MINING SECTOR UPDATE

AUSTRALIA AND PAPUA NEW GUINEA

NOVEMBER 2017

INTRODUCTION

Welcome to the November 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

- We review the market rumours and opportunities across Australia and PNG.
- Partner Michael MacGinley considers the National Energy Guarantee and the impact it will have on energy retailers.
- A look at Adani's plans for 2018. What's next for the Indian giant?

RECENTLY COMPLETED DEALS

Queensland Mining Corporation sells White Range Project

ASX-listed **Queensland Mining Corporation** has announced it has signed a binding share sale agreement with **Moly Mines Limited** (**MML**) to sell 100% of its **White Range Project**, an advanced copper-cobalt-gold project located 40km south of Cloncurry held by five of its subsidiaries. MML will pay A$53 million for the acquisition, comprising A$45 million cash and A$8 million in MML convertible notes.

MARKET RUMOURS AND OPPORTUNITIES

Where to for Barrick Gold's Super Pit goldmine?

Speculation continues to surround **Barrick Gold's Super Pit gold mine**. Earlier this year, Chinese group **Shandong Tyan Home** abandoned its US$1.3 billion offer to acquire a stake in the asset. *The Australian* suggests the **Super Pit gold mine** is expected to be placed back on the market, with existing shareholder **Newmont Mining** tipped as the most likely buyer.

Anglo-American eyes further investment in Queensland coal

According to *The Australian*, **Anglo-American** is eyeing further investment into its existing Queensland coking coal mines, and may consider new projects. **Anglo-American's** renewed investment interest follows recent strong showings by the company on the back of cost-cutting, a restructuring of assets and a resurgence in coal prices.

The Australian reports that moving forward, **Anglo-American** will leverage "a fourfold increase in productivity to pursue incremental growth in the Queensland coking coal business" with chief executive Mark Cutifani citing Grosvenor, Moranbah and Aquila (part of Capcoal) as assets with potential for growth. **Anglo-American's** head of iron ore and coal, Seamus French, told *The Australian* "the kind of opportunities we'd be looking for would be partnering in longwall projects where we can bring in an operational competitive edge".

Mr Cutifani is reported to have expressed confidence in the Chinese coal market. He revealed in the article that, despite calls from JP Morgan for **Anglo-American** to spin off its South African business, the company has no plans to do so.

Rio Tinto tipped to dispose of Pacific Aluminium

The *Financial Times* has reported that ASX-listed **Rio Tinto** is holding discussions with Sanjeev Gupta's **GFG Alliance** regarding the sale of **Rio Tinto's** New Zealand and Australia-based aluminium assets **(Pacific Aluminium)**. **Century Aluminium** (which is 47% owned by **Glencore plc**) is also said to be interested in acquiring **Pacific Aluminium**.

Telfer mine expansion receives green light

The Australian has reported that, in the wake of the Western Australian government's proposed gold royalty hike being blocked, ASX-listed **Newcrest Mining** has announced that it will proceed with a A$93 million expansion of its **Telfer gold mine**. Under the proposal, **Newcrest Mining** will expand the wall of the mine's West Dome Pit and extend the life of the mine to 2023.

According to *The Australian Financial Review*, **Newcrest Mining** has welcomed the blocking of the royalty increase. **Telfer gold mine** executive general manager Phil Stephenson told *The Australian Financial Review* **Newcrest Mining** will now examine further open cut and deep underground expansions.

Bounty Mining emerges as successful bidder for Cook Colliery coal mine

According to *The Australian*, ASX-listed **Bounty Mining Limited** is set to acquire **Caledon Coal's Cook Colliery coal mine** for approximately A$30 million. The sale, however, appears to be far from certain. **Caledon's** shareholder, lender and owner **Guangdong Rising Asset Management**, is reportedly obstructing the deal and refusing to honour its debt guarantee if the sale progresses on the basis that it is below the asset's value.

