be opened to potential bidders early this month, with first round bids due in late November.

BIDDERS KICKING THE TYRES ON GREGORY CRINUM

According to the *AFR*, potential purchasers of coking coal projects are in the data room for the sale of **BHP** and **Mitsubishi's Gregory Crinum mine**, with indicative bids reported to be due by 20 November.

BROOKFIELD RUMOURED TO TAKE A TILT AT ROLLESTON

In our September Mining Sector Update, we noted that **Glencore** and its joint venture partners had been reported to have commenced a sale process to sell the **Rolleston thermal coal mine**. The line-up of potential bidders could be about to get interesting, with The *AFR* reporting that an acquisition of Rolleston could offer a "cost-efficient path" for Canadian asset infrastructure manager **Brookfield** to pick up an interest in the **Wiggins Island Coal Export Terminal**.

REGULATORY UPDATES

"Maximum financial penalties will be increased ... and extended to officers and other individuals"

QUEENSLAND

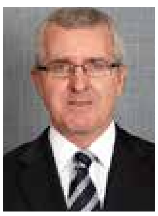
Mines Legislation (Resources Safety) Amendment Bill 2017 introduced

The Mines Legislation (Resources Safety) Amendment Bill 2017 was introduced to the Queensland Parliament on 7 September 2017. The Bill is directed at implementing additional health and safety measures to protect miners in Queensland, following the re-identification of coal workers' pneumoconiosis (commonly referred to as "black lung" disease).

Key amendments are proposed to the *Coal Mining Safety and Health Act 1999* (**CMSHA**) and the *Mining and Quarrying Safety and Health Act 1999* (**MQSHA**), a number of which seek to align the provisions of the CMSHA and MQSHA with the *Work Health and Safety Act 2011*.

If the Bill is passed in its current form:

- the right of entry of mines inspectors will be extended to off-mine-site workplaces, where activities affecting the safety and health of mine workers are carried out (however, the scope of entry will remain limited by the objects of the CMSHA and MQSHA and the functions of the mines inspectorate)[2];
- to address the potential for inconsistencies between the safety and health management procedures of contractors and the mine, contractors will be required to provide a copy of their safety and health management plan (**SHMP**) to the mine's site senior executive (**SSE**). The SSE will consider whether the contractor's SHMP (and the mine's SHMP) are to be amended to provide for a single, integrated plan;
- maximum financial penalties will be increased to more closely align with the penalties within the *Work Health and Safety Act 2011* and will be extended to officers and other individuals;
- officers of a corporation will be under a duty to take steps to ensure compliance with the Acts through monitoring, auditing and reviewing the safety and health performance of the corporation. The Explanatory Notes to the Bill identify this as a "deliberate policy shift away from applying 'accessorial' or 'attributed' liability to officers, to a requirement for officers to be proactive"[3];
- the chief executive will be able to impose civil penalties on corporations which are a mine operator or contractor, and which fail to comply with certain requirements of the Acts. Three categories of civil offences are proposed, based on the level of safety and health risk posed to persons at the mine. The highest maximum penalty of $126,150 applies for a category 1 offence.



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2 Explanatory Notes, page 7.

3 Explanatory Notes, page 12.

WESTERN AUSTRALIA

Western Australia budget targets mining sector and big business for tax increases

Big business, and specifically the gold mining sector, has been targeted by the WA government for tax increases in its State budget announced on 7 September 2017. The changes come amidst the deterioration of the WA State budget, in part due to falls in WA's share of GST revenue from the Commonwealth and mining royalties, leaving it with an estimated deficit of A$2.3 billion in the current financial year. The projection is for net debt to peak at June 2020, coinciding with the budget returning to surplus by 2020/21.

