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# INVESTING IN THE AUSTRALIAN MINING INDUSTRY

A FOCUS ON COAL AND IRON ORE



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Working  
with clients,  
stakeholders  
and community,  
we're shaping  
the conversation

The information contained in this publication is intended as an introduction only, and should not be relied upon in place of detailed legal advice. Some information has been obtained from external sources, and Corrs cannot guarantee the accuracy or currency of any such information.

The information contained in this publication was current as at Q4 2017.



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# FOREWORD

Australia is a country with enormous mineral resources and is home to a vibrant mining industry. Despite the recent economic headwinds faced by the sector, Australia continues to be well positioned to meet the growing global demand for vital mineral and energy commodities.

Organisations with an international footprint need an understanding of the different commercial and regulatory environments of countries in which they operate or are looking to invest.

Corrs Chambers Westgarth offers a deep understanding of the resources sector and the wider international and political issues affecting cross-border business. As a premium independent law firm, we are able to leverage our global connections with policy makers, government and trade agencies to help our clients manage complex environments. We are highly-regarded for our strong international alliances and we are widely represented in national and global business affairs. Corrs is part of the national debate on trade and investment, global governance and anti-corruption. Working with clients, stakeholders and community, we're shaping the conversation.

This publication provides background information in relation to the Australian mining industry generally – and the coal and iron ore sectors in particular. It explores some of the key legal considerations for investing in mining projects in Australia. Our Energy, Resources and Projects team has produced this sixth edition of *Investing in the Australian Mining Industry* as a useful source of information for those interested, or considering strategic investment, in this important Australian industry.

If you would like any further information in relation to the Australian mining industry, please feel free to contact any of our partners listed at the end of this publication.

We wish you all the best with your endeavours.

Regards

**Bruce Adkins**  
Lead Partner (Mining)

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# INTRODUCING CORRS CHAMBERS WESTGARTH

**Corrs Chambers Westgarth (Corrs) is a world class law firm based in Australia and a firm of choice for foreign companies investing in the mining industry in Australia.**

Our strong partnering relationships throughout the Asia-Pacific region and globally mean we are ideally placed to support clients whose businesses extend across national and international borders. We advise major organisations on the matters most important to them, bridging the gap between business issues and legal practice.

Corrs is consistently involved in high-profile work for both domestic and international clients. A number of the ASX top 100 listed companies, numerous Fortune 500 companies and some of the world's largest organisations choose Corrs as a legal service provider.

Our lawyers are considered to be world class in their fields. We are proud of our reputation for delivering results by providing innovative, multi-disciplinary teams who understand clients' objectives

and execute legal services in a competitive and commercial manner.

In recognition of our expertise and client service, Corrs was voted as the number one law firm in both Australia and the Asia Pacific in the 2016 Legal 500 Client Intelligence Report, with the in-house legal community scoring the firm highly across all three of the key performance indicators, including client relationship skills, technical legal ability, and project management. The Legal 500 surveyed 226 general counsel from companies primarily in the financial, energy, industrials and retail sectors, whose collective spend on law firms is around A\$3.2 billion a year.

For further information about Corrs please visit our website at [www.corrs.com.au](http://www.corrs.com.au).

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# CORRS AND THE MINING INDUSTRY

Corrs' Energy, Resources and Projects team is made up of more than 80 lawyers located in Australia and Papua New Guinea who specialise in this area. Between them, our experts have an unsurpassed depth of experience in the mining industry.

## OUR CLIENTS

Our experience has been gained from many years of close involvement with leading Australian companies, as well as private and Government-owned foreign companies, in relation to their interests in the Australian mining sector.

In addition to partnering with mining companies, Corrs is a firm of choice for foreign companies investing in the Australian mining industry. We are proud of our strong track-record advising on major investments in Australian mining projects by foreign investors.

## SERVICES TO THE MINING INDUSTRY

The Corrs team is nationally recognised as a leading provider of a complete range of services in all areas of law relevant to the mining industry.

Our team can advise on:

- mergers and acquisitions
- joint ventures
- financing arrangements
- mine development and construction
- exploration activities
- environmental and other approvals
- native title and cultural heritage
- land access, acquisition and compensation
- port, rail, road, water and power infrastructure
- mining services contracts
- procurement and supply contracts
- operations and marketing
- commodity sale agreements
- occupational health and safety
- industrial relations
- contract disputes

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# PROVEN RESULTS IN THE MINING INDUSTRY

## MACH ENERGY

### **Mount Pleasant**

Advised in relation to MACH Energy's A\$320 million acquisition of the Mount Pleasant Coal Project from Rio Tinto.

## PEABODY ENERGY AUSTRALIA

### **Metropolitan coal mine**

Advised Peabody Energy on its proposed US\$200+ million sale of the Metropolitan coal mine to South32.

## PEABODY ENERGY AUSTRALIA AND CITIC RESOURCES

### **Olive Downs and Willunga coal projects**

Advised Peabody Energy and CITIC Resources on their A\$120 million sale of the Olive Downs and Willunga coal projects to Pembroke Resources.

## GOLD ROAD

### **Gruyere gold project**

Advised Gold Road on its A\$350 million sale of a 50% interest in the Gruyere gold project to South Africa's Gold Fields.

## U&D COAL

### **MDS Joint Venture**

Advised U&D Coal on its agreement with Sojitz Coal Mining for a proposed 50/50 joint venture in respect of the Meteor Downs South Coal Project.

## YANZHOU COAL

### **A\$3.3 billion takeover**

Advised Yanzhou Coal on its A\$3.3 billion takeover of ASX listed mining company Felix Resources – the single largest acquisition by any Chinese company in the Australian mining sector to date.

## WHITEHAVEN COAL

### **A\$171 million takeover bid**

Advised Whitehaven Coal on its A\$171 million takeover bid for Coalworks Limited.

## WHITEHAVEN COAL

### **A\$6 billion all scrip merger-of-equals**

Advised Whitehaven Coal on its A\$6 billion all scrip merger-of-equals with Aston Resources and its simultaneous acquisition of Boardwalk Resources – the largest M&A transaction in the Australian mining sector in 2012.

## IRON ROAD

### **Central Eyre Iron Project**

Advised Iron Road (the developer of the Central Eyre Iron Project in South Australia) on its non-renounceable pro-rata entitlement offer and institutional placements.

## NATIONAL MINERAL DEVELOPMENT CORPORATION

### **50% equity investment**

Advised NMDC, an Indian Government owned corporation, on its 50% equity investment in ASX listed Legacy Iron Ore Limited.

## MACARTHUR COAL

### **A\$5.2 billion takeover bid**

Advised in relation to Peabody Energy's A\$5.2 billion takeover bid, one of the largest Australian inbound merger and acquisition deals in 2011.

## ADANI GROUP

### **A\$1.5 billion acquisition**

Advised Adani on its A\$1.5 billion acquisition of the Carmichael Coal Project in the Galilee Basin in Queensland from Linc Energy – the largest acquisition by any Indian company in the Australian mining sector to date.

## CHINA METALLURGICAL GROUP CORP

### **A\$400 million acquisition**

Advised CMG in respect of its A\$400 million acquisition of Cape Lambert Iron Ore's key iron ore project. Also handled the Australian component of CMG's US\$5.1 billion IPO, comprising about 20% of the float.

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# RECENT RECOGNITION

Our team members are recognised as leaders in the mining industry. In fact, a number of Corrs' partners are ranked amongst the best mining lawyers in the world, as evidenced by some of our recent independent industry awards.

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## BEST LAWYERS

- **Michael MacGinley** – 'Best Lawyer – Mining, Energy, Natural Resources and Oil & Gas' (2009-2018); 'Lawyer of the Year – Energy, Brisbane' (2012 & 2016); 'Lawyer of the Year – Oil & Gas, Brisbane' (2014 & 2018)
- **Bruce Adkins** – 'Best Lawyer – Mining, Energy, and Oil & Gas' (2013-2018), 'Best Lawyer – Natural Resources' (2014-2018), 'Lawyer of the Year – Energy, Brisbane' (2018)
- **Peter Jarosek** – 'Best Lawyer – Natural Resources' (2014-2018), 'Best Lawyer – Energy and Oil & Gas' (2009-2018), 'Lawyer of the Year – Oil & Gas, Perth' (2018)

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## CHAMBERS GLOBAL 2018

Corrs is ranked amongst the leading practices for Energy & Resources in Australia in the Chambers Global Guide.

Partners **Michael MacGinley** and **Bruce Adkins** are '*Ranked Lawyers*' in Energy & Natural Resources – Mining and Partner **Peter Jarosek** and Special Counsel **Paul Careless** are '*Ranked Lawyers*' in Energy & Natural Resources – Oil & Gas.'

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## THE LEGAL 500 – ASIA PACIFIC

The Asia Pacific Legal 500 guide recognises Corrs as the #1 law firm in Australia and the Asia Pacific (2016) and as a leading Energy & Natural Resources Practice (2012-2018) with **Peter Jarosek** recognised as a 'Leading Individual' for Energy (Transactions & Regulatory).

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# WHAT DO OUR MINING CLIENTS SAY ABOUT US?

As demonstrated in the commentary provided by our clients as part of the industry award programs, the advice and reputation of Corrs' mining team is highly esteemed.

## CHAMBERS ASIA PACIFIC GUIDE 2018

*'Full-service, independent practice offering noteworthy expertise on large-scale energy and resources matters and frequently active on inbound investment mandates for international clients. Particularly prominent in the mining and oil and gas sectors and significantly expanding its coverage of the Papua New Guinea market.'*

*'They have a deep understanding of the resources sector and have such a good depth of knowledge and understanding of the industry; they know who's who in the market.'*

*'The practice delivers good, solid advice from genuine people who are nice to deal with.'*

*'[Peter Jarosek is] a major asset of the Corrs practice and is a highly respected negotiator in transactional discussions.'*

*'[Michael MacGinley is an] accessible and responsive partner who is very experienced in Queensland resource law and energy transactions. He is acknowledged for his unparalleled depth of knowledge of the mining industry.'*

*'[Bruce Adkins] listens to what clients want, handles things exceptionally well and the quality of his work is excellent. He receives commendation for his work on mining and mining infrastructure-related mandates.'*

*'[Paul Careless] advises extensively on transactional mandates in the energy and resources sector, offering particularly noteworthy expertise where joint venture formations and oil and gas deals are concerned.'*

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# THE AUSTRALIAN ECONOMY, LEGAL SYSTEM AND GOVERNMENT





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# ECONOMY

Australia has a strong and stable economy, based largely around traditional primary industries such as mineral and petroleum resources and agriculture, but with an increasing focus on information technology, tourism and education. In its 2017 *World Economic Outlook Report*, the International Monetary Fund predicted that Australia's GDP would grow by 3.1% in 2017 and a further by 3.0% in 2018.<sup>1</sup>

Australia ranks 22nd in terms of the Global Competitiveness Index published in the World Economic Forum's *Global Competitiveness Report* for 2016-17<sup>2</sup>. The nation has an efficient and well-developed financial system (ranked 6th for financial market development) and

receives very good ratings for higher education and training (ranked 9th), and health and primary education (ranked 10th).<sup>3</sup> Australia does not rank lower than 28th in any of the twelve pillars of competitiveness.<sup>4</sup>

Relatively low unemployment, transparent public and private institutions, a strong resources industry, contained inflation and prudent macroeconomic policy management also contribute to Australia's stability and growth.

Australia has low barriers to trade and investment. It has a sound and practical structure of financial and corporate regulation which provides certainty for business and is open to investment without undue delay.

Australia is also party to a number of Free Trade Agreements with countries including the United States, Thailand, New Zealand, Singapore, Chile, Malaysia, Korea, Japan and China.<sup>5</sup> Most recently, Australia has also signed the Trans-Pacific Partnership.<sup>6</sup>

Australia is also engaged in advanced negotiations with India to conclude a Comprehensive Economic Cooperation Agreement,<sup>7</sup> as well as with Indonesia for a Comprehensive Economic Partnership Agreement.<sup>8</sup>

# LEGAL SYSTEM AND GOVERNMENT

The Commonwealth of Australia is a federation of six States (Queensland, New South Wales, Victoria, South Australia, Western Australia and Tasmania), two internal Territories (the Northern Territory and the Australian Capital Territory) and a number of minor external Territories.

A written Constitution divides power between the central Federal Parliament, located in Canberra in the Australian Capital Territory, and the eight State and Territory Parliaments. The Constitution gives the Federal Parliament legislative power over various areas relevant to foreign investment, including corporations, taxation, international and interstate trade and commerce, communications, banking, insurance, bankruptcy and insolvency, intellectual property, immigration and industrial disputes.

Each State has legislative power to make any laws that it wishes to make, except in relation to a few matters reserved to the Federal Parliament. Federal law prevails over State or Territory law to the extent of any inconsistency.

Federal, State and Local Governments are democratically elected at general elections held every three or four years. These elections are contested by candidates from two major political parties (the Australian Labor Party and the Liberal / National Coalition) and several smaller parties and independent politicians.

Any foreign investment proposal must comply with both Federal law and the law of the State or Territory in which the investment is located. There are two sources of law in Australia – statute law and common law. Statute law is the body of

written law enacted by the various levels of Government. Common law is the body of law created out of decisions of the various Federal, State and Territory courts.

Each State has its own court system, consisting of a Supreme Court and a number of minor courts. The Federal Government has its own court system consisting of the High Court, the Federal Court, the Family Court and the Federal Circuit Court. The High Court is the highest court of appeal in Australia, and hears appeals (if leave is granted) from the Federal Court and the State Supreme Courts. In addition, there are numerous panels and tribunals administering particular areas of law, such as industrial relations and takeovers.

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# THE AUSTRALIAN COAL INDUSTRY



# COAL RESOURCES

## BLACK COAL

Australia is endowed with abundant, high quality and diverse energy resources and is home to around 10% of the world's proven reserves of black coal.<sup>9</sup> There are two main types of black coal:

- **metallurgical or coking coal**, which is used to produce coke for the steel-making process; and
- **thermal coal**, which is used to generate electricity.

Although black coal occurs in all Australian States and the Northern Territory,<sup>10</sup> the largest share of Australia's total identified resources are located in Queensland (60%) and New South Wales (37%).<sup>11</sup>

The Bowen Basin in Queensland and the Sydney Basin in New South Wales dominate black coal production in Australia and contain 64% of the nation's recoverable black coal.<sup>12</sup> Significant black coal resources are also found in the Surat, Clarence-Moreton and Galilee Basins in Queensland and in the Gunnedah Basin in New South Wales.<sup>13</sup>

Black coal accounts for almost three-quarters of Australia's energy production,<sup>14</sup> and it is also one of Australia's largest commodity exports, with earnings forecast to be almost A\$44 billion in 2017-18.<sup>15</sup> Australia's success in world coal markets has been based on reliable and competitive supplies of high quality metallurgical and thermal coal.

## BROWN COAL

Brown coal, or lignite, is a low rank coal with high moisture content which is mainly used to generate electricity. Approximately 24% of the world's recoverable brown coal resources are located in Australia.<sup>16</sup> However, nearly all of Australia's recoverable brown coal is located in Victoria, where it is almost exclusively used for domestic energy generation.<sup>17</sup> Australia does not currently export brown coal.

# COAL PRODUCTION

Australia's production of black coal is forecast to grow strongly over coming years with metallurgical coal production to rise from 190 Mt in 2017 to 196 Mt in 2018 and 2019 and thermal coal production to rise from 250 Mt in 2016-17 to 254 Mt by 2018-19.<sup>18</sup> This increase in production is forecast due to high coal prices and expansions to a number of mining projects.

The majority of Australia's metallurgical or coking coal is produced in Queensland, while New South Wales largely produces thermal coal.

Fig 1 – Australia's metallurgical coal production (Mt)<sup>19</sup>

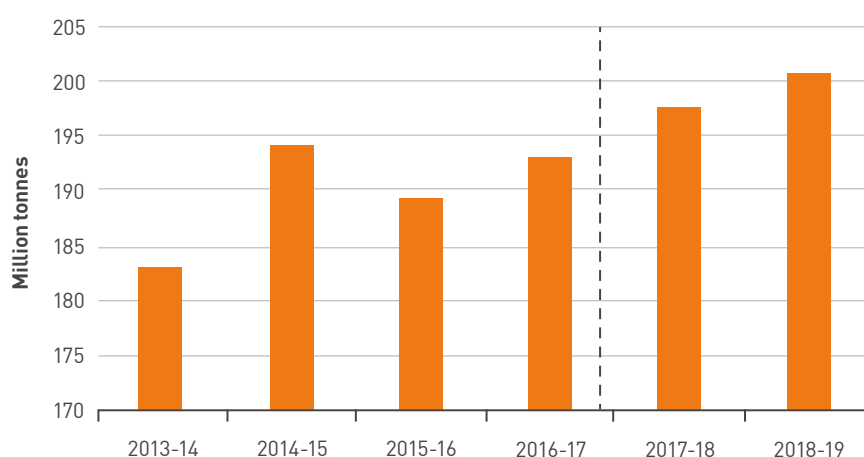


Fig 2 – Australia's metallurgical coal export volumes and values<sup>20</sup>

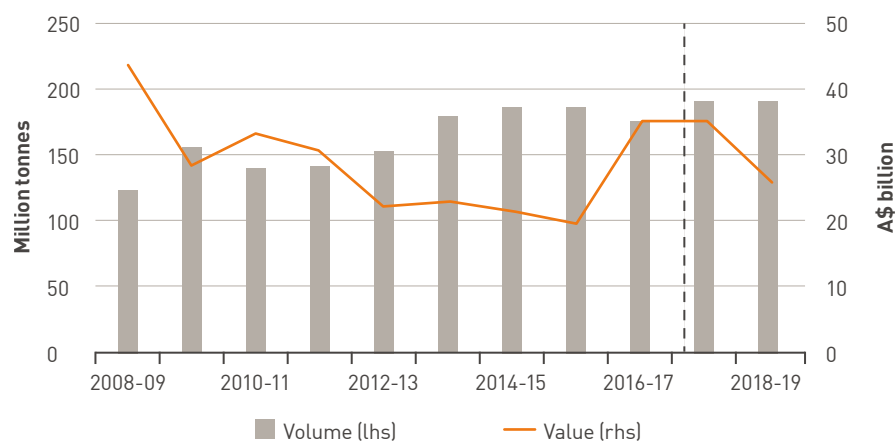


Fig 3 – Australia's thermal coal export volumes and values<sup>21</sup>

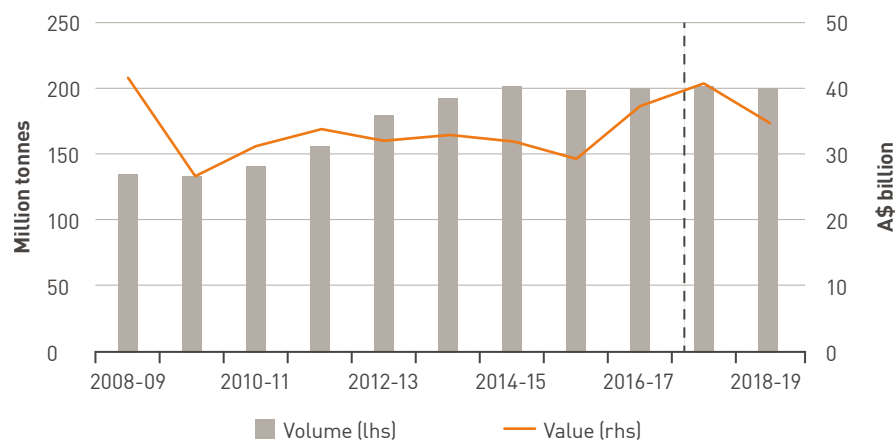
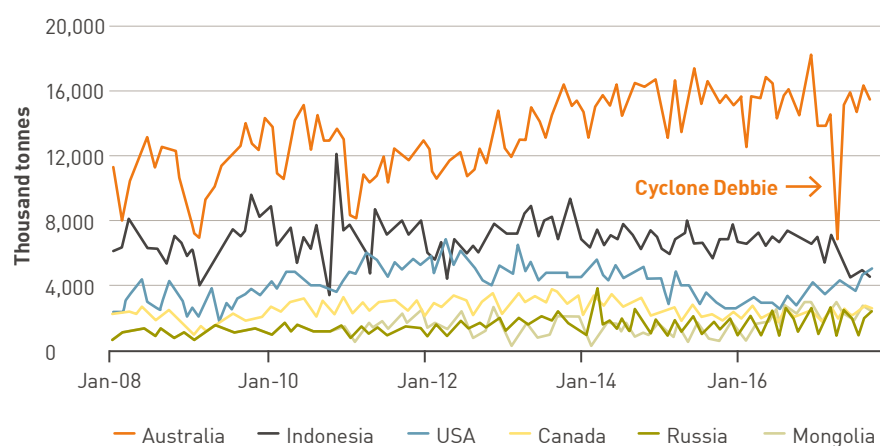