Acquisitions on agenda for Whitehaven and Stanmore

The Australian Financial Review reports that ASX-listed miner **Whitehaven Coal Limited** is cashed-up off the back of strong coal prices and is eyeing acquisitions. According to *The Australian Financial Review*, recent comments from Whitehaven chairman Mark Vaile have fuelled speculation Whitehaven is pursuing a large acquisition in Queensland.

REGULATORY UPDATES

AUSTRALIA

Turnbull Government introduces National Energy Guarantee

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On 17 October 2017, the Turnbull Government announced a new National Energy Guarantee (**NEG**) in lieu of the Clean Energy Target (**CET**) recommended in the Finkel report.[1] Acting on the recommendation of the newly established Energy Security Board, the Commonwealth Government plans to implement the NEG with the aim of delivering affordable and reliable electricity whilst producing fewer emissions and providing certainty for energy investors.

According to the Energy Security Board, under the NEG, wholesale electricity prices will fall by 20-25% between 2020-2030 and, over that period, "typical" households can expect to see their electricity bills fall by an average of A$110-A$155 per annum. These forecast figures are lower than those modelled under the CET.

Fundamental Features

The NEG includes two main pillars that will place reliability and emissions obligations on energy retailers and some large energy consumers. The two pillars are:

1. the reliability guarantee
2. the emissions guarantee.

The Reliability Guarantee

The reliability guarantee will require a level of each State's power, set by the Australian Energy Market Commission (**AEMC**) and Australian Energy Market Operator (**AEMO**), to be "dispatchable". The level set by the AEMC and AEMO will be dynamic and will change according to system demand.

Under the reliability guarantee, individual energy retailers will have an obligation to source a prescribed level of energy (based on a percentage of their load requirements) from "dispatchable energy facilities." Dispatchable energy facilities are those whose output may be altered by the market operator in response to an increase or decrease in demand. Whilst the accepted sources of dispatchable energy are yet to be defined, the report produced by the Department of Environment and Energy (**Department**) cites coal, gas, pumped hydro and batteries as contemplated sources.

The Emissions Guarantee

The Commonwealth Government will set the level of the emissions guarantee to be consistent with Australia's obligations under the Paris Agreement. Once the level is set, energy retailers will be required to meet average emissions intensity obligations for their load requirements. These requirements will be enforced by the Australian Energy Regulator.

1. For a detailed discussion on the Finkel Report, see our article here.

It will be up to the individual retailers as to how they meet their emissions obligations. The Department's report suggests energy retailers may choose to:

1. invest directly in lower emissions technologies;
2. enter into contracts with generators specifying the emissions produced by that electricity; or
3. contract with another retailer that has overachieved its emissions obligations.

"'typical' households can expect to see their electricity bills fall by an average of A$110-A$155 per annum"

Implementation

The Commonwealth Government proposes to work with the Energy Security Board and the States through the COAG Energy Council to implement the NEG. It is expected that a high-level NEG plan will be put before COAG for endorsement during the scheduled November meeting. It is understood that, in the event COAG endorses the high-level plan, the Government will aim to finalise the NEG by the end of 2018, allowing the reliability guarantee to commence in 2019 and the emissions component in 2020.

New federal legislation will not be required, as the NEG requirements will be inserted into the National Electricity Market's registration requirements. However, amendments to the Australian Energy Market Agreement and to the complementary State-based legislation which makes up the National Electricity Law will be required.

Key takeaways:

- The NEG replaces the CET and will impose both reliability and emissions obligations on energy retailers.
- Energy retailers will be required to diversify their energy sources. They will be required to:
  - invest directly in dispatchable energy generation, or contract with dispatchable energy generators, in order to meet their reliability obligations;
  - invest directly in low emissions/renewable energy generation, or contract with low emissions/renewable energy generators, in order to meet their emissions obligations; or
  - contract with other retailers with excess reliability or emissions positions in order to meet their reliability and/or emissions obligations.
- The Commonwealth Government is aiming for the reliability guarantee to commence in 2019 and the emissions guarantee to commence in 2020.