The budget papers seem to acknowledge that government cannot rely on wages growth to support the budget position by identifying weakness in wages growth in "payroll tax-intensive industries (like mining)" as contributing to "weaker than anticipated underlying payroll tax collections". The response is that, from 1 July 2018, businesses with a national payroll in excess of $100 million will have their marginal payroll tax rate increase from 5.5% to 6%. The marginal payroll tax rate for those businesses with a national payroll of over $1.5 billion will increase to 6.5%. The WA government expects this to affect less than 8% of all employers liable for payroll tax in WA, with the State's largest employers – which would include **BHP**, **Rio Tinto** and the big four banks – bearing the highest increase. The WA government has estimated that one-fifth of the additional revenue will come from the largest of the iron ore miners. This measure is slated to be in place for five years. Notwithstanding the high thresholds before the new rates will apply, the increases in WA payroll tax rates place the State at the high end of payroll tax rates compared to Queensland (4.75%), New South Wales (5.45%) and Victoria (4.85%).

As discussed in our article below, the gold mining industry has also been singled out for a royalty increase from 1 January 2018. Businesses have, for the most part, been spared from the direct impact of a new foreign resident purchaser surcharge of 4% on residential housing from 1 January 2019. While the introduction of a 4% surcharge in addition to usual stamp duty rates on residential property sales may dampen demand amongst overseas buyers for WA real property, housing construction activity should be protected to some degree by an exemption from the surcharge for residential developments of ten or more dwellings. Residential land with commercial or predominantly commercial use will also be exempt. In a change from recent WA budgets, the government has not flagged any increases in land tax.

As for what's next, Australia's big banks will no doubt continue to monitor the performance of the WA economy with the Treasurer telegraphing a potential return to a State-based bank levy on the major banks (following the lead set by South Australia). The Treasurer's statement was a reflection on the reduction in WA's share of the GST revenue from the Commonwealth – the introduction of which saw State governments abolish their own bank levies.

"businesses with a national payroll in excess of $100 million will have their marginal payroll tax rate increase to 6%"

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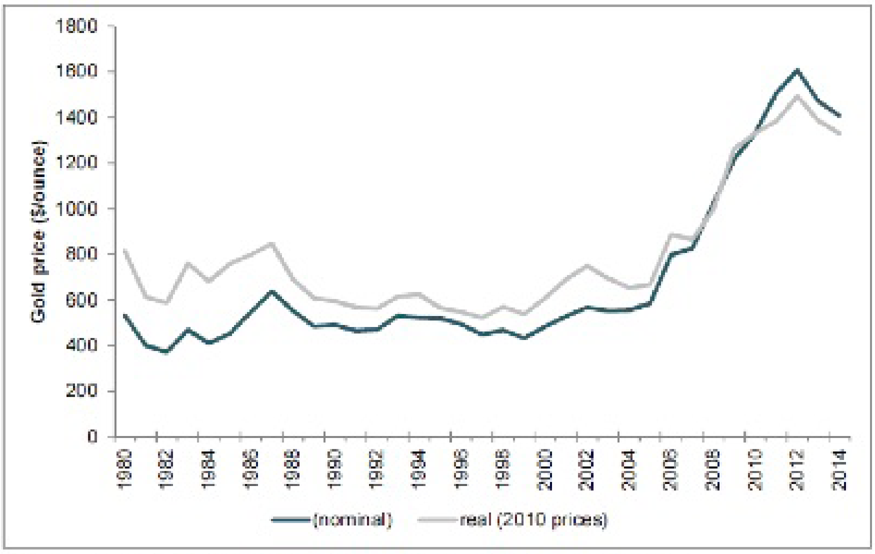
Western Australian government introduces new gold royalty

Key inclusions in the WA 2017/2018 State Budget are the changes to the gold royalty system that are set to take effect on 1 January 2018.

There are two major changes to the existing gold royalty. The first is an increase in the royalty rate for gold to 3.75% when the spot price is above A$1,200. The current gold spot price is approximately A$1,350 and Treasurer Wyatt identified that he expected the gold price to remain above A$1,200 for the next four years. The increase is expected to result in an extra A$20 of royalty per ounce of gold produced, at a total of approximately A$392 million in extra gold royalties over a four year period.

Gold Spot Price Monthly Average	A$1,200 per ounce or less	Above A$1,200 per ounce
Royalty Rate	2.5%	3.75%

The second change is to remove the existing royalty exemption for the first 2,500 ounces of gold produced each year for miners who produce more than 2,500 ounces per year. The government provided this concession to gold producers when the gold royalty was introduced in 1998. This change is expected to affect about 50 gold mines in WA, and will take effect from 1 July 2018.