Fig 4 – Major metallurgical coal exporters<sup>29</sup>



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Coal is Australia's largest energy export, and the second largest export overall in terms of value (after iron ore)



# COAL TRADE

## ONE OF THE WORLD'S LARGEST EXPORTERS

Australia is a net energy exporter and has been a leading exporter of black coal since the mid-1980s.<sup>22</sup> Australia is currently the largest exporter of metallurgical coal in the world,<sup>23</sup> and the second largest exporter of thermal coal after Indonesia.<sup>24</sup>

A majority of Australian black coal produced is destined for export, with 396.4 Mt projected to be exported around the world in 2017-18.<sup>25</sup> Coal is Australia's largest energy export,<sup>26</sup> and the second largest export overall in terms of value (after iron ore),<sup>27</sup> with the real value of Australian black coal exports in 2017-18 projected to exceed A\$55.7 billion.<sup>28</sup>

## EXPORT DESTINATIONS

India is Australia's largest export destination for metallurgical coal,<sup>31</sup> while Japan imports the greatest share of Australian thermal coal.<sup>32</sup> China, South Korea and Taiwan are also significant export destinations for Australian coal.<sup>33</sup>

Fig 5 – Major thermal coal exporters<sup>30</sup>

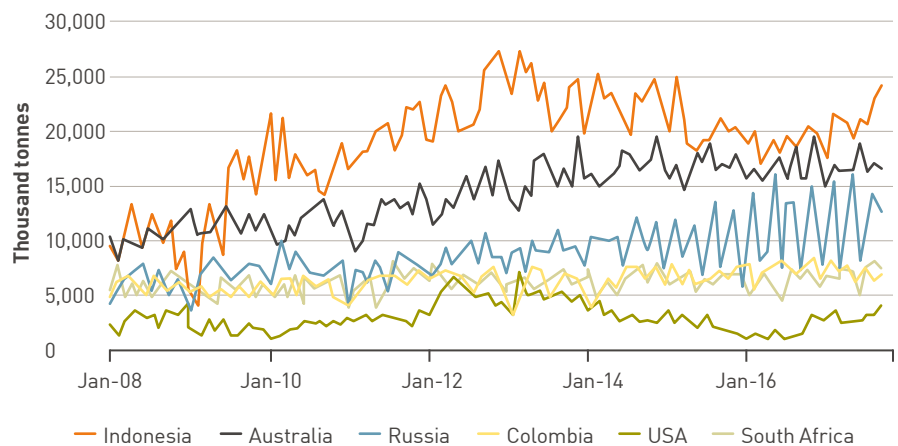


Fig 6 – Australian Metallurgical Coal Importers (Mt)<sup>34</sup>

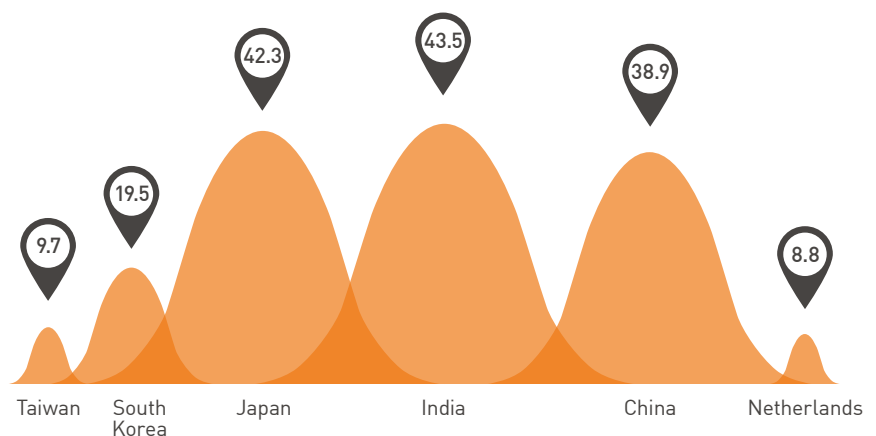
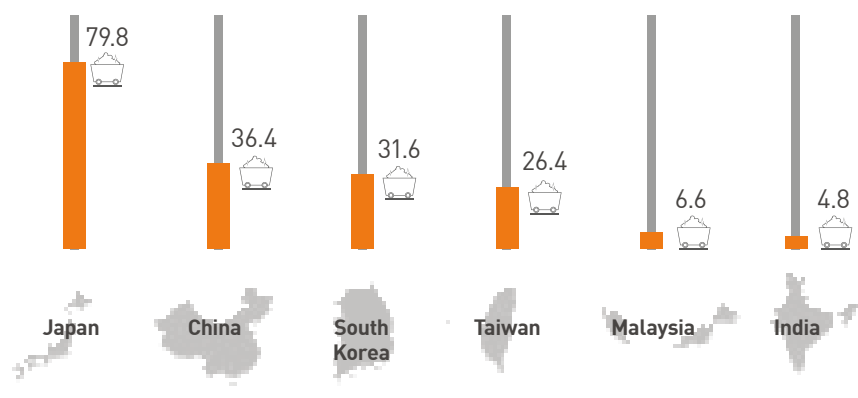


Fig 7 – Key Importers of Australian Thermal Coal (Mt)<sup>35</sup>



## METALLURGICAL COAL EXPORTS

Worldwide trade in metallurgical coal is forecast to increase substantially during 2018, as the market recovers from supply disruptions experienced during 2017.<sup>36</sup>

Australia is the world's largest exporter of metallurgical coal, exporting 177.2 Mt in 2016-17 with a value of just over A\$36 billion.<sup>37</sup> This represented a 5.8% decrease in the volume of exports and a 75.7% increase in value.

Australian export volumes are forecast to rise by 8.4% in 2017-18 to 192.1 Mt off the back of the export of cargoes delayed by Cyclone Debbie. Earnings are, however, expected to decrease by around 2.3% to just under A\$35.3 billion due to lower prices.<sup>38</sup>

## THERMAL COAL EXPORTS

Australian thermal coal export volumes rose by 0.2% in 2016-17 to 201.7 Mt. This growth, supplemented by higher thermal coal spot prices, resulted in a 26% rise in export earnings to just under A\$19.3 billion.<sup>40</sup>

It is expected that growth will continue into 2017-18, with export volumes expected to increase by 1.3% to 204 Mt. Export values over that period are also expected to increase by 5.5% to just under A\$20.4 billion.<sup>41</sup>

Fig 8 – Australian metallurgical coal export volumes and values<sup>39</sup>

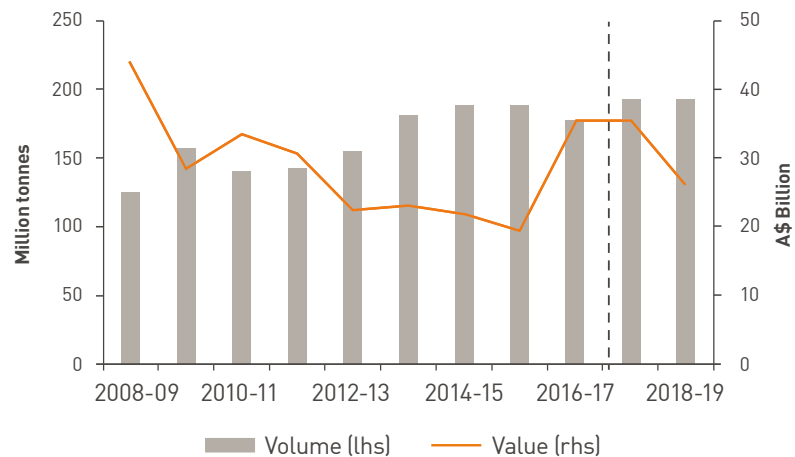
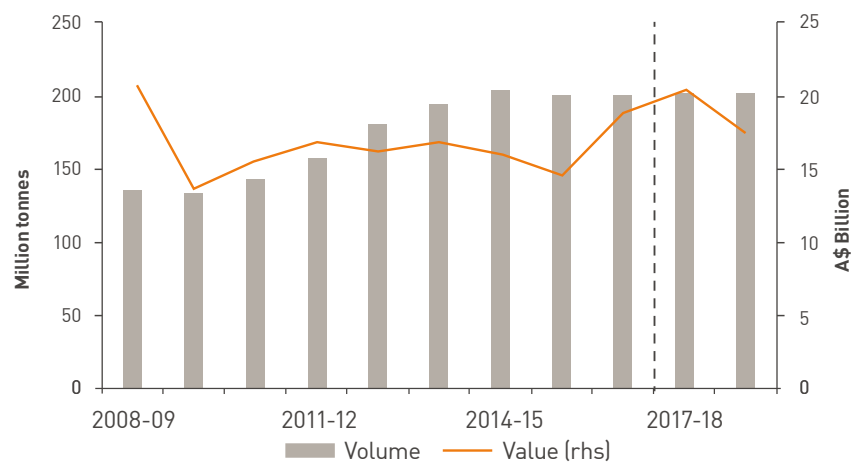


Fig 9 – Australian thermal coal exports<sup>42</sup>







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## TRADE AND INFRASTRUCTURE

In the past, infrastructure has been a constraint on Australian coal exports. However, expansions to port capacity, including infrastructure upgrades at the Newcastle Coal Infrastructure Group terminal and the Kooragang Island Coal Terminal, have alleviated some of those constraints.<sup>43</sup> Another key factor increasing export capacity has been increasing efficiency in the use of existing resources (in Newcastle in particular).<sup>44</sup>

The development of further infrastructure in Queensland and New South Wales will be required to support continued growth in coal exports. There are a number of infrastructure projects proposed, including:

- Adani's Carmichael Rail Project from its Carmichael mine in the Galilee Basin to the Port of Abbot Point. The proposed rail line is a multi-user, greenfield, standard gauge rail line and will have an operational capacity of up to 100 Mt per annum;<sup>45</sup>

- Adani's T0 terminal at the Port of Abbot Point. The proposed coal export terminal will provide an increase of up to 70 Mt per annum to the existing capacity of Abbot Point;<sup>46</sup>
- GVK Limited and Aurizon Limited's 500km narrow gauge Alpha Coal Railway. The proposed railway will extend from the Galilee Basin to Aurizon's Newland's rail system and enable export through the Port of Abbot Point;<sup>47</sup>
- A 210km Surat Basin Railway, running from Wandoan to Banana allowing export through the Port of Gladstone;<sup>48</sup> and
- Hume Coal's Berrima Rail Project which proposes an extension of the Berrima railway line to connect the proposed Hume Mine Project to the Main Southern Railway.<sup>49</sup>

## EXPORT GROWTH PREDICTIONS

Black coal is projected to remain Australia's main energy export, increasing by around 54% from 2014-15 to 2049-50.<sup>50</sup> This implies an annual growth rate of 1.2%, which is based on the expectation that the global demand for coal will continue to increase over the next 35 years driven by growing demand for electricity and steel-making raw materials, especially in emerging market economies in Asia.<sup>51</sup> In particular, global demand for metallurgical coal is expected to remain robust, as there is less scope for its replacement by other less carbon intensive fuels in steel making.<sup>52</sup>

Australia, with its abundant reserves of high-quality coal, is well positioned to make a substantial contribution to meeting this increased demand, subject to adequate infrastructure development.<sup>53</sup>

# QUEENSLAND'S COAL RESOURCES

With over 33 billion tonnes of measured and indicated coal resources,<sup>54</sup> Queensland is home to around 60% of Australia's total identified coal resources.<sup>55</sup> This coal primarily is located in six separate coal regions throughout Queensland including the Bowen, Galilee and Surat Basins.<sup>56</sup>

As Queensland's only source of metallurgical coal<sup>57</sup> and primary source of thermal coal,<sup>58</sup> development of open cut coal mines in the Bowen Basin has been the

main driver of recent growth in Queensland's coal production.<sup>59</sup>

With vast reserves of unexploited coal, the largely undeveloped Galilee Basin also contains massive resources of export quality thermal coal. These resources are expected to be developed over the next decade to contribute to the future expansion of Queensland's coal export industry. In particular, Adani's A\$16.5 billion Carmichael Project, which received State and Federal approval in 2014, is

expected to play a major role in opening up the region, especially through the development of critical export infrastructure.

While a number of other mining projects in the Galilee Basin are progressing towards the final investment decision, there are challenges to be overcome. Despite these challenges, BREE expects the Galilee Basin to become an important coal producing region over the next 20 years.<sup>60</sup>

Fig 10 – Queensland coal basins<sup>61</sup>



Fig 11 – South-east Queensland coal mines and coal deposits<sup>62</sup>

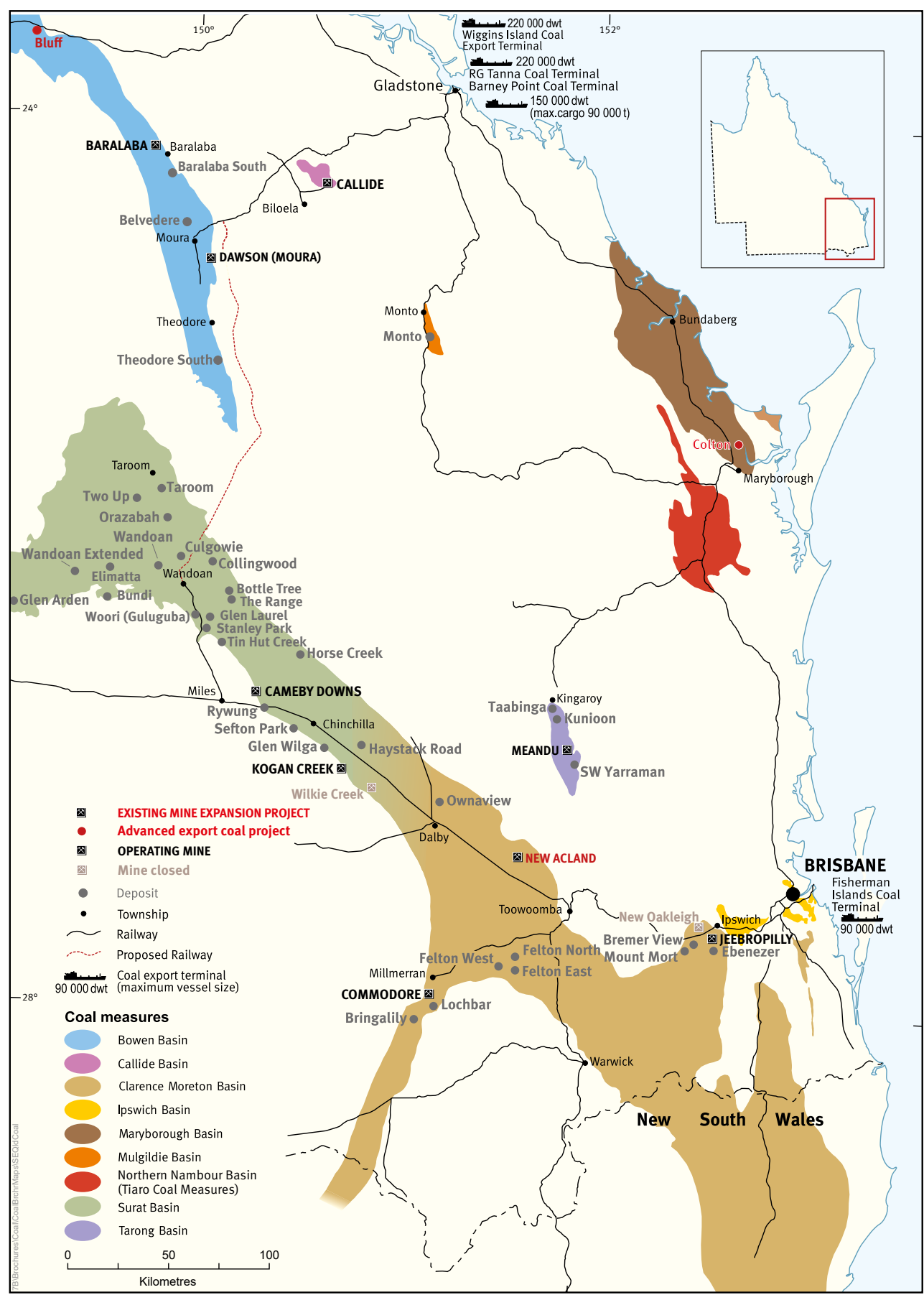


Fig 12 – Central Queensland coal mines and coal deposits<sup>63</sup>

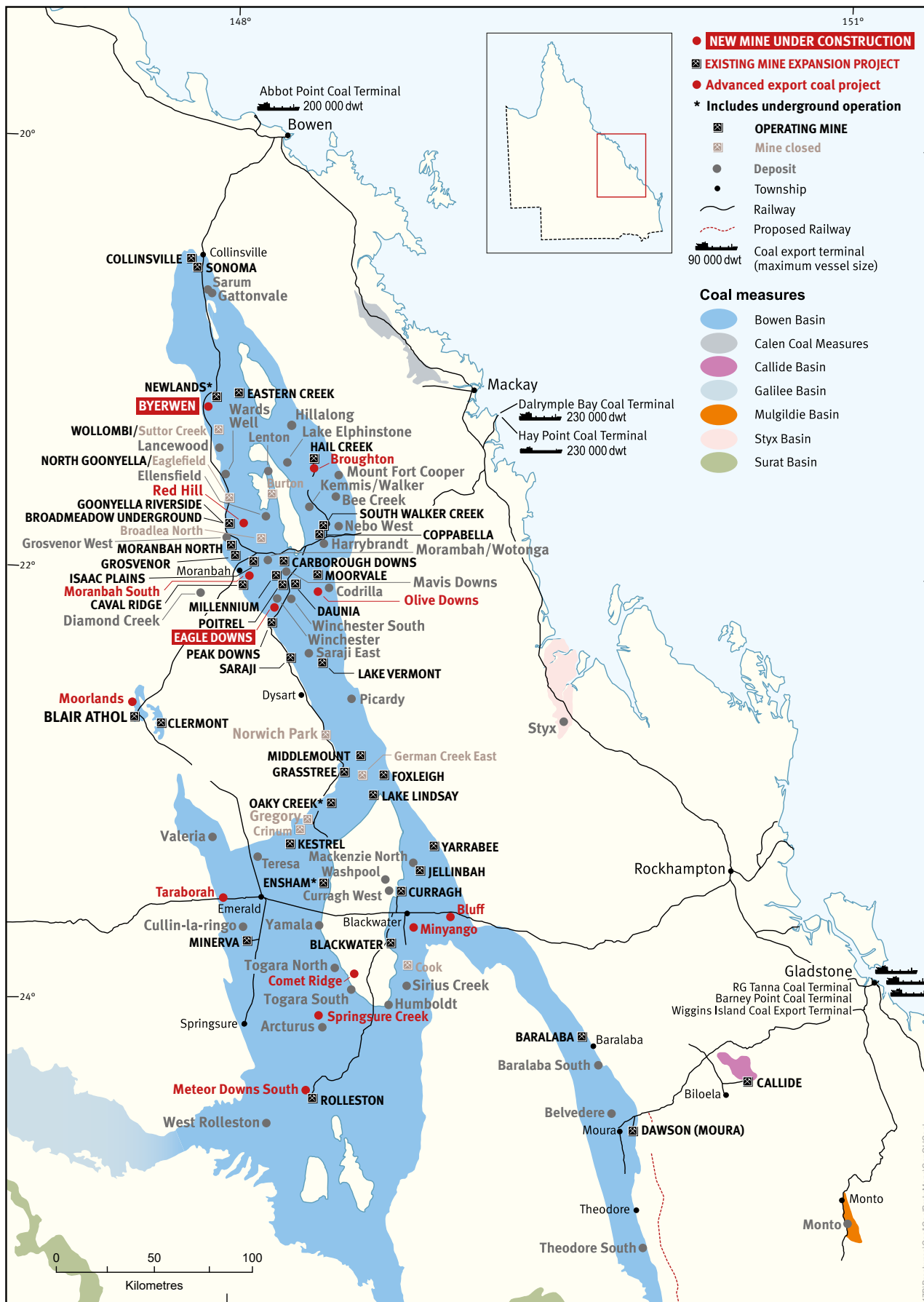


Fig 13 – Western-central Queensland coal mines and coal deposits<sup>64</sup>



# QUEENSLAND COAL PRODUCTION AND TRADE

## PRODUCTION

In 2016, Queensland produced approximately 313.6 Mt of raw coal, yielding just under 245 Mt of product or saleable coal.<sup>65</sup> This represented a 0.73% increase in saleable production from the previous financial year.<sup>66</sup>

## TRADE

Queensland is one of the largest exporters of seaborne coal in the world, exporting over 220.3 Mt in 2016.<sup>67</sup> Nearly three quarters of this export volume was metallurgical coal with thermal coal comprising approximately 27.6% of Queensland coal exports.<sup>68</sup>

Following a downturn in the State's coal trade during 2010-11, caused by extreme weather events, the Queensland coal export market has trended upward, increasing a further 0.69% in 2016 (from 2015 volumes).