Details regarding the NEG are still very limited. Corrs will continue to monitor progress of the NEG and provide an update when further details become available.

"rushed changes to workplace health and safety legislation will have a perverse outcome of reducing safety."

QUEENSLAND

Queensland Resources Council expresses concerns about workplace health and safety legislation

Queensland Resources Council (QRC) has released a media statement expressing concerns that "rushed changes to workplace health and safety legislation will have a perverse outcome of reducing safety."

QRC's fears relate to the introduction of the offence of industrial manslaughter (under the Work Health and Safety and Other Legislation Amendment Bill 2017 (which was passed on 12 October 2017), the Queensland Government's last minute amendments which expand the application of the offence to the resources industry, and the adequacy of consultation and scrutiny as to the potential impact the legislative change could have on the resources sector.

The Bill was passed on 12 October 2017.

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Updates to Queensland's Petroleum and Gas Legislation

The Queensland Government has extended the expiry date of the *Petroleum and Gas (Production and Safety) Regulation 2004* (the **Regulation**) to 31 August 2018. The tenure provisions of the P*etroleum and Gas (Production and Safety) Act 2004* (the **Act**) are currently under review as part of the Department of Natural Resources and Mine's Tenure Reform project (the **Project**). According to a report provided to the legislative assembly, the Project will modernise and streamline the tenure regulatory framework. Changes arising from the Project are expected to be finalised during 2018 and a review of the Act and the Regulation will follow to allow for any consequential amendments from the Project to be included.

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New progressive rehabilitation requirements for Queensland mining activities

On the eve of calling the Queensland State election, the Queensland Government has introduced the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*. The Bill proposes to amend legislation including the *Environmental Protection Act 1994*, to impose new requirements relating to the environmental impacts of resource activities, including for progressive rehabilitation of mining activities.

Under the proposed amendments, a site-specific application for a mining activity relating to a mining lease would have to be accompanied by a proposed Progressive Rehabilitation and Closure Plan (**PRC plan**).[2]

The purpose of the PRC Plan will be to ensure that authority holders have planned for carrying out environmentally relevant activities in a way that maximises the progressive rehabilitation of the land, and provides for the condition to which the land must be rehabilitated before an authority can be surrendered.[3]

The PRC Plan will have to include, among other things:[4]

- a "PRCP Schedule" containing:
- a description of the post-mining land use for the land;
- rehabilitation milestones required to achieve a stable condition for the land;
- proposed rehabilitation methods or techniques;
- identification of risks;
- community consultation in developing the Plan; and
- ongoing consultation in relation to the rehabilitation under the Plan.

The PRC Plan will be subject to the same information request, public notification and decision-making process that applies to applications for an environmental authority under Chapter 5, Parts 3 – 5 of the *Environmental Protection Act 1994*. The PRCP Schedule will be attached to an environmental authority when approved,[4] and may be subject to conditions. The Bill proposes to include various offences relating to contravening conditions of a PRCP Schedule.

In light of the looming election, whether this Bill progresses through Parliament and is enacted remains to be seen.

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NEW SOUTH WALES

Laws allowing for expansion of Springvale coalmine

The NSW government has passed legislation allowing for the expansion of **Centennial Coal's** Springvale coal mine. The passing of the *Environment Planning and Assessment Amendment (Sydney Drinking Water Catchment) Act 2017* (NSW) follows a decision of the NSW Supreme Court to uphold non-profit group 4Nature's appeal against a proposed expansion to the mine. The appeal was upheld due to uncertainty regarding the impacts of the expansion upon Sydney's water supply.

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2. s 103 (s 125)
3. s 104 (s 126B)
4. s 104 (ss 126C and 126D)
5. s 119 (s 181(2)(b)(iii))

OTHER NEWS

Adani aiming to have funding in place by March 2018

Adani Australia CEO Jeyakumar Janakaraj has revealed **Adani** aims to have finance for its **Carmichael coal mine project** tied up by March 2018, according to Reuters. He went on to suggest the Indian company will sell minority equity stakes in the coal mine and the associated rail project to help raise funds. Mr Janakaraj told Reuters that commercial bank investment may remove a requirement for **Adani** to seek a A$900 million loan from the Northern Australian Infrastructure Facility for its rail project and that Adani is considering a debt-to-equity ratio of 45:55 for the Carmichael mine, and 70:30 for the rail project.