Source: Bureau of Resource and Energy Economics, Reserve Bank of Australia and the World Bank

Source: Mineral Royalty Rate Analysis Final Report 2015, Department of State Development and Department of Mines and Petroleum, Western Australia.

In 2015, the WA Department of Mines and Petroleum submitted a report that recommended the royalty rate for gold be increased to 3.75%. The royalty system in Western Australia is based on delivering approximately 10% of the mine-head value (being the value of the ore at the first point at which the ore could be stockpiled). The report concluded that at a royalty rate of 2.5%, the return for gold as a percentage of mine-head value was approximately 4.6%. The report also noted that the gold industry was able to adjust project costs in response to price, and that WA gold royalties were relatively lower compared to other Australian jurisdictions.

As expected, the gold industry has rallied against the proposed changes, with commentators and key industry personnel warning of the potential adverse consequences. **Gold Road Resources** CEO, Ian Murray, said: "There won't be jobs growth because exploration is going to be curtailed and new projects won't be discovered."[4]

The State government has argued that WA's gold royalty rate is low compared to other jurisdictions. Mr Murray said that WA's vast distances meant cost of production is higher: "Our project is 1200 kilometres away from Perth. Average costs at the moment are around $1100/oz. At $100 margin, there won't be much of an industry."[5]

Analysts have expressed concern that the impact of the royalty increase could be far greater, depending on the cost base of the mine. In particular, smaller, higher cost, mines may be likely to see larger changes to their cash margins. The WA government has defended the royalty increase on the basis that the gold industry has consistently provided a lower return to the state than other major commodities in WA and that mining costs in the gold industry are, on average, no higher than mining costs of other commodities.

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4 http://www.sbs.com.au/news/article/2017/09/08/wa-treasurer-rejects-gold-miner-threats.

5 http://www.sbs.com.au/news/article/2017/09/08/wa-treasurer-rejects-gold-miner-threats.

NEW SOUTH WALES

Coal Mine Subsidence Compensation Act 2017 (NSW) receives assent

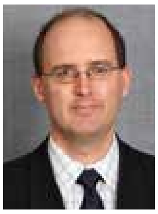
On 14 September 2017, the *Coal Mine Subsidence Compensation Act 2017* (NSW) (**New Act**) received assent. It repeals and replaces the *Mine Subsidence Compensation Act 1961* (NSW) (**Old Act**) and makes proprietors of active coal mines **directly liable** for damage arising from subsidence caused by their coal mines and for related preventative or mitigative expenses.

Under the Old Act, coal mine proprietors were required to pay a levy into the Mine Subsidence Compensation Fund (**MSCF**) (administered by the Mine Subsidence Board (**MSB**)). Claims for damage caused by mine subsidence were made against and paid by the MSCF and determined by the MSB.

Under the New Act, compensation will either be payable by the Chief Executive of Subsidence Advisory NSW (**Chief Executive**) or the **individual proprietor** of an active coal mine (where a mining lease is current). Key changes include:

- coal mine proprietors will be required to pay a levy to the Coal Mine Subsidence Fund in certain circumstances. Claims relating to non-active mines will be paid by the Chief Executive from this fund;
- a person seeking compensation will need to make an application to Subsidence Advisory NSW (which will replace the MSB). The Chief Executive will determine if the claim is valid and if so, the relevant coal mine proprietor must determine the claim in accordance with approved procedures (which have not been published at this stage);
- a coal mine proprietor who deals with the claim in accordance with the provisions of the New Act and complies with its mining lease conditions will not be liable under any other law in relation to the claim;
- if a coal mine proprietor breaches the New Act in respect of the claim determination or payment, the Chief Executive may determine the claim, make the payment and seek to recover the amount from that proprietor;
- contracting out of the New Act is prohibited; and
- contravention of the New Act can be taken into account by the Minister in determining whether to grant, renew or transfer mining leases.

The commencement date for the New Act has not yet been proclaimed.