By volume, Japan, China, India and Korea are the primary destinations for Queensland coal, with Japan importing approximately 49.2 Mt in 2016, valued at nearly A\$5.5 billion. By value, China (followed by Japan, India and Korea) is the largest importer of Queensland coal, importing nearly 46.9 Mt in 2016 valued at over A\$6.1 billion.<sup>69</sup>

Coal is exported from five major Queensland ports which, in order of smallest to largest export volume, are the Ports of Brisbane, Abbot Point, Hay Point, Dalrymple Bay and Gladstone. The coal terminals at Dalrymple Bay and Gladstone exported over 60 Mt each in 2016, together comprising about 61% of total coal throughput by port in Queensland.<sup>71</sup>

Fig 14 – Queensland exports by destination (2016)<sup>70</sup>

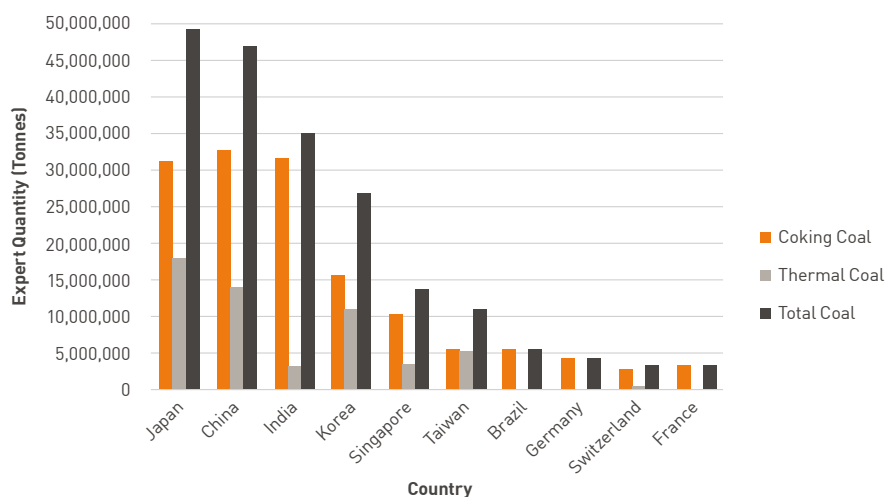
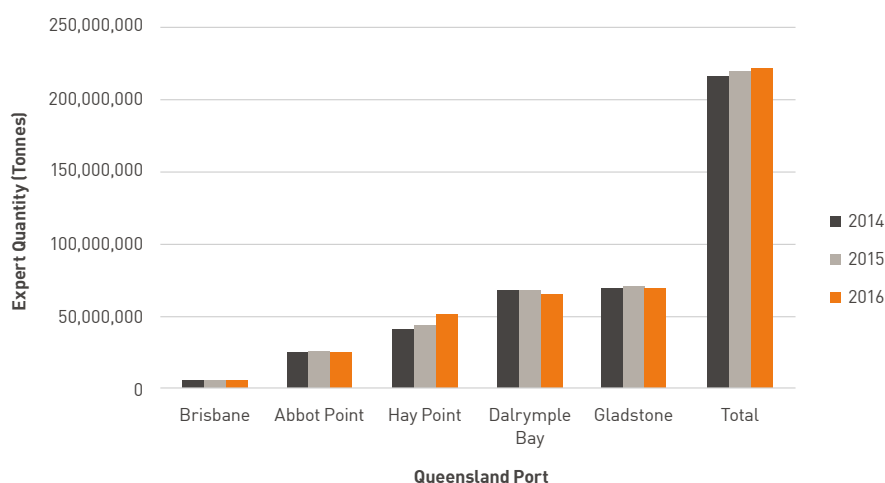


Fig 15 – Queensland export sales by port (Mt)<sup>72</sup>

PORT	2014 (TONNES)	2015 (TONNES)	2016 (TONNES)
Brisbane	7,126,194	7,032,724	6,606,335
Abbot Point	26,574,958	26,864,701	26,142,389
Hay Point	42,476,293	44,496,265	52,116,459
Dalrymple Bay	69,340,360	69,366,356	65,744,336
Gladstone	69,654,478	71,046,002	69,709,648
<b>Total</b>	<b>215,172,283</b>	<b>218,806,048</b>	<b>220,319,167</b>

Fig 16 – Coal Exports from Queensland Ports



# NEW SOUTH WALES COAL RESOURCES

The major coal resources of New South Wales are located in the Sydney-Gunnedah Basin, which extends from south of Wollongong to north of Newcastle, through the

Hunter Valley and up to Narrabri. Minor coal resources are also found in the Gloucester and Oaklands Basins.<sup>73</sup>

Fig 17 – New South Wales coalfields <sup>74</sup>



# NEW SOUTH WALES COAL PRODUCTION AND EXPORTS

## PRODUCTION

New South Wales is the second largest coal mining State in Australia, producing 37% of the country's black coal.<sup>75</sup> Coal accounts for the majority of the State's mining production with 253.4 Mt of raw coal produced in 2016-17.<sup>76</sup> This represents a 2.7% increase from 246.8 Mt of raw coal production for 2015-2016.<sup>77</sup>

Productivity measured as raw coal production per minerworker increased by 4.4% during 2016-17.<sup>78</sup>

## EXPORTS

New South Wales is a leading coal exporter and is home to the one of the world's largest coal export ports at Newcastle.

Mining is New South Wales' largest export industry with coal being the State's most valuable export commodity. The value of coal shipments rose 37.7% to A\$18.2 billion in 2016-2017.<sup>80</sup> During 2016-2017, NSW coal exports also increased 0.4% to 170.2 Mt after falling for the first time in 15 years during 2015-16.

Asia is the major export destination for New South Wales coal.<sup>82</sup> Coal that is not exported is used for local electricity generation and in the steel and cement production process.<sup>83</sup>

Japan is the largest export market for New South Wales coal, with shipments of 74.5 Mt in 2016-17 followed by China (25.8 Mt), Taiwan (24.4 Mt) and the Republic of Korea (22.1 Mt). Although New South Wales coal was shipped to 22 countries in 2016-17, these top four markets accounted for 86.3% of the total tonnage exported.<sup>84</sup>

Fig 18 – NSW coal industry performance <sup>79</sup>

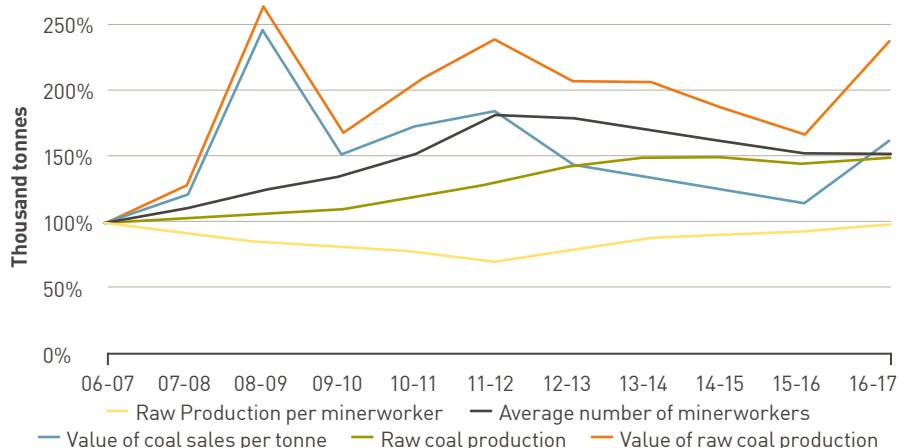


Fig 19 – New South Wales coal exports as at 30 June 2017 <sup>81</sup>

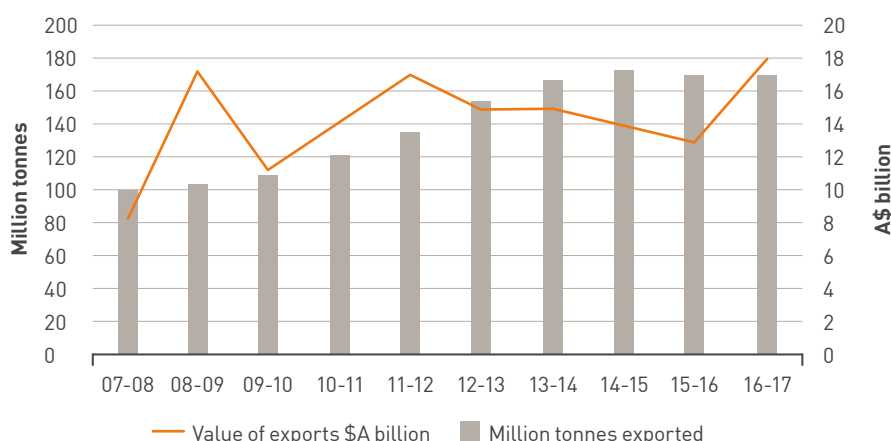
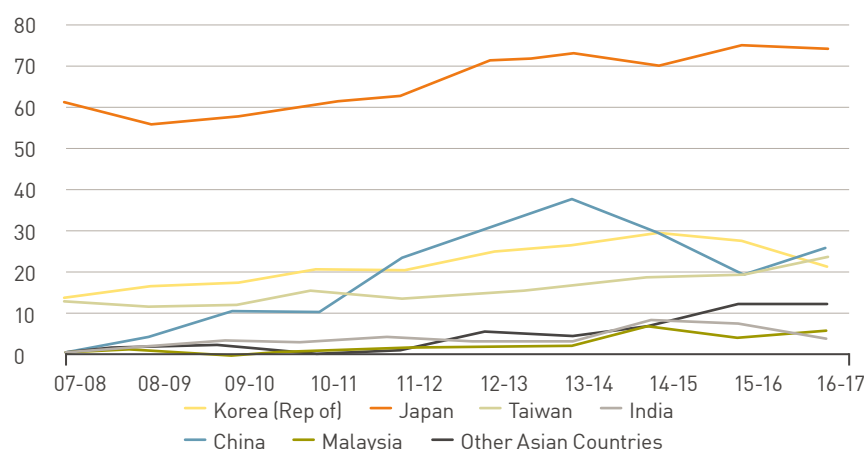


Fig 20 – Export markets for New South Wales coal (Mt per year) <sup>85</sup>





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## DOMESTIC MARKET

Deliveries of New South Wales coal to domestic markets have declined steadily since 2007-2008 due to increased efficiencies and the emergence of natural gas and renewable energy sources. 2015-2016, however, saw an increase in domestic coal sales by 2.7% to 26.5 Mt.<sup>86</sup> This increase continued in 2016-17 with domestic sales up by 0.3% to 26.6 Mt.<sup>87</sup> New South Wales' power stations are the largest market for the State's coal in Australia, accounting for 84.4% of all domestic sales of NSW coal. 22.4 Mt of coal was supplied to New South Wales power stations during 2016-17, reflecting a 0.1% decrease from the previous year.<sup>88</sup>

Mining is New South Wales' largest export industry with coal being the State's most valuable export commodity



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# THE AUSTRALIAN IRON ORE INDUSTRY



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# AUSTRALIAN IRON ORE RESOURCES AND PRODUCTION

## OVERVIEW OF IRON ORE IN AUSTRALIA

Australia is widely recognised as having some of the largest iron ore deposits in the world and continues to lead global production by volume over competitors such as Brazil.<sup>89</sup>

Almost 90% of Australia's identified iron ore resources are situated in Western Australia, being found predominantly in the Pilbara region, one of the world's major iron ore provinces.<sup>90</sup> Virtually all of the iron ore produced in Australia is exported to Asian markets, primarily to be used in the production of steel.<sup>91</sup>

Australia has shown itself to be a centre for innovation in mining operations. In response to the significant fall in iron ore prices during 2015, iron ore miners were forced to seek efficiency gains in order to maximise returns (for the major miners) and/or remain viable (for the junior miners). Such measures have included the implementation of remote operation centres and autonomous haulage systems in an effort to significantly drive down the costs of production.

## TYPES OF IRON ORE

The two most common types of iron ore are:

1. **hematite**, which has a very high iron content and is often referred to as direct shipping ore or DSO because it is mined and extracted using a relatively simple crushing and screening process before being exported for use in steel mills;<sup>92</sup> and
2. **magnetite**, which typically has a lower iron content than hematite and is usually required to be upgraded to make it suitable for steelmaking. The need to process magnetite ore makes it more costly to produce a concentrate for steel producers.

Hematite ore has been the dominant iron ore mined in Australia since the 1960s. Approximately 96% of Australia's iron ore exports are in the form of high-grade hematite.<sup>93</sup>

However, the mining of magnetite ore is an emerging industry in Australia with large deposits, including CITIC Pacific Mining's Sino Iron project at Cape Preston,<sup>94</sup> being developed in Western Australia.<sup>95</sup> Whilst such projects have historically been much more capital intensive and not well suited to a low iron ore price environment, continued developments in smelting technology are expanding the potential for newer steel mills to deal with a greater range of impurities, thereby potentially reducing the extent of beneficiation required to produce a viable feedstock material.

**Australian Government**  
Geoscience Australia

## AUSTRALIAN IN SITU IRON ORE RESOURCES (Sheet 1: Hematite)

2012 EDITION

SCALE 1:10 000 000

UNCLASSIFIED CONFIDENTIAL CONCURRENCE  
Geoscience Australia (GSA) Geoscience Australia (GSA) 1:10 000 000  
Geoscience Australia (GSA) Geoscience Australia (GSA) 1:10 000 000

This map is based on information compiled from publicly available sources on 100 Australian hematite type iron ore deposits. Consideration of data is ongoing. Deposit sizes are the 1000 tonnes of iron ore resources in a deposit.

In situ resources for each geological region represent aggregates of resources in deposits located in that region. It includes deposits in some regions of the region where such deposits are of the same age or where the region extends beyond the boundary of the region. Geological regions are defined and are based on Geoscience Australia's Geological Regions (Geoscience Australia, 2010). In situ resources are shown in the map in Geoscience Australia's (GSA) 1:10 000 000 scale map. Geoscience Australia (GSA) 1:10 000 000 scale map.

**Iron Ore (Hematite)**

Iron ore resources by region  
Millions of tonnes  
Deposits count

Region	Millions of tonnes	Deposits count
Kimberley	100	2(1)
South Nicholson	100-1000	(2)
South Australia	100-1000	(3)
Western Australia	100-1000	(4)
Central Pilbara	100-1000	(1)
Other	100-1000	(1)

**In situ resources of iron ore by region**

Kimberley 31%  
South Nicholson 1%  
South Australia 1%  
Western Australia 2%  
Central Pilbara 2%  
Other 1%

**In situ resources of iron ore by type**

Hematite 2%  
Magnetite 2%

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Geoscience Australia (GSA) Geoscience Australia (GSA) 1:10 000 000 scale map. Geoscience Australia (GSA) 1:10 000 000 scale map.

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## HISTORICALLY HIGH LEVELS

Presently, Australia's production of iron ore is at historically high levels and is expected to peak in the coming years.

The volume of iron ore exported during the 2016-17 financial year is estimated to be approximately 825 Mt.<sup>98</sup> The Pilbara Port Authority has recently reported that for the financial year ended 30 June 2017, iron ore exports from the Port of Port Hedland alone totalled 494.6 Mt, an increase of 9% from the previous financial year.<sup>99</sup>

As major projects reach completion and mining capacity expands, production volumes are expected to increase. It is forecasted that Australia will hit the peak of the production phase in late 2019.<sup>100</sup> Iron ore production continues to be a significant portion of Western Australia's economy, accounting for some 65% of the value added by the mining industry and 15% of the gross State product in the 2015-16 financial year.<sup>101</sup>

## APPROACHING THE PEAK

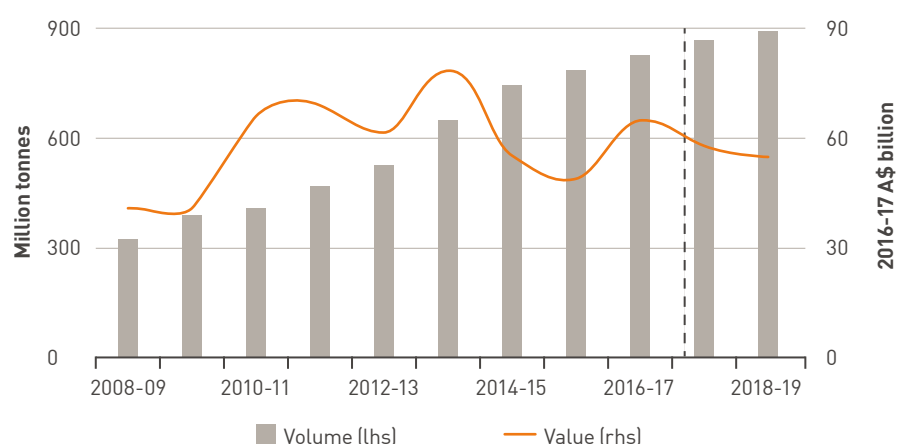
In recent years, exploration expenditure has dropped due to Australia moving from the investment phase to the production phase of the mining boom. This has resulted in an increase in unemployment in the mining industry as a whole and some economists have suggested that these falling levels of investment will weigh down the growth in export volumes for at least the next two years.<sup>102</sup>

Some economists expect the demand for global resources and energy commodities, particularly for steel making commodities, to slow in the next two years which may impact Australian export volume growth. The slowdown in demand may be attributed to a slowdown in offshore infrastructure and construction spending and growing domestic iron ore production.<sup>103</sup>

Despite this outlook, miners continue to invest in new projects to replace depleted resources.