According to Reuters, coal production is expected to commence in March 2020 with production totaling between 16-18 Mt in 2020-2021 and 27 Mt in 2021-2022. The majority of the coal (70%) will be exported to India, with the remainder to be exported to South East Asia.

Adani announces Townsville and Rockhampton as FIFO hubs

On 5 October 2017, **Adani Australia** announced Townsville and Rockhampton as joint FIFO hubs for the A$16.5 billion **Carmichael coal project**. Whilst both cities put forward strong cases to be the solo FIFO hub for the project, Jeyakumar Janakaraj cited the size of the workforce required and **Adani's** commitment to generate jobs across regional Queensland as factors prompting the joint hub decision.

Full Federal Court hands down decision in Timber Creek native title case appeal

On 20 July 2017, the Full Court of the Federal Court (consisting of Justice North, Barker and Mortimer) gave judgment in the case *Northern Territory of Australia v Griffiths* [2017] FCAFC 106.

The decision at trial was the first ever to consider and apply the compensation scheme under section 61 of the *Native Title Act 1993* (Qld) and involved consideration of six major issues with respect to the assessment of compensation for the extinguishment of native title.

A summary of the case has been prepared by Charlotte Loos (Senior Associate), Henry Prokuda (Consultant) and Nicholas Finlay (Law Graduate).

Appin coal mine back in operation

ASX-listed *South 32* has restarted operations at its *Appin coal mine* following a three month shut down period prompted by operational issues and high gas levels at the mine. According to *The Australian Financial Review*, South 32 has completed a review of the operating systems and processes of the broader **Illawarra Metallurgical Coal** business, aimed at addressing "unacceptable levels of performance".

Following the review, **South 32** resumed operation at one of **Appin coal mine's** two longwall mining faces on 20 October 2017. According to *The Australian Financial Review*, **Appin coal mine** will not return to full operation until the December quarter of 2018. The closure period and staged restart are expected to have a significant impact on **Appin coal mine's** overall production.

NSW Department of Planning and Environment deals a blow to Rocky Hill coal project

On 23 October 2017, the Department of Planning and Environment announced its recommended refusal of **Gloucester Resources Limited's** proposed **Rocky Hill coal mine**. The Department cited noise, visual amenity impacts and incompatibility with the land use zoning objectives of the site as reasons for refusal.

Under its development application, **Gloucester Resources Limited** is seeking approval for the development of an open cut coal mine with an estimated production of 2.5 Mt of coal per year. The proposed mine site is located only 1km from the southern fringes of the township of Gloucester.

The development application has been referred to the Planning Assessment Commission for final determination.

Mining industry dam standards under review

The Australian Financial Review has reported that an update of Australian mining industry dam standards could be on the horizon, with the Australian National Committee on Large Dams (**ANCOLD**) establishing a working committee to consider updates to the standards for dams containing mining waste (referred to as tailings dams).

According to *The Australian Financial Review*, "the committee is focused on governance of tailings dams, with particular reference to the way owners can meet their long-term responsibilities around dam safety and management." It is expected that ANCOLD's proposed changes will be released for industry feedback prior to being settled.

Mayur Resources lists on ASX following oversubscribed IPO

Brisbane-based, Papua New Guinea focused explorer **Mayur Resources** has listed on the ASX following a heavily oversubscribed Initial Public Offering (**IPO**). According to the company's media release, the company issued 38.8 million shares (to approximately 400 applicants) at an issue price of A$0.40 per share, raising a total of A$15.5 million.

The capital raised through the IPO will be used to advance **Mayur Resource's** portfolio of current projects in Papua New Guinea and to fund further mineral exploration activities. **Mayur Resources** is developing an industrial minerals, copper gold and power generation platform in Papua New Guinea.