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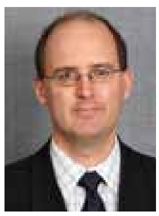
OTHER NEWS

QUEENSLAND INVESTS $25 MILLION TO PROTECT COAL WORKERS

The Queensland government has announced that it will invest $25 million ($21.051 million in addition to an existing commitment of $3.737 million) over the next two years to protect the health and safety of coal workers. This additional investment will build on measures which have already been implemented, and the proposed changes to mining health and safety legislation outlined above.

CHINA RESTRICTS COAL IMPORTS

The *Australian Financial Review* has reported that in an effort to promote greater use of domestic coal, the Chinese government has introduced a policy imposing "unofficial import quotas" at ports that will result in a reduction of total coal imports by 10% in the second half of 2017. Whilst the Chinese government has not officially announced measures directed at curbing coal imports, any such policy could hurt Australia's coal exports to China (worth $8 billion in 2016) through resulting increases in the price of imported coal. The Australian reports that, in response, the Federal government tabled the issue for discussion at Australia and China's annual economic commission, held in Hangzhou on 15 September 2017.



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STANMORE COAL LIMITED ANNOUNCES BOARD CHANGES

On 18 September 2017, **Stanmore** announced the retirement of long-serving Chairman, Mr. Neville Sneddon and the appointment to the Board of Mr. Stewart Butel and Mr. Neal O'Connor.

Mr. Butel has more than 40 years of experience in operational management and board roles in the resources industry. He joined **Wesfarmers Limited** in 2000 as Managing Director of the Curragh mine, and was Managing Director of **Wesfarmers Resources** between 2006 and 2016. He is the immediate past President of the QRC and has held directorships of a number of resource industry bodies.

Mr. O'Connor has 30 years of legal experience in private practice in Australia and the UK. He was Company Secretary and General Counsel of the global copper business unit of **Xstrata plc** between 2003 and 2013, prior to which he was the General Manager Legal at **MIM Holdings**. He is currently a non-executive director of **Mitchell Services** and **Dingo Software**.

WHAT WOULD THE FINANCIAL ASSURANCE FRAMEWORK LOOK LIKE UNDER A QUEENSLAND LNP GOVERNMENT?

The Financial Assurance (**FA**) framework in Queensland has been under review since July last year. With a Queensland State election likely to be called within the next few months, what would the FA system look like under an LNP government if elected? In short – probably the same as Labor is proposing.

In a recent one-on-one meeting with the LNP's Shadow Minister for Environment and Heritage Protection, Dr Christian Rowan, we questioned the LNP's policy approach to the FA framework reform. Dr Rowan supports the principles of FA, as it provides financial security for the government. This support may come in the form of covering legal costs (incurred in taking action to prevent environmental harm from mining activities) or it may also be applied in the rehabilitation of legacy sites.

Late last year, Queensland Treasury Corporation (**QTC**) reviewed the current FA framework in consultation with government departments, industry and other key stakeholders. This included a risk assessment of resource companies becoming insolvent and whether the current FA arrangements are proportionate to that risk profile. QTC found that the current FA framework does not protect the State's financial interests, is expensive for industry, and does not promote good environmental outcomes.

The current Queensland Labor government's position on FA is largely consistent with that outlined by QTC. The proposed redesigned FA framework is based on a four category "tailored solution" that differentiates between the portfolio of resource companies, adopting a tiered approach based loosely on a more detailed credit rating system. Mining companies that have an acceptable level of risk will have access to a pooled Rehabilitation Fund, however some companies could face significant financial increases.

Shadow Minister Rowan has spoken to a wide range of stakeholders, from mining operators to contractors to environmental groups. He sees key stakeholders as "comfortable with the process" that QTC adopted as part of its FA review. Dr Rowan provided no indications of any policy changes proposed if an LNP government was elected into power but did say he wouldn't want to "reinvent the wheel", particularly given the feedback he has received from the industry.