For example, to sustain its levels of production, BHP recently announced plans to develop its South Flank iron ore project in the Pilbara by approving US\$184 million in initial funding, with a final investment decision to be made in 2018.<sup>104</sup>

Fig 23 – Australia's iron ore export volumes and values <sup>105</sup>



Source: ABS (2017) *International Trade, Australia*, Cat. No. 5465.0; Department of Industry, Innovation and Science (2017)

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# EXPORT OF IRON ORE

## EXPORT VOLUMES PROJECTED TO REMAIN HIGH

Australia holds approximately 28% of the world's iron ore reserves and continues to be the world's largest producer and exporter of iron ore.<sup>106</sup>

Australia exports virtually all of the iron ore it produces to China, Japan, South Korea and Taiwan.<sup>107</sup> Iron ore is used almost exclusively for steel manufacturing, with Australia having no major steel producers.<sup>108</sup> As the primary use of iron ore is in steel manufacturing, demand for Australia's iron ore is highly correlated to the global demand for steel. Robust activity and demand in industries such as construction, plant and equipment manufacturing, motor vehicle manufacturing and shipbuilding will increase the demand for steel and iron ore production.

In 2016, Australia exported 808 Mt of iron ore.<sup>109</sup> Australia's iron ore exports are forecast to increase by 5.3% and 3.9% in 2017 and 2018, respectively.<sup>110</sup> After this time exports are forecast to continue to grow (albeit at a slower rate) to eventually reach 917 Mt exported in 2022, representing 57% of the global seaborne trade.<sup>111</sup>

## PRODUCTIVITY IMPROVEMENTS TO CONTRIBUTE AN INCREASE IN EXPORT VOLUMES

The recent increase in export volumes can be attributed to a number of factors, including completion by Roy Hill of its 55 Mtpa mine and the expansion of production from BHP Billiton's Western Australia iron ore operations (which is expected to continue to increase to 290 Mtpa by 2018- 2019).

Improvements in productivity and efficiency gains are also expected to increase export volumes. Rio Tinto has described their autonomous train system, AutoHaul®, as a 'step change' improvement to productivity in its iron ore operations.<sup>112</sup>

The program, which is being progressively rolled out this year, is scheduled to be fully implemented by the end of 2018.<sup>113</sup>

Australia's ability to produce low-cost / high-grade iron ore provides a significant advantage over its competitors. Despite experiencing a decrease in exploration investment and new mine development in Australia in recent years, it is expected that iron ore exports from Australia will continue to grow due to ongoing productivity and efficiency improvements, project expansions and continued development of high-quality deposits.<sup>114</sup>

## IRON ORE MARKET TO REMAIN WELL-SUPPLIED

The iron ore market is forecast to remain well supplied, with increased output from low-cost, high-grade producers in Australia and Brazil expected to displace high-cost producers.<sup>115</sup>

Longer-term production growth will also be supported by the Rio Tinto's expansion of its Silvergrass mine and its likely commissioning of the 70 Mt Koodaideri and 10 Mt Turee Syncline projects, which are both currently undergoing feasibility studies.<sup>116</sup>

Iron ore shipments from Port Hedland were up 9% for the year ended 30 June 2017 to 494.6 Mt.<sup>117</sup> The port achieved a record monthly throughput record of 44 Mt in May 2017.<sup>118</sup>

Imports from Australia's largest customer of iron ore, China, increased by 12% year-on-year in the March quarter, followed by 1.8% year-on- year in April and May.<sup>119</sup> The slowdown in import growth is likely to be due to the effect of the monsoon season on production in the Pilbara and iron ore shipments, and the slowing of import demand due to a growth in Chinese domestic production.<sup>120</sup>

While some economists suggest that a growing domestic scrap steel industry in China may also impact the demand for Australian iron ore, a recent publication by McKinsey & Company reports that scrap metal recycling in China remains a fragmented industry that mainly operates under the authorities' radar, with the government providing little support for the industry in recent years.<sup>121</sup> Despite the predicted slowdown in Chinese demand for iron ore, China's iron ore imports are nonetheless expected to continue to grow by 0.7% and 0.3% in 2018 and 2019, respectively.<sup>122</sup>

## AUSTRALIA'S EXPORT EARNINGS

Australia's estimated export earnings for 2016-17 are forecast to be 33% higher year-on-year than 2015-16, reaching A\$65 billion.<sup>124</sup>

More generally, Australian resource and energy export prices are estimated to have grown by 23% in real terms in the 2016-17 financial year, to reach their highest level since 2013-14.<sup>125</sup> However, these prices are forecast to decline over the next two years, largely as a result of lower metallurgical coal prices and, to a lesser extent, lower iron ore prices.<sup>126</sup>

The global consumption of resources and energy commodities is expected to grow in 2018 and 2019, albeit at a rate considerably slower than most of the last decade.<sup>127</sup>

Fig 24 – Share of world iron ore exports<sup>123</sup>

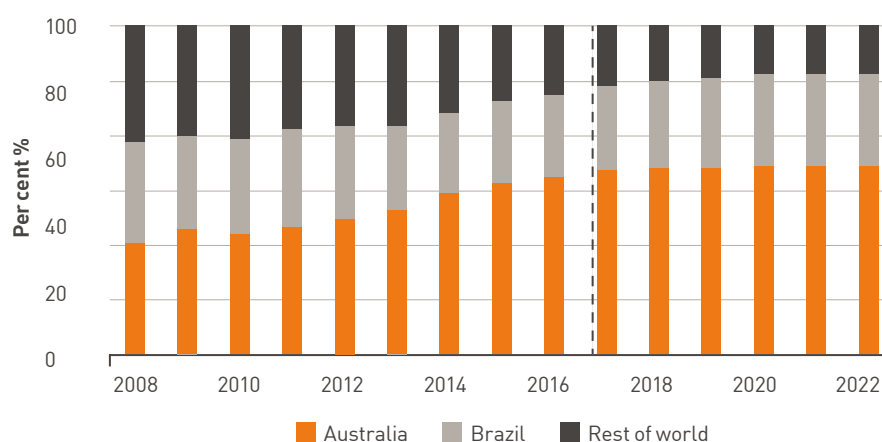
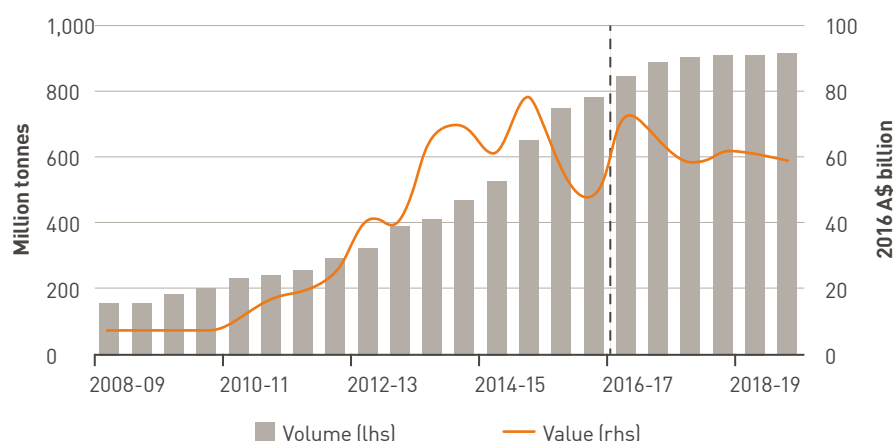


Fig 25 – Australia's iron ore export volumes and values<sup>128</sup>





# IRON ORE IN WESTERN AUSTRALIA

Western Australia is the largest producer and exporter of iron ore in the world. In 2016, the State produced 763 million tonnes of iron ore, representing 37% of worldwide production, and exported 53% of global exports.<sup>129</sup>

The Pilbara region accounted for 94% of Australia's iron ore exports in 2016.<sup>130</sup> The region is home to three of the four largest iron ore mining companies in the world: Rio Tinto, BHP Billiton and Fortescue Metals Group.

Fig 26 – Western Australian iron ore sales <sup>131</sup>

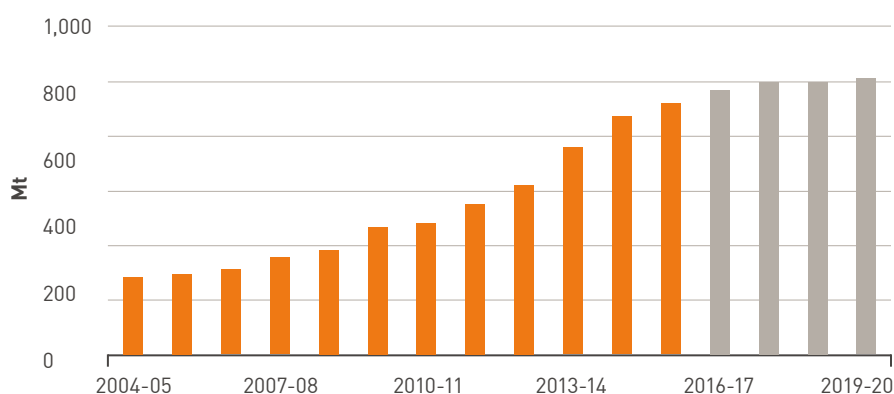
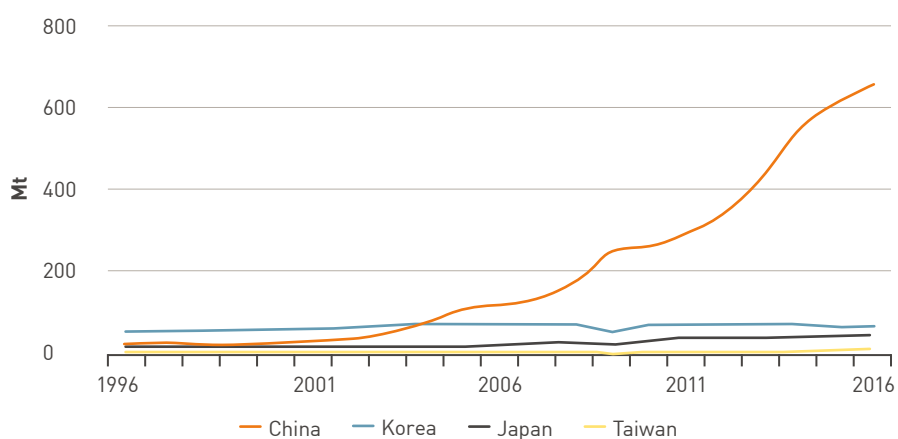


Fig 27 – Iron ore exports by destination <sup>132</sup>





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# THE FUTURE OF AUSTRALIAN IRON ORE

Australia and Brazil's ability to produce low-cost, high-grade iron ore will mean they both continue to be the world's major producers and exporters of iron ore. For this reason Brazil will also remain Australia's major competitor. The supply from Australia and Brazil is expected to outpace demand growth in 2017, resulting in a projected decline in the price of iron ore over the coming years.<sup>133</sup>

In the short to medium term, export growth will be supported by increased capacity of existing mines and the opening of mines currently subject to feasibility. In addition to Rio Tinto's Silvergrass, Koodaideri and Turee Syncline projects mentioned previously, the following projects are expected to begin operations in the next five years: Mt Gibson Iron's Iron Hill project, Atlas Iron's Corunna Downs project, Brockman's Marillana mine and the Balla Balla mine.<sup>134</sup> However, smaller iron ore mining operations are likely to remain marginal in a low iron ore price environment due to their higher costs of production.

On the other hand, iron ore exploration expenditure declined by 9% to A\$288 million in 2016,<sup>135</sup> and was followed by a further decline of 7.3% in the March 2017 quarter to A\$54 million, the lowest quarterly figure since 2006.<sup>136</sup> Lower exploration expenditure will impact longer-term production and export volumes. The decline in exploration expenditure is due in part to companies focusing on expanding existing mines, cost cutting and operational efficiencies.<sup>137</sup>

The future of Australian iron ore will also depend on the extent to which iron ore miners continue to innovate and implement productivity improvements to further reduce their production costs. Developments and advancements in autonomous haulage systems such as Rio Tinto's AutoHaul® fully-autonomous heavy haul long distance railway system, will further cement Australia as a global leader in mining innovation, research and development.

# RAIL AND PORT INFRASTRUCTURE AND SERVICES



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Regardless of the country in which a project is located, the development and operation of a mining project requires access to critical infrastructure and services, including rail and ports.

Determining whether a project will have access to critical infrastructure and services is a key issue for due diligence investigation, and may determine whether or not a project is commercially viable.

The majority of Australia's key mineral and energy resources are located in remote regions that require an extensive and reliable infrastructure network to facilitate transportation to export markets. Existing port and rail systems in Australia are approaching capacity

and the viability of new mines and the long term growth in exports will depend heavily on the development and expansion of this infrastructure.

Between 2004-2014, over A\$30 billion was invested to develop and improve privately and publicly owned export infrastructure in Australia.<sup>138</sup> In 2016-17, the network of pipelines, roads, rail and port facilities enabled approximately 825 Mt of iron ore and 384 Mt of coal to be exported from Australia.<sup>139</sup>

## RAIL

In Australia, coal, iron ore and other bulk commodities are usually transported from the mine of origin to the port of export by rail.

There are several reasons why rail is the preferred method of transport, including cost, reliability, environmental issues and safety. Road transportation and overland conveyors are sometimes used for transporting bulk minerals over shorter distances, and there are also some examples of slurry pipelines being used to transport ore. However rail is still by far the most common means of transportation, especially where the haulage distances are longer.

Australia's main coal and iron ore producing States – Queensland, New South Wales and Western Australia – are serviced by existing high quality heavy rail networks. The rail networks in the eastern States of Queensland and New South Wales are owned by dedicated railway companies whose business includes the provision of third party access to their rail networks by private train operators. In contrast, the iron ore rail networks in Western Australia are largely privately owned by major mining companies.

Although Australian law potentially provides a mechanism for third parties to gain access to these privately owned railways, there are often challenges involved in securing that access. For these reasons, it is not uncommon for smaller producers to look to enter into mine gate sales arrangements with the owners of the relevant infrastructure.

Despite having modern, efficient and well-maintained rail infrastructure, Australia's rail networks are often capacity constrained. This means that the development of new mines, or expansion of production from existing mines, will often require an expansion, extension or upgrade to the rail network to create additional rail capacity. The party who requires the rail network upgrades will usually be required to financially underwrite the construction of those upgrades. These costs can often form a significant part of the capital costs (or ongoing operating costs) of a new mine.

## RAIL IN QUEENSLAND

Queensland's coal industry is serviced by a world-class narrow gauge heavy rail network which transports coal from more than 50 operating coal mines to six existing export coal terminals. At these export coal terminals, ships of up to 230,000 deadweight tonnes export coal to world markets.

Both 'below rail' and 'above rail' providers service the coal industry. Below rail providers own the rail track itself, and above rail providers own the rolling-stock used to transport the coal on the rail system.

There are two main below rail networks servicing the Queensland coal industry – the Central Queensland Coal Network (**CQCN**), and the West Moreton system.

The CQCN is owned by Aurizon (formerly QR National), a spin-off from the former State-owned rail business which was privatised and listed on the ASX in late 2010. This rail track network includes four major coal systems: Moura, Blackwater, Goonyella, and

Newlands and one connecting system link (the Goonyella Abbot Point Extension). Aurizon is progressing a number of capital projects aimed at expanding and enhancing capacity on the network.

The West Moreton rail network system is owned by Queensland Rail. Coal mined in the Surat Basin is hauled to the Port of Brisbane for export via this network.

There are currently two above rail haulage service providers in Queensland – Aurizon and Pacific National (a subsidiary of Australian Logistics Acquisition Investments Pty Limited). Both operate modern train fleets and provide efficient and reliable rail transport services.

Pacific National is Australia's second largest transporter of coal, hauling on average around 435,000 tonnes a day in Queensland and New South Wales. In 2015-16 it hauled 56.7 Mt of coal in Queensland.<sup>140</sup>

## RAIL IN NEW SOUTH WALES

The main ways of transporting coal in New South Wales are by rail, road and conveyor, with rail being the most effective means of long-distance transport, particularly for export coal. Major investments have been made by both the New South Wales Government and the private sector to fund the expansion and upgrading of transport and

Fig 28 – Queensland rail network and coal export terminals<sup>141</sup>



loading facilities, with the intention of ensuring that coal production and exports are well supported into the 21st century.

The rail network that services the New South Wales coal industry extends over 1,050 kilometres, and export coal is loaded at 31 rail loading terminals. The majority of the coal hauled across the New South Wales Hunter Valley rail network is exported through the Port of Newcastle to overseas customers, with 159.4 Mt of coal delivered to the Port of Newcastle in 2015-16.<sup>142</sup> During 2014, Australian Rail Track Corporation, which operates the network, completed a A\$7 billion investment program to repair, upgrade and expand the capacity of the Hunter Valley and Interstate rail networks.<sup>143</sup> Australian Rail Track Corporation plays a critical role in the transport supply chain and is responsible for selling access to train operators, capital investment in the corridors, management of the rail network and infrastructure maintenance and the development of new business.<sup>144</sup>

Pacific National is the primary coal rail haulage operator in New South Wales.<sup>146</sup> In 2015-16 it hauled 102.1 Mt of coal in South East Australia.<sup>147</sup> The company services the mines of the NSW Hunter Valley, Illawarra, Lithgow, Mudgee and Gunnedah regions hauling export coal into the ports of Newcastle and Port Kembla.

In 2015-16, Aurizon hauled 43.8 Mt of coal in the Hunter Valley.<sup>148</sup>

## RAIL IN WESTERN AUSTRALIA

### OVERVIEW

Western Australia has an extensive network of rail infrastructure, some owned by miners and other by infrastructure and service providers. A large portion of the rail infrastructure exists to support iron ore and grain operations. As iron ore production continues to

increase, demand for associated rail and port facilities will likewise increase.

Access to existing rail infrastructure in Western Australia is subject to various State Agreements and State and Federal access regimes. Attempts to secure access to private infrastructure has been a source of controversy over the past decade, with BHP and Rio Tinto seeking to resist attempts by other miners to gain access to their rail networks.

Fortescue Metals Group and Roy Hill have invested in their own railway infrastructure so as to provide security of supply of iron ore from their mines to Port Hedland for export. However, the proponents of the West Pilbara Iron Ore Project in Western Australia (Baosteel, Aurizon, AMCI and POSCO) announced in 2015 that they were ceasing feasibility studies into that project due to challenging conditions in the iron ore market.<sup>149</sup>

Arc Infrastructure (one of the world's few independent rail infrastructure providers) controls over 5,500 kilometres of critical rail infrastructure across the south west of Western Australia, from Geraldton in the north, to Leonora and Kalgoorlie in the east, and Esperance, Albany and Bunbury in the south.<sup>150</sup> Arc Infrastructure's network transports grain, alumina, bauxite and interstate freight as well as passengers on the Perth to Kalgoorlie and Perth to Bunbury lines. The network currently transports over 70 million tonnes of freight each year.<sup>151</sup>

Iron ore is also railed to the Port of Geraldton over the narrow gauge railway between Morawa, Mullewa and Geraldton which is managed by Arc Infrastructure. In 2014, Arc Infrastructure completed a A\$550 million upgrade to the rail infrastructure in the Mid-West region of Western Australia, which increased the capacity of the line from 3 Mtpa to 25 Mtpa.<sup>152</sup> However, several proposed iron ore mines in the Mid-West region have not been

developed, thereby limiting the amount of new iron ore production from the region.

It remains to be seen whether assets owned by the State Government will be privatised following the recent trend of government led privatisations of state assets in the Eastern states. Proposed changes recently introduced into Parliament by the NSW Treasurer has seen a proposal to see rail assets such as tracks, trains and stations owned by RailCorp (a NSW government agency) transferred into a state-owned corporation with a greater commercial focus.<sup>153</sup> In recent months there has also been increasing pressure on Western Australia's new Labor government to consider broader privatisation measures for State assets as a way of managing increased public debt levels.