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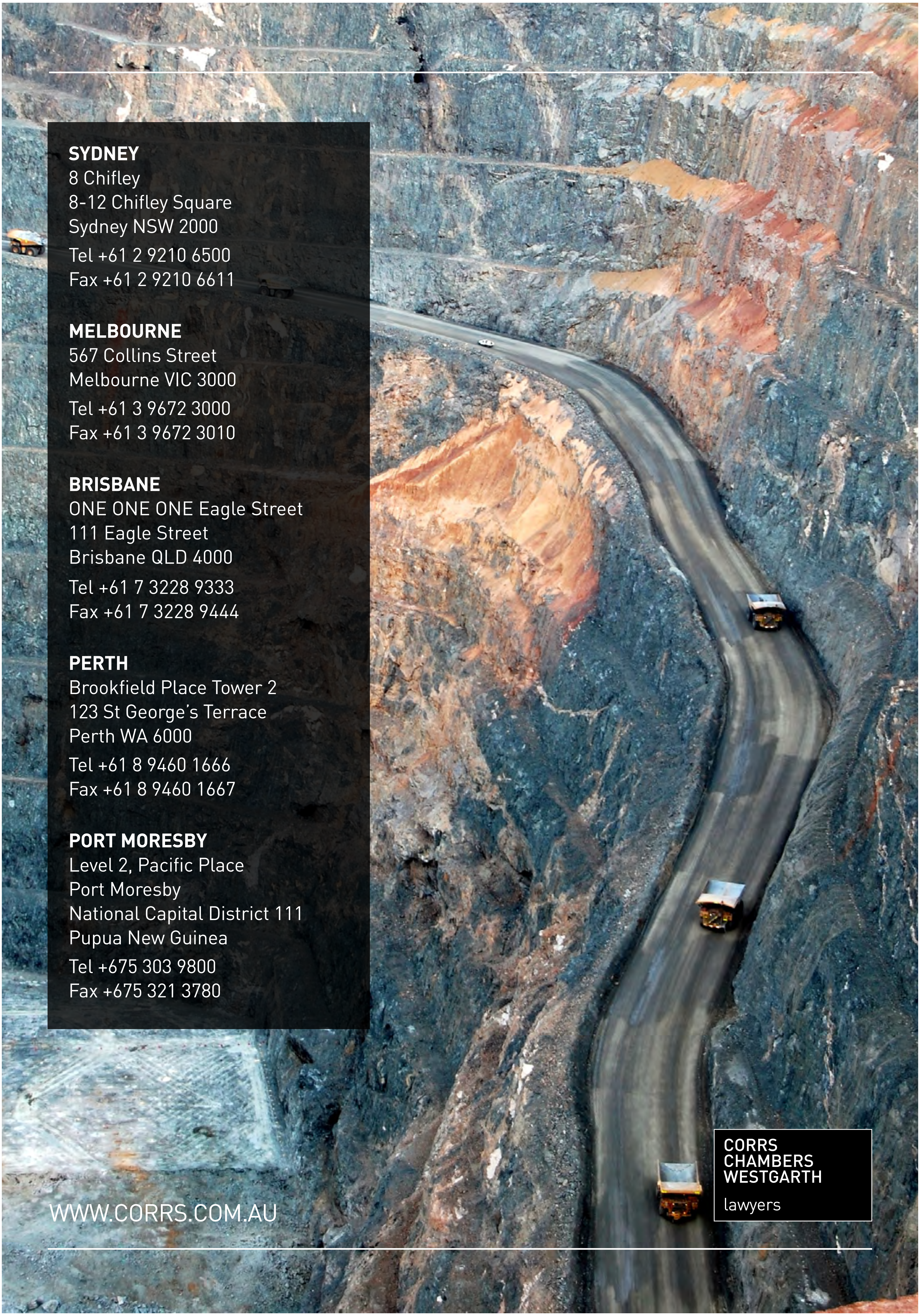

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