There are certainly some benefits to the mining sector from a revised FA framework that adopts "the tailored solution", as it recognises the varying sizes, risk profile and financial stability of the resource companies operating in Queensland. However, under the current proposed reform, which appears to have support from both the LNP as well as Labour, some companies may find themselves unable to qualify for the discounts, meaning that they might end up paying significantly more.

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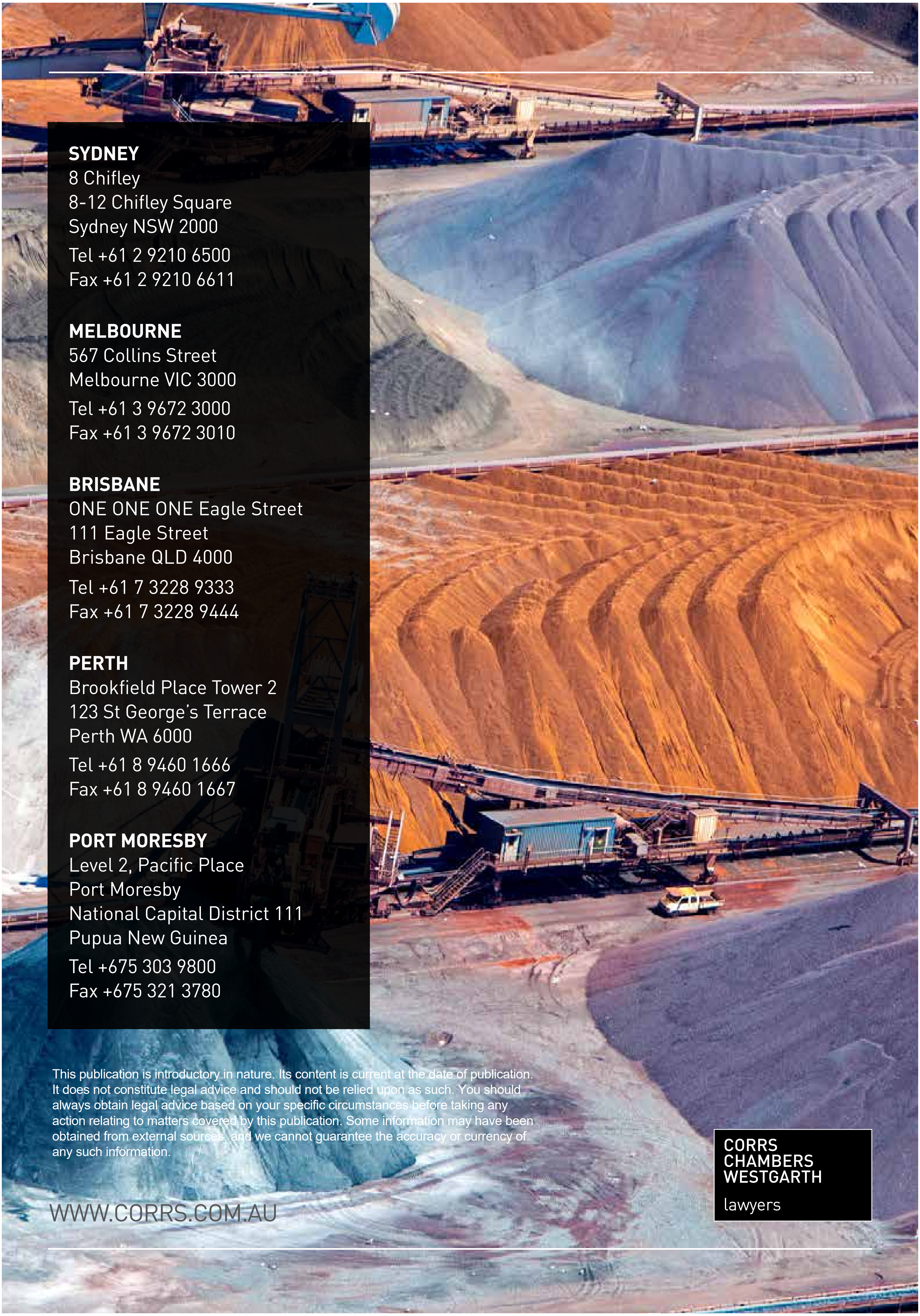

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