### WESTERN AUSTRALIAN RAIL ACCESS REGIME

The Western Australian Economic Regulation Authority oversees the WA Rail Access Regime, which is a framework for promoting effective competition on Western Australia's railway network.<sup>154</sup> It covers approximately 5,000 route kilometres of track in the South West region of Western Australia and a portion of Fortescue Metal Group's railway in Port Hedland.<sup>155</sup>

The Regime aims to facilitate access negotiations between operators of above rail infrastructure (i.e. rolling stock) and the operator of the below rail network (i.e. the track and associated infrastructure). Part of this requires that certain regulatory instruments, including segregation arrangements, are approved by the Economic Regulation Authority to ensure that negotiations may occur for access to the railway under the *Railways (Access) Code 2000* (WA). Recently, the Economic Regulation Authority published its final decision on the segregation arrangements in relation to Roy Hill Infrastructure's railway line in Port Hedland.<sup>156</sup>

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# PORT

Australia has some of the busiest bulk commodity export ports in the world.

The Port of Port Hedland in Western Australia is the world's largest bulk export facility, predominantly handling iron ore. The Port of Newcastle in New South Wales is the world's largest export coal terminal, handling 161.4 Mt of coal (valued at A\$15.28 billion) in 2016.<sup>157</sup> There are currently five major coal ports in Queensland which exported just over 207.5 Mt of coal in 2016-17.<sup>158</sup>

As with rail, there are often capacity constraints at export ports. Both construction of new ports and expansion of existing ports is currently planned in the key mining States of Queensland, New South Wales and Western Australia. BREE has suggested that up to an additional 20% of total port capacity (existing, under construction and planned) may be needed to provide sufficient infrastructure for projected commodity export volumes by 2025 if previous port utilisation rates continue into the future.<sup>159</sup>

## QUEENSLAND PORTS

Queensland's rail network delivers coal to five major ports. From north to south, the export terminals located within these ports are:

- **Abbot Point Coal Terminal** near Bowen;
- **Dalrymple Bay Coal Terminal** and **Hay Point Services Coal Terminal** near Mackay;
- **Wiggins Island Coal Terminal** and **RG Tanna Coal Terminal** at the Port of Gladstone; and
- **Fisherman Islands Coal Terminal** at the Port of Brisbane.

Like the rail network, export terminals in Queensland are capacity constrained. There are a number of expansions currently underway or recently completed, including the 11 Mtpa Stage 3 expansion at Hay Point by the BHP Billiton-Mitsubishi Alliance which saw first coal loaded on 12 January 2015 and which increased the capacity of the Hay Point Coal Terminal to approximately 55 Mtpa.<sup>162</sup>

At the Port of Gladstone, the first shipment of coal from Stage 1 of the Wiggins Island Coal Terminal (WICET) occurred on 28 April 2015.<sup>163</sup> WICET currently has a capacity of 27 Mtpa.<sup>164</sup> To reach full capacity of 81 Mtpa at WICET would require the construction of two further expansions,<sup>165</sup> although the likelihood of Stage 2 proceeding in the short to medium term is uncertain.

A 25 Mtpa expansion was recently completed at the Abbot Point terminal in Bowen. This expansion increased coal export capacity to 50 Mtpa and was constructed in conjunction with Aurizon's Northern Missing Link rail project.

There is still scope to significantly increase port capacity at Abbot Point to support increased coal production from the Galilee and Bowen Basins. The approval for the proposed A\$6.2 billion expansion of Abbot Point port, which will provide an additional 120 Mtpa capacity at the terminal, was granted by the Federal Government in December 2013.



Fig 29 – Central Queensland coal terminals <sup>160</sup>

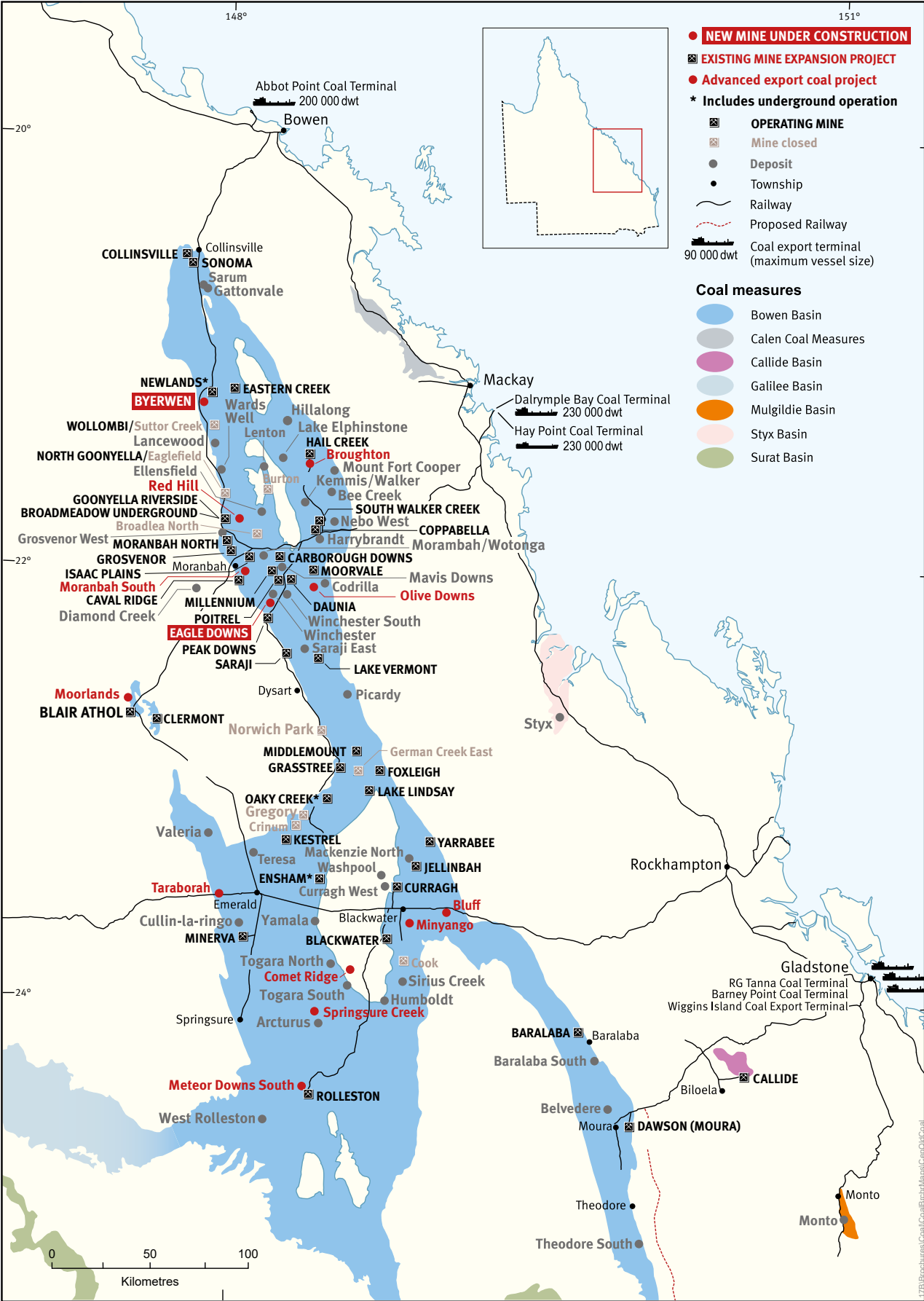
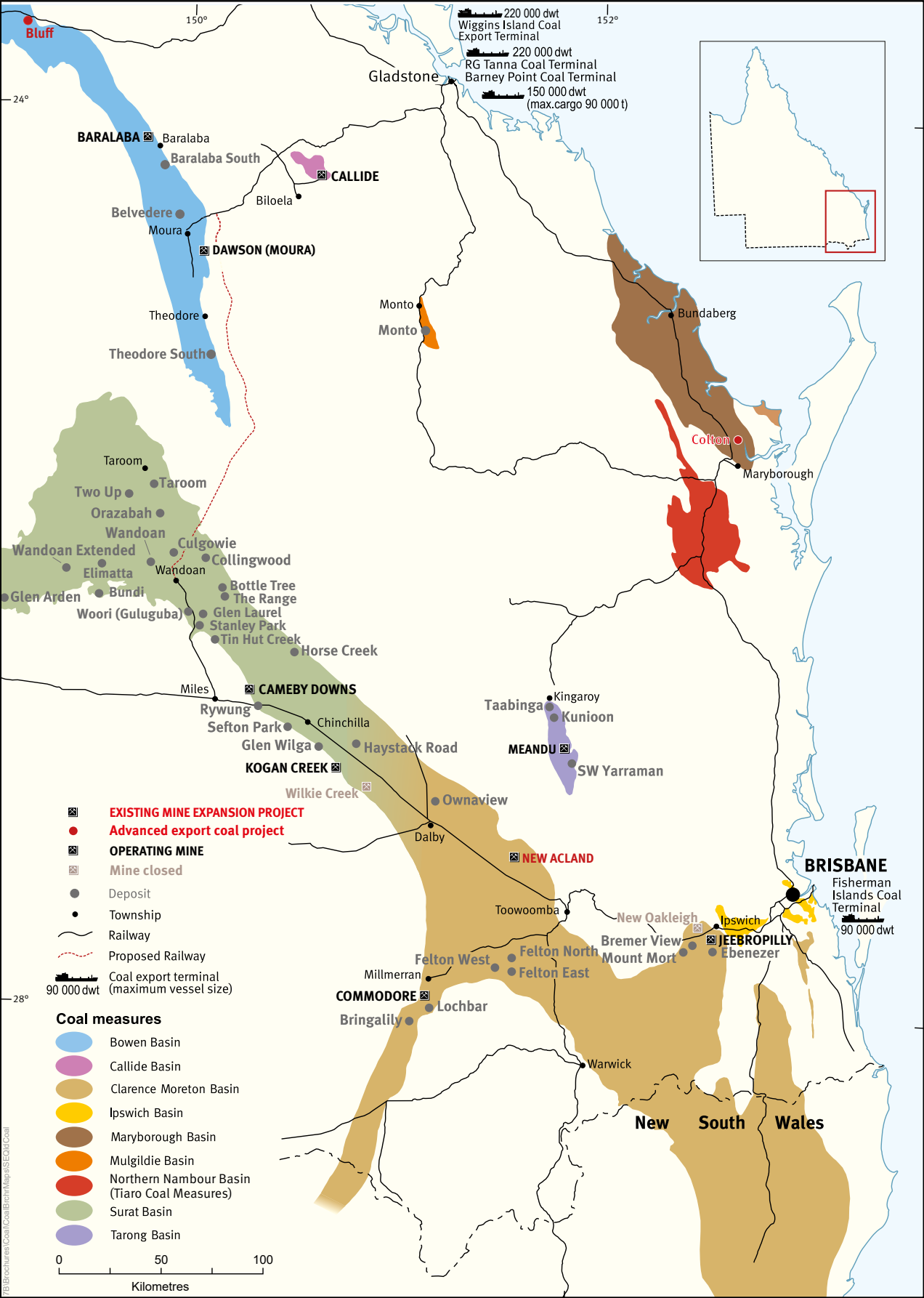


Fig 30 – South-east Queensland coal mines and coal deposits <sup>161</sup>





## NEW SOUTH WALES PORTS

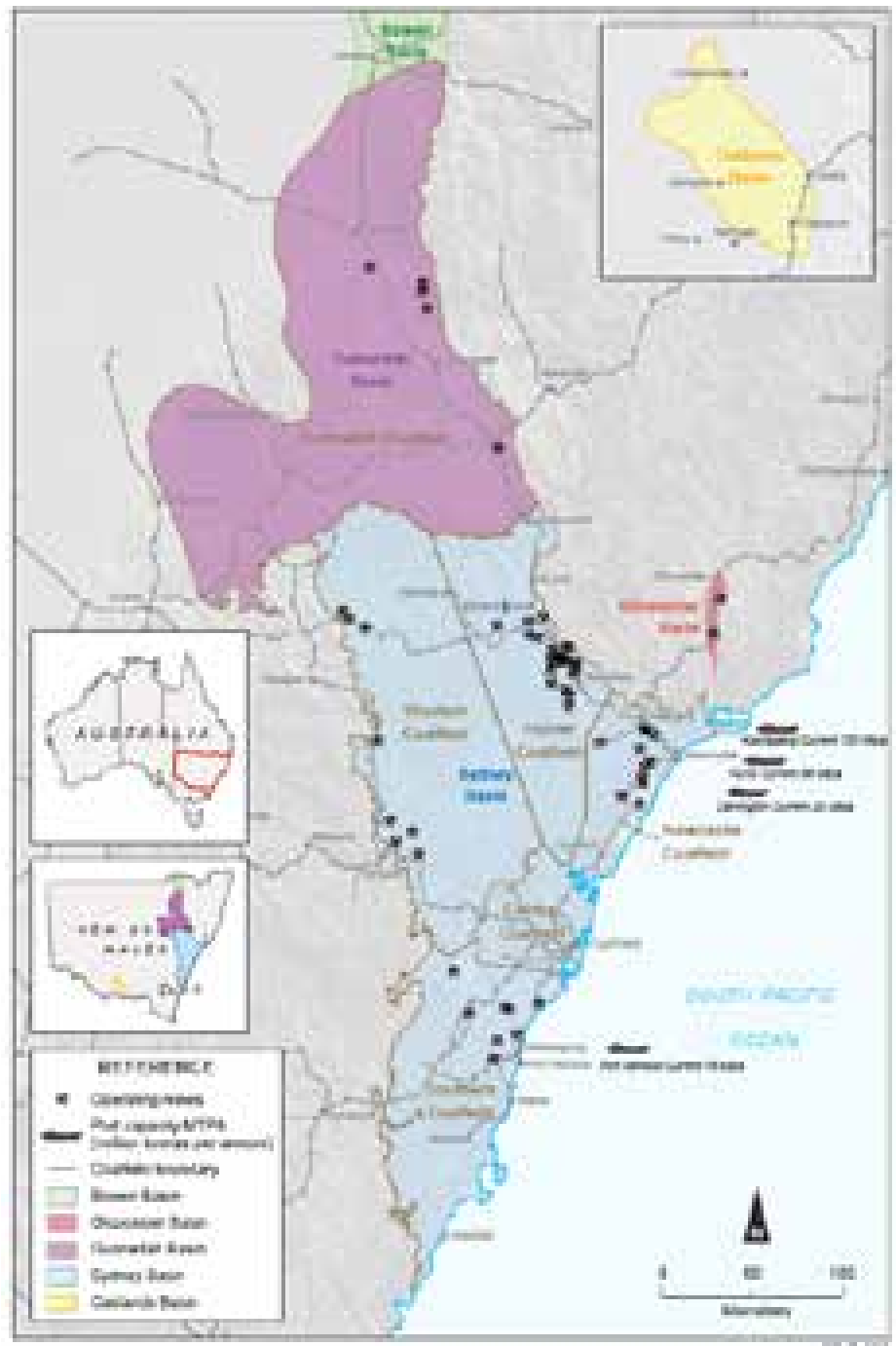
The major coal mining areas of New South Wales are serviced by four export terminals which are located at two major ports. These are:

- **Carrington Coal Terminal** and **Kooragang Coal Terminal** (operated by Port Waratah Coal Services) at the Port of Newcastle;
- **Newcastle Coal Infrastructure Group Terminal** (operated by NCIG) at the Port of Newcastle; and
- **Port Kembla Coal Terminal** (operated by the NSW Ports Consortium) in Wollongong.

The Hunter Valley is the largest thermal coal producing area in Australia. Coal produced in the region is railed distances of between 15 and 120 kilometres to the Port of Newcastle. Rapid growth in demand for and production of thermal coal in New South Wales has led to substantial inefficiencies in the export chain due to limited infrastructure capacity.

A number of expansions are currently underway to resolve these capacity constraints with several other expansions having been recently completed, including the final stage of the Port of Newcastle expansion.

Fig 31 – New South Wales coal basins, operating mines and export terminals<sup>166</sup>



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## WESTERN AUSTRALIAN PORTS

### OVERVIEW OF PORTS IN WESTERN AUSTRALIA

Robust rail and port infrastructure continues to be crucial to the success of the Western Australian iron ore industry. Western Australia produced 763 Mt of iron ore in 2016 (representing 37% of worldwide production) and the Pilbara region alone accounted for 94% of Australia's iron ore exports in 2016.<sup>167</sup>

The combination of geographical isolation, strong growth and export focus means that maintaining an adequate infrastructure network is an ongoing challenge to the industry and the State Government of Western Australia. Since the previous edition of this report was published in 2015, many mining projects have progressed from construction to production.

The State Government has authority over eight ports around the State and has allocated funding of A\$663.2 million over the next few years to all port authorities as part of the State's Asset Investment Program.<sup>168</sup> Port authorities are commercial entities which operate independently of the State Government and are responsible for the planning and development of future growth of the ports and include the Pilbara Ports Authority, Fremantle Port Authority and the Southern Ports Authority.

The legislative amendments introduced in 2014 have, among other things, strengthened port governance and the involvement of the State's ports in the planning of future transportation corridors.<sup>169</sup> Investment in port infrastructure has also continued throughout Western Australia, including large projects undertaken by the Pilbara Ports Authority, Roy Hill Infrastructure and the Kimberley Ports Authority.<sup>170</sup>

Western Australian ports handle a diverse range of export materials, ranging from minerals to livestock and other agricultural products. Traditionally the northern ports (Broome, Port Hedland and Dampier) have handled mineral exports, while the southern ports (Fremantle, Bunbury, Albany and Esperance) handle primarily agricultural exports. However, as mineral production increases in the southern half of the State, it is envisaged that mineral export trade will become a major component of activity for all ports. For example, in the 2015-16 financial year, iron ore exports comprised of 74% of the total trade of the Port of Geraldton, located in Western Australia's Mid-West region.<sup>171</sup> By comparison, grain and mineral sands comprised of only 12% and 4% of the total trade of the Port of Geraldton respectively.<sup>172</sup>

In 2015-16, the Port of Esperance attracted new trade, with 15,185 tonnes of woodchips being exported to China. It is anticipated that this will grow to 400,000 tonnes per annum.<sup>173</sup> Approximately 93% of the Port of Esperance's tonnage consists of iron ore and grain exports.<sup>174</sup>

### PORT HEDLAND – THE CORNERSTONE OF WA'S IRON ORE EXPORT INDUSTRY

Port Hedland continues to be a cornerstone of Western Australia's iron ore export infrastructure. It is the largest bulk export port in the world, with iron ore accounting for 98.7% of the total 500.9 Mt throughput of the port in 2016-17.<sup>175</sup>

There are 19 operational berths within the inner harbour at Port Hedland, four of which are owned and operated by the Pilbara Ports Authority. Eight are owned and operated by BHP and five are owned and operated by Fortescue Metals Group. During the 2015-16 financial year, Roy Hill completed the construction of two new berths, with its first shipment of iron ore departing for South Korea in December 2015.<sup>176</sup>

Large capital infrastructure projects continue to be undertaken at Port Hedland, including construction of the Integrated Marine Operations Centre (IMOC), an operations facility with advanced traffic service systems and state-of-the-art equipment.<sup>177</sup> The IMOC is being funded by the Port Improvement Rate, a levy imposed on vessels entering and exiting the harbour, which funds capital improvements required to maintain the long-term operation and development of the Port of Port Hedland.<sup>178</sup>

The Western Australian Government owns over 6,000 hectares of land at Oakajee, about 25km north of Geraldton, which was originally intended to be used for the development of a new deep water port to support the development of new resources projects in the Mid-West region. However, that project now looks unlikely to proceed given the current state of the iron ore market. Attempts are now being made to re-direct the A\$339 million in funding that was originally allocated to the Oakajee port project by the Federal Government towards other WA infrastructure projects.

### PRIVATELY OWNED PORTS

There are nine non-port authority trading ports in Western Australia. Generally speaking, these proclaimed ports and facilities are privately owned by resources companies (such as Quadrant Energy's Varanus Island port, Chevron's Barrow Island port and Rio Tinto's Port Walcott) with limited guidance and oversight from the State Government.<sup>179</sup>

The largest of these privately owned ports is Port Walcott which is owned by Rio Tinto.

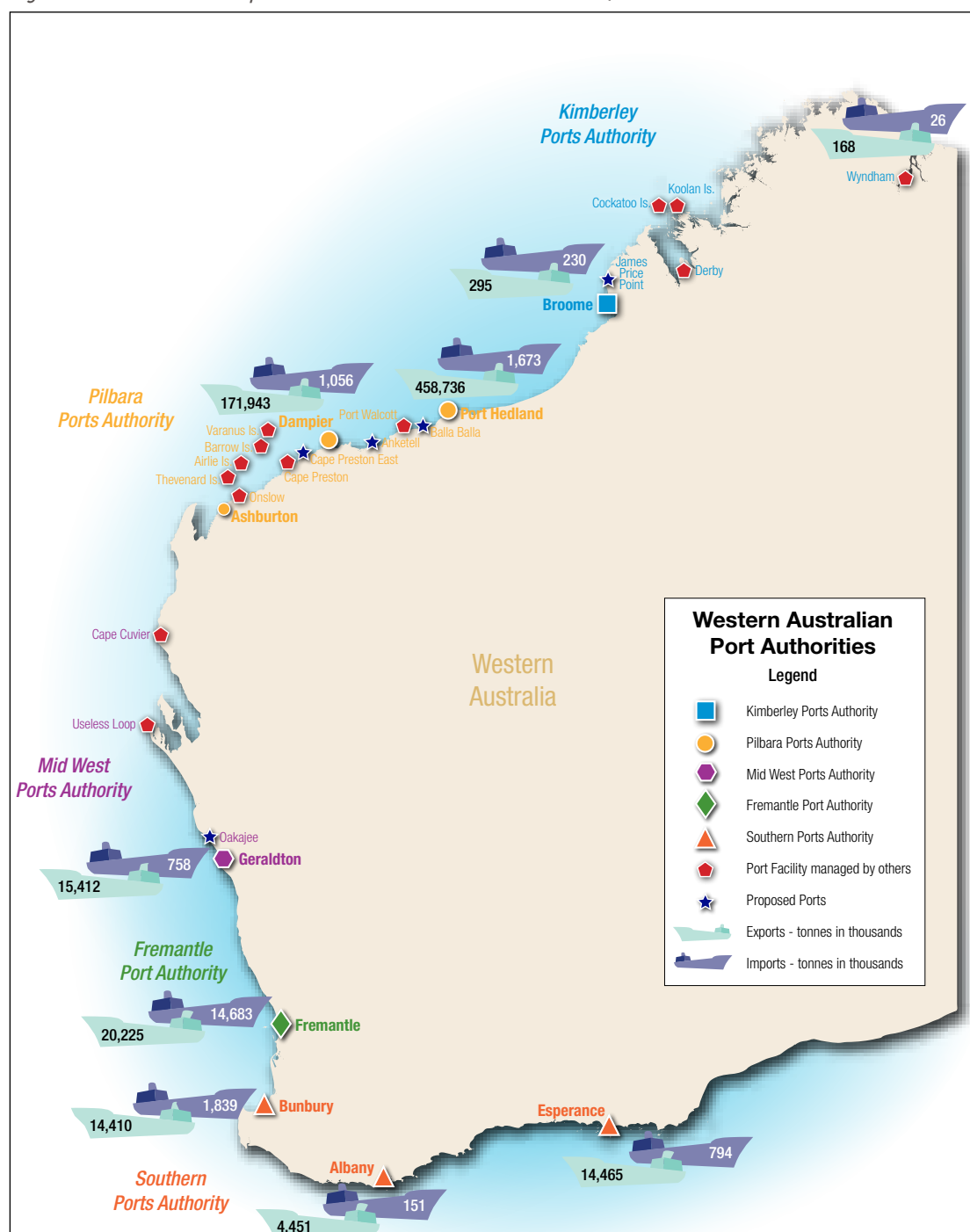
Over the last few years, a number of large infrastructure projects were completed which has resulted in the expansion of the iron ore handling capacity of both privately and publicly owned ports.

Fortescue Metals Group's Herb Elliot Port in Port Hedland has five operating berths and can export more than 165 Mtpa. In May 2016, Fortescue Metals Group was awarded a second towage licence at Port Hedland which will provide additional capacity and an alternative supplier of tug services for users of Port Hedland.<sup>181</sup>

In February 2017, BHP was forced to temporarily pause its plans to upgrade its facilities at Port Hedland pending a review by the Environmental Protection Authority into the impact of dust pollution caused by BHP's activities in Port Hedland.<sup>182</sup> There does not appear to be any indication as to when BHP's upgrade will recommence.

Rio Tinto continues to invest in developing its port infrastructure in Western Australia. The company currently operates four shipping terminals, two at the Port of Dampier and two at Cape Lambert Port.

Fig 32 – Western Australian port authorities and trade volumes in 2015/16 <sup>180</sup>



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# INVESTMENT STRUCTURES

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Investments into Australia's mining industry generally take one of two forms – either the acquisition of an interest in a company which owns the mining project, or the acquisition of a direct interest in the assets and business of the mining project.

## COMPANIES

In Australia a company is a separate legal entity that is established under *Australia's Corporations Act 2001* (Cth) (**Corporations Act**), and whose formation and ongoing operations are regulated by the Australian Securities and Investments Commission (**ASIC**).

There are broadly three types of companies that a foreign investor might encounter in the Australian mining sector. They are listed public companies, unlisted public companies and private companies.

### LISTED PUBLIC COMPANIES

Listed public companies are companies that are listed on the Australian Securities Exchange (**ASX**) or the securities exchange of another jurisdiction. Listed companies are highly regulated, being governed not only by the Corporations Act but also by the Listing Rules of the relevant securities exchange. Listed public companies will tend to be, but are not always, larger in size than unlisted public companies and private companies.

In Australia, listed public companies have an obligation of 'continuous disclosure', which requires the company to disclose to the market (via releases to the ASX) all information that is price sensitive. This obligation is subject to a limited number of exceptions.

The acquisition by a foreign investor of an interest in a listed public company can be 'on market' or 'off market', and may be friendly or hostile. An investor may

directly approach one or more of the existing major shareholders with a proposal to acquire their shares. Alternatively, an investor may approach the company with a proposal to acquire an interest in the company (for example by purchasing new shares or other securities in the company) or to take over the company. There are limits on the size of the shareholding that an investor may acquire without launching a formal takeover, and rules that govern the creeping of the size of a shareholding over time without a takeover.

Examples where a foreign investor has acquired an interest in an Australian listed public company include Baosteel's and Aurizon's joint A\$1.4 billion bid for Aquila Resources in 2014 and Peabody Energy's A\$5.2 billion bid for Macarthur Coal Ltd in 2011.

### UNLISTED PUBLIC COMPANIES AND PRIVATE COMPANIES

Unlisted public companies and private companies are generally far less regulated than listed public companies. They are not subject to the Listing Rules, and are governed primarily by the Corporations Act. Different rules apply to unlisted public companies and private companies, and private companies are the less regulated of the two. However, the acquisition of an interest in an unlisted public company which has less than 50 shareholders and a private company is essentially the same. An example where a foreign

investor has acquired an interest in a private Australian company is the A\$2.69 billion acquisition by Yancoal Australia Limited of Coal & Allied Industries Limited from Rio Tinto in 2017.

### INCORPORATED JOINT VENTURES

Where two or more parties are shareholders in an unlisted public company or private company which owns a mining project, this is often referred to as an incorporated joint venture (IJV).

Listed public companies, unlisted public companies and private companies are all common in the Australian mining industry, and a foreign investor who wishes to acquire an interest in a mining project that is owned by one of these companies may be able to do so by buying an interest in the company.

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# ASSETS

The other way for an investor to acquire an interest in a mining project in Australia is to acquire a direct interest in the assets and business of the mining project. This is quite common in the Australian mining industry, particularly where the project is not wholly owned by a single owner.

## UNINCORPORATED JOINT VENTURES

Unincorporated joint ventures are very common in the Australian mining industry. An unincorporated joint venture is where two or more parties own interests in the assets of a mining project, and the project is governed by a contract between the parties (a joint venture agreement or joint operating agreement). This contract sets out the arrangements between the parties for the development and operation of the project, the sharing of costs and the sharing of production from the project.

The joint venture agreement will set out the scope of the venture, the obligations and commitments of individual parties and provisions covering the financing of the venture and the entitlement of individual participants to the outputs of the venture. The rights and obligations of parties to the joint venture are governed by contract without any significant legislative interference.

Another feature of the unincorporated joint venture is that participants have individual liability in proportion to their interest in the joint venture. In Australia, unincorporated joint ventures are the most favoured structure for mining projects where there are multiple owners due to various tax and other benefits.

One tax benefit of an unincorporated joint venture is that, structured carefully, the project is not a separate legal entity for tax or other purposes. It is a purely

contractual relationship between the parties to the joint venture. The unincorporated joint venture does not lodge a joint tax return. Instead each party to the joint venture must lodge a separate tax return. This allows each party flexibility in relation to the tax treatment of the income and expenses referable to its share of the joint venture.

Another benefit of an unincorporated joint venture is that tax losses (such as those which arise in the exploration phase of a resources project) are immediately available to offset other income of the party, unlike incorporated joint ventures where the joint venture company's losses are locked up in the company and are not available to be netted off against other income of the shareholders.

However, careful structuring is needed to prevent an unincorporated joint venture from being a partnership for tax purposes.

The activities of the joint venture will be conducted by a manager or operator. This will normally be the party with the largest interest in the joint venture, a wholly owned subsidiary of that party, or a company which is jointly owned by all of the parties who have an interest in the joint venture.

Joint venture agreements will often contain restrictions on a party who wishes to sell all or part of their interest in the joint venture. There may be a requirement that the party wishing to sell its interest has to first obtain the consent of the other parties to the joint venture. Another possible restriction requires the seller to grant a pre-emptive right to the other parties to the joint venture, allowing them to buy the interest that is for sale at the same price, and on the same terms, as a third party buyer is willing to accept. In some cases there is both a consent requirement and a pre-emptive right, although this is not common.

Joint venture partners usually enter into deeds of cross charge indemnifying each other for any loss suffered as a result of a partner failing to make a contribution under the joint venture agreement. The deed of cross charge is usually secured by a general security over the joint venture partner's interest in the joint venture. In these cases, third party financiers are required to recognise the deed of cross charge and security granted to each joint venture partner as ranking in priority to any security granted to the third party financier.

## FARM-IN AND FARM-OUT AGREEMENTS

Farm-in agreements (also known as farm-out agreements) are another common form of project participation in the Australian mining industry. Under a farm-in agreement, a party (Farmee) agrees to fund certain exploration costs for the project or pay an upfront capital contribution to the other party (Farmor) in exchange for an interest in the underlying mining tenement which is owned by the Farmor. The interest received by the Farmee is a 'farm-in interest' and the interest assigned by the Farmor is a 'farm-out interest'.

Farm-in agreements are typically used in the exploration stage of mining projects. Often, a farm-in agreement will be entered into where the Farmee has funds to conduct exploration but does not have sufficient access to suitable exploration tenements, and where the Farmor holds suitable exploration tenements but does not have the funds to explore them. Similarly, a Farmor may decide to enter into a farm-out agreement where it holds an exploration tenement over an area of land that is peripheral to its main project and that it does not wish to explore further.



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The farm-in agreement will set out the specific activities that the Farmee must fund, or the amount of capital contribution that it must make and the timing of that payment, in order for the Farmee to obtain an interest in the mining tenement. Once the Farmor has transferred an interest in the

mining tenement to the Farmee or earned an interest in the mining tenement, the Farmee and Farmor will generally form a joint venture (governed by a joint venture agreement) for the continued exploration, and subsequent development, of the mining tenement.

## COMPANY OR ASSETS

When deciding whether to acquire an interest in the company which owns a mining project, or a direct interest in the assets of the project itself, it should be noted that neither method is inherently better than the other. Sometimes only one method will be available in the circumstances of the particular mining project and the party who is wishing to sell.

In other cases both options might be open, and the best approach will need to be determined on a case-by-case basis. Often tax and other legal issues will play a significant part in determining the best acquisition method.

## COMPANY OR ASSETS

### INVESTMENT VEHICLE

Although it is generally possible for a foreign buyer to directly acquire shares in an Australian mining company, or an interest in the assets and business of an Australian mining project, direct investment by a foreign entity is relatively uncommon.

The choice of investment vehicle for a foreign investor into the Australian mining industry will largely be driven by tax considerations, including the tax laws of both Australia and the foreign investor's home jurisdiction, and the interaction between those tax laws.

### INCORPORATED PRIVATE COMPANIES

More often than not, foreign investors will establish an Australian incorporated private company as the investment vehicle. Sometimes the new Australian company will be directly owned by the foreign investor, while at other times there will be one or more interposed holding companies incorporated in other jurisdictions. The best investment structure will depend upon the circumstances of the particular case, and will need to be determined on a case-by-case basis.

An Australian incorporated private company must have at least one shareholder, and may not have more than 50 non-employee shareholders. It must have at least one director, including a director who ordinarily resides in Australia.

Relative to public companies, private companies are less tightly regulated and subject to less onerous reporting requirements. Areas in which this more relaxed regulatory approach is evident include the regulations and restrictions in relation to meetings, the appointment, qualification and removal of directors, the giving of financial benefits to directors and related parties, the power to allot shares and the required contents of annual reports.

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# HOT TOPICS





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# TURNBULL GOVERNMENT INTRODUCES NATIONAL ENERGY GUARANTEE

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. 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 2020-30 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; and
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 that will be enforced by the Australian Energy Regulator.

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

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.

## IMPLEMENTATION

The Commonwealth Government proposes to work with the Energy Security Board and the States through the Council of Australian Governments (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.

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# THE ENVIRONMENTAL PROTECTION (CHAIN OF RESPONSIBILITY) AMENDMENT ACT 2016 (QLD) (**CORA**)

On 27 April 2016, the *Environmental Protection (Chain of Responsibility) Amendment Act 2016* (Qld) (**CORA**) received assent in Queensland. CORA amends the *Environmental Protection Act 1994* (Qld) to give the Department of Environment and Heritage Protection greater powers to enforce compliance with existing environmental obligations.

In its simplest terms, CORA introduces a risk, which did not previously exist, that a former owner of a mining or petroleum resource project in Queensland could be given an order (called an Environmental Protection Order (**EPO**)) to

rehabilitate the resource site, or a cost recovery notice (**CRN**) to pay to the State an amount required for rehabilitation or monitoring.

The powers created are designed to be used where the current owner of the project is unable to discharge its environmental rehabilitation obligations (for example, due to insolvency). In these circumstances, the State will look for someone else to discharge the rehabilitation obligations. This can include former owners. CORA cannot be contracted out of - there is no way to avoid its operation.

Further information on CORA, particularly in the context of recent strong interest from the financial institutional investor space, is contained in our publication [Institutional Investors and the Queensland Resources Sector: A New Challenge to Clean Exit.](#)

In that note, we examine:

- the circumstances in which a former owner of a resource project could remain liable for an EPO or CRN after they've exited the investment; and
- what steps an existing manager can take to mitigate or manage the potential risks postured by CORA.

## POTENTIAL LIABILITY FOR NATIVE TITLE COMPENSATION

Although the *Native Title Act 1993* (Cth) (**NTA**) commenced on 1 January 1994, the principles to be applied in assessing compensation for the impairment and extinguishment of native title rights and interests had not been thoroughly considered by an Australian Court until quite recently.

Under Australian law, a State, Territory or Commonwealth government may in some circumstances be liable to pay native title holders compensation for economic and non-economic loss suffered by the holders if the government has done an act (for example, granted freehold title over Crown land) which impacted on the holder's native title rights and interests which exist in relation to that land.

The issue of such compensation has been something of a sleeping giant in the development of native title law, and while considerable case law has evolved in relation to most of the workings of the NTA, compensation for impairment and extinguishment of native title has been the exception.

That has now changed with the decision on 24 August 2016 of Mansfield J in *Griffiths v Northern Territory of Australia (No 3)* [2016] 337 ALR 362, and the subsequent findings of the Full Federal Court on appeal<sup>184</sup> (the **Timber Creek case**).

The Timber Creek case involved a claim for compensation under the NTA on behalf of the Ngaliwurru and Nungali Peoples of the Northern Territory. A determination of native

title in their favour had been made earlier in 2006. That was important as any compensation claim under the NTA would require significant proof of the existence of native title rights, and the nature of them, in the absence of a Federal Court determination of the existence of those rights. The compensation claim area covered approximately 1.26km<sup>2</sup> in the township of Timber Creek.

The Full Federal Court ordered the total compensation payable to be A\$2.9 million.

Compensation for economic loss was determined to be payable at an amount of 65% of the freehold value of the relevant land as at the time the acts which gave rise to a right to compensation occurred.

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On that basis, compensation for the economic value of the extinguished (non-exclusive) native title rights and interests was ordered to be A\$416,325, with simple interest on that sum of A\$1,183,121. The award of compensation by the trial judge of A\$1.3 million for non-economic loss was not varied by the Full Federal Court.

Our analysis of the Timber Creek case at trial ([Compensation for Extinguishment or impairment of Native Title: The Federal Court Timber Creek Decision](#)) and on appeal ([Full Federal Court Hands Down Appeal Decision in Timber Creek Native Title Case](#)) explains the native title compensation regime in the NTA, and covers the relevant findings of the case in detail.

The principles on which native title compensation will be calculated have not yet been finally resolved, as applications seeking special leave to appeal the findings of the Full Federal Court to the High Court of Australia have been filed by the native title holders, the Commonwealth and the Northern Territory. It will take some months for the special leave applications to be decided.

The assessment of compensation for the grant of mining tenements was not addressed in the case. Unlike the compensable acts considered in the Timber Creek case, the grant of a mining tenement suppresses, but does not extinguish, native title. It is not currently clear what valuation methodology would apply to compensation arising in relation to grant of a mining tenement.

Although under the NTA the Commonwealth, State and Territory governments are largely liable for native title compensation, mining companies may in some circumstances be responsible for such compensation. State governments in Western Australia and New South Wales have passed legislation which transfers to mining companies the burden of any liability for native title compensation in relation to the grant of a mining tenement. The statutory regimes in Western Australia and New South Wales are different. In Western Australia, the holder of a tenement at the time compensation is determined is the liable entity, whereas in New South Wales, the liability attaches to the holder of a tenement as at the relevant date of grant or renewal. There is also scope for governments to pass on liability for native title compensation contractually, or through the imposition of conditions attaching to the grant or renewal of a tenement.

In some cases, a native title party with whom an agreement was entered into prior to the grant or renewal of a mining tenement may have provided a contractual compensation release which would protect the original holder (and potentially a future purchaser of the relevant mining tenement, depending upon the terms of the release) against further liability to compensate native title holders.

Accordingly, it is important for potential purchasers of mining assets (or of holders of mining assets) in Australia to have regard to the legislative position in the relevant jurisdiction(s), and to carefully review the terms and conditions of any related agreements and instruments of grant or renewal in order to ascertain the potential impact on liability for native title compensation as part of their due diligence. The extent of any potential liability, and allocation of risk in relation to that liability, should be considered when negotiating the terms of any acquisition agreement.

# QUEENSLAND FINANCIAL ASSURANCE REGIME TO RECEIVE AN OVERHAUL

The Mineral and Energy Resources (*Financial Provisioning*) Bill 2018 (Qld) (the **Bill**) was reintroduced into Queensland Parliament on 15 February 2018, and proposes significant changes to rehabilitation obligations and the financial assurance regime for resources projects in Queensland.

The two key changes proposed under the Bill are the:

1. introduction of progressive rehabilitation requirements; and
2. replacement of the existing financial assurance regime.

## PROGRESSIVE REHABILITATION REQUIREMENT

The Bill proposes to amend the *Environmental Protection Act 1994* (Qld) (**EP Act**) to impose a new requirement 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).<sup>186</sup>

The purpose of the PRC Plan will be to ensure that authority holders have planned for carrying out environmentally relevant activities (activities, prescribed by regulation, that the Governor in Council considers may cause a contaminant to be released into the environment when the activity is carried out<sup>187</sup>) 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.<sup>188</sup>

The PRC Plan will have to include, among other things:<sup>189</sup>

- 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 EP Act. The PRCP Schedule will be attached to an environmental authority when approved,<sup>190</sup> and may be subject to conditions. The Bill proposes to include various offences relating to contravening conditions of a PRCP Schedule.

## REPLACEMENT OF CURRENT FINANCIAL ASSURANCE REGIME

The Bill also proposes to replace the existing financial assurance regime, which requires all environmental authority holders to provide a financial assurance (typically in the form of a bank guarantee) to the State, with a new regime which establishes a 'financial provisioning scheme' (to be administered by a scheme manager) under which:

- a financial provisioning scheme fund will be created;<sup>191</sup> and

- authority holders will be required to provide one (or, in limited cases, both) of the following types of security to the scheme manager:
  - an annual contribution into the scheme fund;<sup>192</sup> or
  - a surety (in the form of a bank guarantee, insurance bond or cash deposit).<sup>193</sup>

The type and amount of the security required to be provided by an authority holder under the new regime will be determined by the scheme manager applying a risk assessment methodology which takes into account the following five factors:

1. the estimated rehabilitation cost for the authority;
2. the risk category to which the authority is allocated by the scheme manager;
3. the prescribed ERC amount (A\$100,000);
4. the total estimated rehabilitation cost for the authority holder (or, if more than one holder, the nominated 'relevant holder') and its parent corporation, subsidiaries and controlled entities; and
5. the fund threshold (A\$450 million).

Corrs is currently compiling a comprehensive article which critically analyses the key elements of the new financial assurance regime. This will be made available via our [website](#).

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# KEY LEGAL CONSIDERATIONS WHEN BUYING OR DEVELOPING AUSTRALIAN MINING PROJECTS

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# OVERVIEW

When a foreign buyer is considering the acquisition of an interest in an Australian mining project or the development of a new Australian mining project, there are a number of legal issues that should be taken into account.

These issues include:

- foreign investment approval;
- exploration and mining tenure;
- competing resources;
- landholder issues;
- native title;
- cultural heritage;
- environmental approvals and assessment;
- planning
- rail, port, electricity and water access;
- competition issues;
- royalties; and
- employee relations and skilled labour.

Depending on the structure of the transaction, corporate and tax issues may also require consideration.





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# FOREIGN INVESTMENT APPROVAL

The Australian Government welcomes foreign investment into Australia and recognises the substantial contribution it makes to Australia's development. Foreign investment in Australia is regulated and notifiable foreign investment proposals are required to be reviewed by the Australian Treasurer against the national interest on a case-by-case basis.

In practice, it is very rare for a proposal to be refused approval, however, foreign investors wishing to successfully navigate Australia's foreign investment regulatory regime need to understand not only the letter but the spirit of the regime. Adopting a clear commitment to Australia's foreign investment regime from the outset is critical to facilitate timely approval.

To facilitate the process, it is important that a foreign investor who is looking at a significant and potentially sensitive proposal:

- respect the process and consult with the Foreign Investment Review Board (FIRB) and the Treasurer prior to any public announcement;
- appreciate and manage community sensitivities as needed;
- develop a whole of stakeholder strategy which engages key political and community players; and
- proactively identifies and seeks to address potential national interest concerns (if any).

## OVERVIEW OF FOREIGN INVESTMENT REGULATION

### FRAMEWORK

Australia's foreign investment regulatory framework comprises:

- legislative framework and in particular the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) and the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (**Fees Imposition Act**) and their associated regulations.

Under FATA foreign investors must submit foreign investment proposals that meet certain criteria to the Treasurer for approval. The Treasurer has the power to block foreign investment approvals that are contrary to Australia's national interest or apply conditions on the way in which a proposal is to be implemented to ensure it is not contrary to the national interest.

The Fees Imposition Act sets the fees for foreign investment applications.

- Australia's Foreign Investment Policy (**Policy**) is issued by the Australian Government. Historically the Policy was of critical importance as it included substantive additional approval requirements to those in the FATA (for example in relation to foreign government investors). However, since the rewriting of the FATA in 2015 to cover these additional matters, the primary function of the Policy is to give a useful summary of the Government's approach to administering the foreign investment framework, including national interest considerations.
- Guidance Notes which provide more specific information on how the foreign investment framework applies for different acquisitions and investors.

### REGULATORS

The Australian Treasurer is responsible for the foreign investment framework and reviews investment proposals against the national interest on a case-by-case basis.

The Foreign Investment Review Board (**FIRB**), a non-statutory body, advises the Treasurer on the foreign investment regime and is responsible for the day-to-day administration of the regime, together with the Board Secretariat that is within the Commonwealth Treasury.

When making foreign investment decisions the Treasurer is advised by FIRB, which examines foreign investment proposals and advises on the national interest implications. Ultimate responsibility for making decisions rests with the Treasurer.

FIRB is supported by a secretariat located in Treasury and by the Australian Taxation Office (ATO). Treasury is responsible for the day-to-day administration of the framework in relation to business, agricultural land and sensitive commercial land proposals. The ATO administers foreign investment in residential real estate and non-sensitive commercial land.

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## WHO SHOULD CONSIDER THE REGIME?

### FOREIGN PERSONS

FATA and the Policy apply to 'foreign persons'. Broadly, a 'foreign person' means:

- a natural person not ordinarily resident in Australia;
- a foreign government or foreign government investor;
- a corporation, trust, partnership or fund where an individual is not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20%; or
- a corporation, trust, partnership or fund in which two or more foreign persons hold an aggregate substantial interest of at least 40%.

A foreign government investor is a foreign government or separate government entity, trust, partnership or fund in which:

- a foreign government or separate government entity holds a substantial interest of at least 20%; or
- foreign governments or separate government entities of more than one foreign country hold an aggregate substantial interest of at least 40%.

### FOREIGN INVESTORS FROM FTA COUNTRIES

Certain privately owned investors from countries with whom Australia has a free trade agreement including Chile, China, Japan, Korea, New Zealand and the United States are subject to certain higher monetary notification thresholds for acquisitions made directly by those investors.

To take advantage of these higher thresholds the investment must come directly from the free trade agreement country and not through a subsidiary incorporated in another country (including Australia).

### FOREIGN GOVERNMENTS AND THEIR RELATED ENTITIES

All foreign government investors must obtain approval before acquiring a direct interest in Australia, starting a new business or acquiring an interest in Australian land in each case regardless of the value of the investment. Foreign government investors also require approval to acquire a legal or equitable interest in a tenement or an interest of at least 10% in securities in a mining, production or exploration entity.

A direct interest is:

- a) an interest of at least 10% in the entity or business;
- b) an interest of at least 5% in the entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business (other than the supply of good or services on normal commercial terms); or
- c) an interest of any percentage in the entity or business if the person who has acquired the interest is in a position to:
  - i) participate or influence the central management and control of the entity or business; or
  - ii) influence, participate or determine the policy of the entity or business (eg a nominee director).

## APPROVAL

Whether notification of a proposed transaction is required will depend on the identity of the investor, the type of investment, the industry sector and the value of the proposed investment. Importantly, the acquisition of a foreign company with Australian assets may require foreign investment approval.

All notifiable transactions require prior approval by the Treasurer and any agreement to undertake the transaction must be conditional on the approval being obtained. A fee must be paid for each foreign investment application.

A failure to comply with Australia's foreign investment regime has significant and serious consequences for a foreign investor and its officers. Substantial civil and criminal penalties are imposed for breach of the FATA. The Treasurer also has extensive powers to divest or unwind transactions that are subsequently found to be contrary to the national interest.

The following table sets out, at a high level, when foreign investment approval will be required. Various exemptions may apply and it is important that you obtain specific legal advice in relation to your particular transaction.



Type of Investment	Foreign investors	Foreign government investors	FTA country investors
<b>Land</b>			
<b>Agricultural land</b>	A\$15 million (cumulative threshold)	Any interest regardless of value	A\$1,134 million for US, New Zealand and Chilean investors A\$50 million for Thai investors
<b>Developed commercial land (non-sensitive)</b>	A\$261 million	Any interest regardless of value	A\$1,134 million
<b>Sensitive developed commercial land including mines and critical infrastructure eg airports and ports</b>	A\$57 million	Any interest regardless of value	A\$1,134 million
<b>Vacant commercial land</b>	Any interest regardless of value Usually subject to condition to develop within 24 months of the acquisition	Any interest regardless of value	Any interest regardless of value
<b>Production tenements (does not include exploration)</b>	Any interest regardless of value	Any interest regardless of value	A\$1,134 million for US, New Zealand and Chilean investors
<b>Exploration tenement</b>	Approval not required	Any interest regardless of value	Approval not required
<b>Companies</b>			
<b>Acquisition of at least 20% in an Australian business or corporation which is not sensitive</b>	A\$261 million	Direct interest regardless of value	A\$1,134 million for Chile, China, Japan, South Korea, Singapore, New Zealand and US investors
<b>Acquisition of a direct interest in an agribusiness (based on value of investment)</b>	A\$57 million	Direct interest regardless of value	\$1,134 million for US, New Zealand and Chilean investors
<b>Proposal to invest 5% or more in the media sector</b>	Must be notified regardless of value	Must be notified regardless of value	Must be notified regardless of value
<b>Acquisition of at least 20% in an Australian business or corporation which is sensitive</b>	A\$261 million	Direct interest notified regardless of value	A\$261 million
<b>Australian land corporation</b>	Will depend on the underlying land held – see above	Any interest regardless of value	Will depend on the underlying land held – see above
<b>Australian agricultural land corporation (cumulative)</b>	A\$15 million	Any interest regardless of value	A\$1,134 million for US, New Zealand and Chilean investors A\$50 million for Thai investors

#### Notes

1 Threshold figures (other than for agricultural land) are indexed on 1 January annually by reference to the GDP implicit price deflator value published by the Australian Bureau of Statistics.

2 Some exemptions apply to the requirement to notify for proposed acquisitions of real estate.

## FEES

By way of overview, the fees payable to FIRB for an application are as follows:

Fees for commercial land and entities and businesses*			
	Consideration for the acquisition is \$10 million or less	Consideration for the acquisition is above \$10 million and not more than \$1 billion	Consideration for the acquisition is above \$1 billion
<b>Commercial land</b> (vacant and developed)*	\$2,000	\$25,300	\$101,500
<b>Companies / businesses</b>	\$2,000	\$25,300	\$101,500
<ul style="list-style-type: none"> <li>Acquiring an interest in securities in an entity or issuing securities in an entity</li> <li>A foreign government investor acquiring a direct interest in an Australian entity or Australian business</li> <li>Acquiring a direct interest in an Australian entity or Australian business that is an agribusiness</li> <li>Acquiring interests in assets of an Australian business or a direct interest in an Australian business that is an agribusiness</li> </ul>			
Fees for agricultural land		Consideration for the acquisition is above \$2 million and not more than \$10 million	Consideration for the acquisition is above \$10 million
<b>Agricultural land*</b>	\$2,000	\$25,300	\$101,500

*Note – fees are indexed on 1 July each year against the Australian Consumer Price Index (the most widely accepted measure of inflation in Australia).*

## CONDITIONS

FATA allows the Treasurer to decide that the Commonwealth has no objection to the foreign investment subject to conditions to ensure that the action will not be contrary to the national interest. Foreign investors are generally given the opportunity to review and respond to these conditions.

The Treasurer considers the potential impact of an action on Australian tax revenues in determining whether the action is contrary to the national interest. The Australian Taxation Office (ATO) is consulted in determining the potential tax impact of every non-residential foreign investment proposal. If, following consultation, the Treasurer considers the action may involve a risk to tax revenues, standard tax conditions may be imposed as conditions of a no objection notification, to ensure that the action will not be, or is not, contrary to the national interest.

## NATIONAL INTEREST

Under Australia's foreign investment regime the Treasurer, on behalf of the Australian Government, assesses foreign investment proposals against national interest on a case-by-case basis. The Government typically considers the following factors when assessing foreign investment proposals:

<b>National security</b>	The extent to which the investment affects Australia's ability to protect its strategic and national interests.
<b>Competition</b>	Whether investment may result in the foreign investor gaining control over market pricing and production of a good or service or affects diversity in ownership and competition within Australian or global industries.
<b>Government policies</b>	The extent to which the investment is consistent with the Government's policy objectives and the impact the investment may have on Government revenues.
<b>General economy and community</b>	A range of factors including the nature of funding of the investment, Australian participation in the target enterprise following investment and the interests of employees, creditors and other stakeholders.
<b>Character of the investor</b>	The extent to which the foreign investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision. The corporate governance practices of the foreign investor will also be considered.

## DIRECT INVESTMENTS BY FOREIGN GOVERNMENTS AND RELATED ENTITIES

Direct investments by foreign governments and their related entities (including SOEs and SWFs) are assessed on the same basis as private sector investment proposals. In addition, the Australian Government also considers the following factors in respect of a proposal involving a foreign government or a related entity:

- whether the investment is commercial in nature or whether the investor is pursuing broader political or strategic objects that may be contrary to Australia's national interest;
- for partially privatised potential investors: the size, nature and composition of any non-government interests and any restrictions on the exercise of their rights as interest holders; and
- any investment proposals not operating on a fully arm's length and commercial basis.

Investment proposals from foreign government entities operating on an arm's length and commercial

basis are less likely to raise national interest concerns. Other mitigating factors which assist in determining that a proposed foreign investment is not contrary to the national interest include:

- existence of external partners or shareholders in an investment;
- level of non-associated ownership interests;
- governance arrangements for the investment;
- ongoing arrangements to protect Australian interests from non-commercial dealings;
- future or continuous listing of the investment target on the ASX or another recognised exchange; and
- size, importance and potential impact of an investment.

## MINING TENEMENTS

- Under FATA, an 'interest in Australian land' includes an interest in certain types of mining tenements.
- The following table sets out which mining interests will require FIRB notification and approval and the relevant thresholds that apply.

## APPROVAL PROCESS

Under FATA the Treasurer examines investment proposals and may:

- prohibit a proposed investment which the Treasurer decides would be contrary to the national interest; or
- raise no objections to an investment subject to the satisfaction of particular conditions which the Treasurer regards as necessary to address any national interest concerns.

However, even if a proposal is approved under FATA or the Policy, other legislation must also be complied with, including the takeover provisions of the Corporations Act, the Competition and Consumer Act 2010 (Cth) and other legislation and Government policy applicable to special industry sectors, including broadcasting, insurance, banking, airlines and transport, shipping and telecommunications.

The process for obtaining FIRB approval is represented in following flowcharts below.

Investor	Exploration tenement*	Mining lease	Mining joint venture (incorporated or unincorporated)	Operating mine
Foreign investors	x	✓ Must be notified regardless of value	✓ Must be notified regardless of value	✓ A\$55 million
Foreign government investors (SOEs or SWFs)	✓ Must be notified regardless of value	✓ Must be notified regardless of value	✓ Must be notified regardless of value	✓ Must be notified regardless of value
Prescribed foreign investors (US, NZ, Japan, Korea, Chile)	x	✓ Must be notified regardless of value	✓ Must be notified regardless of value	✓ A\$1,134 million

\* If an exploration tenement gives the holder an exclusive right to occupy land and is likely to exceed a term of 5 years, FIRB notification and approval will be required (generally speaking, exploration tenements in Australia do not grant an exclusive right to occupy land).

Fig 33 – FIRB process for applicants

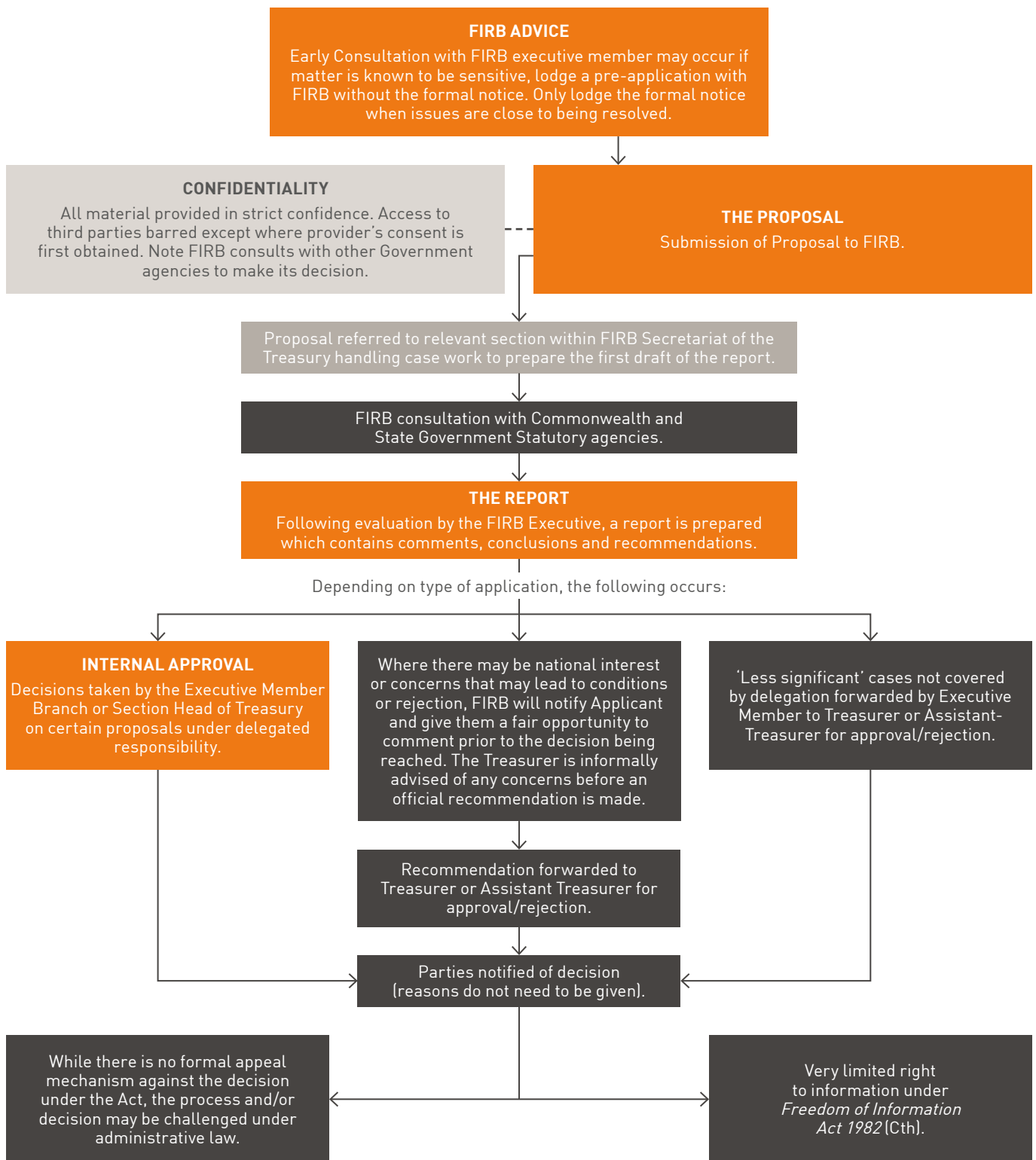
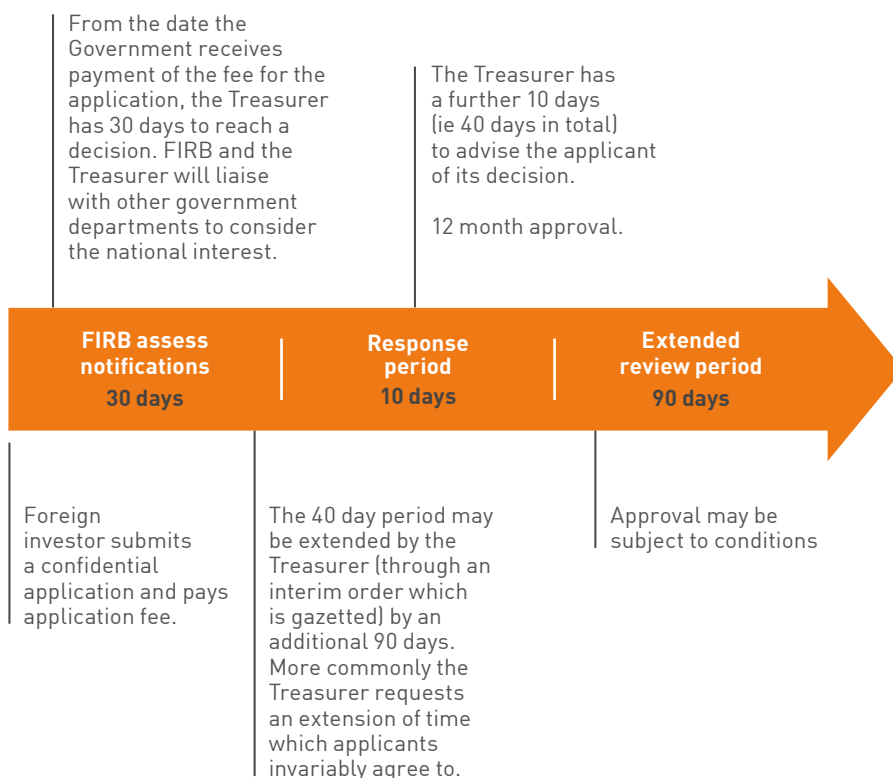


Fig 34 – Timeframe for FIRB review



## FLEXIBLE APPROACH

FIRB works with investors to guide them through the examination process and encourages early engagement (particularly when first proposing to invest into Australia and for significant investment proposals or investment into sensitive sectors). FIRB also welcomes questions if an investor is unsure as to whether prior notification is required. Providing complete and accurate information about a proposal when lodging applications will minimise potential delays. If a proposal raises potential national interest concerns, FIRB will discuss these concerns with the applicant and provide them with an opportunity to comment and/or to propose potential mitigating actions. This flexible approach maximises investment flows while at the same time enabling the Government to consider and respond to community concerns about foreign ownership.

It is unusual for the Government to prohibit a transaction. To facilitate the process, it is important that a foreign investor who is looking at a significant proposal:

- respect the process and consult with FIRB and the Treasurer prior to any public announcement;
- appreciate and manage community sensitivities as needed;
- develop a whole of stakeholder strategy which engages key political and community players; and
- proactively identify and seek to address potential national interest concerns (if any).



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# EXPLORATION AND MINING RIGHTS

In Australia the right to explore for and mine minerals arises under statutory licences which are granted by the relevant State or Territory Government. While the mining laws of each State and Territory of Australia are different, they do have many similarities.

## EXPLORATION RIGHTS

The right to explore for minerals is granted pursuant to an exploration permit or licence<sup>194</sup> and the associated environmental authority, which authorise the holder to go onto the land specified in the permit or licence for the purpose of exploring for minerals.

In some Australian jurisdictions, exploration permits or licences can only be granted following the call for tenders from the Minister, while in other jurisdictions, an over-the-counter application process applies.

Exploration permits or licences are usually granted for five years, but they can be renewed. There is no cap on the total length of the term of an exploration permit or licence and any renewals except in the Northern Territory, where there is a ten year limit, and Victoria, where there is a 15 year limit.

Exploration permits or licences often cover very large areas of land, but the holder is usually required to periodically relinquish parts of the exploration area so that the area of the exploration permit or licence gets smaller over time.

Exploration permits or licences will usually contain conditions which require the holder to carry out certain specified exploration works, to a certain value, for each year of the exploration permit or licence. These work obligations and expenditure commitments are usually set by the relevant Government Department in consultation with the holder of the permit or licence.

The holder of an exploration permit or licence is required to give the owner / occupier of the underlying land prior

notice of entry onto the land, including details of the exploration activities to be carried out and the timing of those activities. The holder of the exploration permit or licence will also be required to compensate the owner / occupier of the land for any impacts of the exploration activities.

Sometimes compensation must be determined in advance of the exploration activities taking place, and in other cases after the activities have taken place. There are certain sensitive areas of land (such as land close to a homestead or water storage facility) which the holder of an exploration licence is not entitled to enter without the consent of the owner of the relevant land.

There is an annual fee payable for an exploration permit or licence which is usually based on the area of the permit or licence. The fee is a nominal amount. There is also a nominal fee for an application for the initial grant, or subsequent renewal, of an exploration permit or licence.

The holder of an exploration permit or licence will be required to provide to the relevant Government Department security for the performance of the holder's obligations under the exploration permit or licence and environmental authority (including obligations under relevant mining and environmental laws). The security is usually in the form of a bank guarantee, and is for a relatively nominal amount.

The holder of an exploration permit or licence will need to comply with its rehabilitation obligations in relation to land affected by its exploration activities. Exploration permits or licences can be held by one or more parties and interests in exploration licences can be transferred, subject to obtaining the prior consent of the relevant Government department/s.

Subject to obtaining any necessary FIRB approval, or Ministerial approval in certain jurisdictions, foreign parties are entitled to hold interests in exploration permits or licences, both on their own and as joint holders with others.

## MINING RIGHTS

An exploration permit or licence does not give the holder a right to mine. If the holder of an exploration permit or licence discovers a commercially viable mineral deposit and wishes to mine, then the holder must apply for a mining lease.

A mining lease<sup>195</sup> and its associated environmental authority permits the holder to go onto the land stated in the mining lease for the purpose of mining. Mining leases are usually granted for longer periods of time (such as 15 to 30 years), and they can be renewed. There is usually no cap on the total length of the term of a mining lease and any renewals.

Before a mining lease can be granted, a number of legal issues will need to be addressed, including landholder compensation and consents (if applicable), native title, cultural heritage, environmental approvals and competing resource rights. Some of these issues are also relevant in relation to the grant of an exploration licence. These issues are discussed in further detail later in this publication.

It can take anywhere from nine months to several years to obtain the grant of a mining lease, depending on the particular circumstances. There is an annual rental fee payable for a mining lease. The fee is a relatively nominal amount. There is also a nominal fee for an application for the initial grant, or subsequent renewal, of a mining lease.

The holder of a mining lease will be required to provide to the relevant Government department security for the performance of the holder's obligations under the mining lease and environmental authority (including rehabilitation obligations and other obligations under relevant mining and environmental laws). The security is usually in the form of a bank guarantee, and may be for a very significant amount.

The holder of a mining lease is required to progressively rehabilitate the land that has been affected by the



mining activities in accordance with certain prescribed requirements and the terms of the holder's environmental authority.

Just like exploration permits and licences, mining leases can also be held by one or more parties and interests in mining leases can be transferred, subject to obtaining the prior consent of the relevant Government department. Consent is usually easy to obtain.

Foreign parties are entitled to hold interests in mining leases, both on their own and as joint holders with others, subject to obtaining any necessary FIRB approval. Furthermore, in Queensland a foreign party can only hold a mining

tenement through an Australian incorporated subsidiary or a foreign company registered as such under the Corporations Act.

If a foreign buyer wishes to buy an interest in an exploration permit or licence or a mining lease, or in a project or company which has an exploration permit or licence or a mining lease, then the buyer will need to carry out legal due diligence to confirm matters such as:

- the identity of the holder of the permit / licence / lease;
- the status of the permit / licence / lease (including the fact that it has been granted and is in good standing);

- the term of the permit / licence / lease and the date when it is due to expire;
- the conditions which attach to the permit / licence / lease (including, in the case of an exploration permit or licence, any work obligations and expenditure commitments);
- the land covered by the permit / licence / lease;
- the amount and form of the security held by the Department in relation to the permit / licence / lease; and
- the encumbrances (if any) which affect the permit / licence / lease.

## COMPETING RESOURCES – OVERLAPPING TENEMENTS

For any project proponent, the issues that need to be considered when dealing with overlapping tenures are:

- whether the presence of an overlapping tenure means that additional processes need to be followed in a future tenure application; and
- whether the presence of an overlapping tenure imposes any limitations on the carrying out of activities.

The answer to each of these questions depends on the particular tenures involved.

### COAL AND CSG OVERLAPPING TENURES

A number of Australian States have legislation which specifically allows exploration and production rights for coal to overlap with exploration and production rights for petroleum (including CSG). The purpose of this legislation is to facilitate and encourage the commercial

production of both coal and CSG wherever possible and to regulate the interaction where an overlap occurs.

For example, in September 2016, in Queensland the overlapping coal and CSG tenure provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) (**MERA**) took effect. The MERA:

- establishes a **direct path to the grant** of coal and CSG production tenures. This means that, provided all other requirements are satisfied, an application for a production tenure will be granted even if it overlaps an existing exploration or production tenure for the other resource. However, safety management and development plans will need to be agreed between the competing production tenure holders before operations commence in the overlapping area;
- provides a **right of way for coal** which operates by temporarily suspending the rights of a

CSG tenure holder within pre-determined areas of a coal mining lease where sole occupancy is required for safe and efficient coal mining operations. If the mining lease holder wants to accelerate mining, compensation for lost CSG production and the costs of relocating infrastructure may have to be paid to the CSG tenure holder. The MERA also eliminates the requirement under the preceding regime for a preference decision to be made by the Minister to 'pick a winner' between coal and CSG production and decide whether to grant the production tenure or give priority to production of the other resource;

- facilitates **information exchange** by requiring overlapping tenure holders to exchange information reasonably necessary to allow them to optimise the development and use of coal and CSG resources in the overlapping area.



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# LANDHOLDER ISSUES

## LANDHOLDER COMPENSATION

The statutory rights which allow the exploration and mining of minerals granted under the laws of the various States and Territories of Australia by way of exploration licences and mining leases are concurrent with (and do not displace) normal land ownership rights.

The ability to access private land to conduct exploration activities is closely regulated, and compensation must be paid to owners and occupiers of land for any damage or inconvenience caused by the exploration activities sometimes in advance of the activities being carried out.

In most cases owners and occupiers of land must be given prior notice of an intended entry onto the land to conduct exploration activities. In some jurisdictions an access and compensation agreement will need to be agreed with the landowner (or determined by the relevant Court) before disruptive exploration activities may be undertaken. In other cases the issue of compensation is left for determination until after the exploration activities have been carried out.

Generally, before a mining lease can be granted, the applicant for the mining lease must either:

- make compensation arrangements with the owners of the underlying land; or
- have compensation determined by the relevant State or Territory Court or Tribunal.<sup>196</sup>

Mining companies will sometimes seek to buy the land underlying the project area as a means of simplifying all issues with landowners. Compensation does not have to be agreed or determined in advance of the mining lease application being made.

Compensation must be agreed or determined with the landholder for every parcel of land which falls wholly or partly within the mining lease area, including any public roads.

Where compensation is agreed with a landholder, this will sometimes result in the mining company purchasing all or part of the landholder's land, depending upon the area of the landholder's land required for the mining lease.

If agreement cannot be reached with a landholder for the purchase of the land or compensation in respect of the use of the land, then the issue of compensation will be determined by a court or tribunal. In most instances, a court or tribunal cannot require the landowner to sell their land and so it is only the issue of compensation to be determined by the court or tribunal.

It is quite common for mining companies to purchase the land, or pay landholders compensation under a compensation agreement, in an amount that is in excess of the fair market value of the affected land.

Where compensation is determined by a court or tribunal, rather than by agreement between the parties, the large premiums over fair market value that are a feature of negotiated sales would not come into play. However, the need to have compensation determined by a court or tribunal may lead to significant delays and significant costs of the proceedings.

## MINING LEASES OVER RESERVES AND 'RESTRICTED LAND' IN QUEENSLAND

In Queensland, the consent of landowners will generally be required if the mining lease application covers land which is a reserve (such as dedicated roads or other Crown reserves, or rail corridor land) or land within a certain distance of structures such as dams for water storage and permanent buildings (**restricted land**).

A foreign buyer interested in investing in a project or company which does not yet have a mining lease should identify whether landowner consent needs to be obtained. If the owner of restricted

land does not consent to the grant of a mining lease, then that land cannot be included in the lease.

## OBJECTIONS TO THE GRANT OF A MINING LEASE

In Queensland, when a mining company makes an application for a mining lease, it must give notice of that application to the public and to certain interested parties, such as the owners and occupiers of all underlying land.

At a certain point in the mining lease application process, interested parties including underlying landholders, neighbours and third parties, are given an opportunity to lodge objections to the grant of the mining lease. Where objections are lodged, they will be reviewed by the Court before the Court recommends to the Government whether or not the mining lease should be granted.

It is possible that, even if compensation agreements are reached with the owners of all underlying land, other persons (such as the owners of neighbouring properties, environmental groups or other third parties) may still object to the grant of a mining lease. The making of objections to a mining lease application will, at the very least, have the effect of delaying the grant of the mining lease and often leads to additional conditions being imposed on the mining lease.

Where no objections are lodged in relation to a mining lease application (and certain other requirements are also met), the Court may dispense with a formal hearing of the mining lease application and in doing so expedite the grant of the mining lease. However, where an objection is lodged, a formal hearing of the mining lease application must take place, consequently delaying the grant of the mining lease.

Similar processes exist in the other states and territories requiring public notification of mining tenement applications and providing the right to object.



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# NATIVE TITLE AND CULTURAL HERITAGE

In order to conduct exploration or mining activities, it is necessary to address two separate legal requirements in relation to Aboriginal and Torres Strait Islander rights. They are:

- native title; and
- cultural heritage.

## NATIVE TITLE

Native title is defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal and Torres Strait Islander peoples, and that are recognised by Australian law. In some areas, native title has been deemed to be 'extinguished', such as freehold land, but in other areas native title continues to exist. Native title is protected and regulated primarily through the *Native Title Act 1993* (Cth) (**NTA**), State native title legislation and the common law.

If native title exists in an area of land over which a mining lease application has been made, certain native title parties are given the 'right to negotiate' with the mining lease applicant about how the applicant's activities will affect the rights and interests of the affected native title parties. The mining lease cannot be granted until the applicant and the relevant native title party have come to an agreement as contemplated under the NTA or the National Native Title Tribunal (**NNTT**) has made a ruling about whether the mining lease should be granted (and if so, on what conditions).

Exploration tenures can also be subject to the right to negotiate process although expedited procedures can sometimes apply.

Although the process is regulated by the NTA, the right to negotiate gives significant leverage to registered native title claimants to negotiate commercially advantageous outcomes.

Typically the agreements reached under the process will require

payments to the registered native title claimants (such as annual payments during the life of the mining lease, or payment of royalties based on tonnage of mineral extracted), and may also include terms relating to Aboriginal cultural heritage and Aboriginal employment quotas, training and scholarships.

Under the process, if agreement cannot be reached, the NTA provides for determination of the matter by the NNTT. However, an application for referral of the matter for determination cannot be made for at least six months from the commencement of negotiations. Although the NNTT is required to resolve the matter as soon as practicable, it is not required to make a determination before six months from when the matter was referred to it. Therefore, resolution of the right to negotiate process, if it applies, can be lengthy, whether negotiated or resolved by the NNTT. An important feature of these negotiations is the statutory requirement to undertake the negotiations in good faith.

An expedited procedure may also be available to address native rights and interests in a manner that is quicker than the full right to negotiate process. Acts attracting the expedited procedure are those acts that are unlikely to interfere directly with community or social activities of the relevant native title parties, or to interfere with areas or sites of particular traditional significance to the relevant native title parties.

An applicant for a mining lease may also satisfy the requirements of the NTA through an Indigenous Land Use Agreement (**ILUA**) with the applicable native title parties. ILUAs are very flexible and can encompass a broad range of considerations. The NTA does not prescribe what can be included in an ILUA. Critically, ILUAs often provide for the native title party's consent to possible 'Future Acts' (as defined in the NTA), such as the future grant of mining leases, or the construction of facilities. However, the ILUA process is entirely voluntary

and there is no statutory timeframe for an agreement to be reached or recourse to an authoritative body to make a determination.

To some extent, the existence of a current registered native title claim over an area of land is not relevant to an assessment of the potential significance of native title for a mining lease application over the land in question. This is because the existence of native title is not dependent on a claim being made – the making of a claim is only a process by which native title is formally recognised. It must therefore be presumed that native title may exist in areas where it has not clearly been extinguished, unless a formal determination has been made by the Court that native title no longer exists in that area. Similarly, the existence of a native title claim over the area of an existing project is not relevant to the validity of the project approvals as native title would have been resolved at the time of grant of those approvals. Subsequent native title claims do not impact on project approvals that have already been validly granted (though they may have impact on the grant of any future approvals sought).

In the event of a mining lease application being made over an area where native title has not clearly been extinguished (and there has been no determination of native title by the Court), the NTA provides for a process of notification to enable claims to be made and registered. In those circumstances, the purpose of native title parties registering the claim would be to gain access to the right to negotiate process. All registered native title claimants have a right to be a party to this process.

## ABORIGINAL CULTURAL HERITAGE

Aboriginal cultural heritage is protected by State legislation (and to a lesser extent Commonwealth legislation) which generally imposes a broad duty of care on proponents of

activities to take all reasonable and practicable measures not to damage Aboriginal cultural heritage. The protection afforded is separate from native title and applies irrespective of whether native title exists.

Generally, the Aboriginal cultural heritage that is protected by legislation includes matters such as human remains, rock-art and archaeological sites, and any areas or objects of significance to Aboriginal people because of their traditions or beliefs, or the history of the area. It is not necessary for the area to contain any markings or physical evidence of use or occupation; for example it could apply to a hill considered sacred by local Aboriginal people.

The cultural heritage duty of care may be satisfied in a number of ways. The most common methods are to enter into and comply with a cultural heritage management plan (**CHMP**) with the relevant Aboriginal parties, to comply with the 'duty of care guidelines' or to enter into another agreement (for example a native title agreement or ILUA) which also deals with cultural heritage.

Generally, resolution of Aboriginal cultural heritage issues is not a prerequisite for the grant of mining tenures. Usually, Aboriginal cultural heritage only needs to be resolved prior to the commencement of activities. An example of when Aboriginal cultural heritage is required to be resolved prior to the grant of a mining tenure is in the event of an application for a mining lease requiring an environmental impact statement where Aboriginal cultural heritage legislation in Queensland requires that the applicant enters into a CHMP with relevant Aboriginal parties for the area of the mining lease before it can be granted.

The Aboriginal cultural heritage legislation sets out a structured process and requirements for development of approved management plans. Even where the legislation does not require a CHMP, comparable plans or agreements about protecting cultural heritage

are now entered into as a matter of course.

Depending on the scale of activities contemplated under the mining tenure applied for, mining companies will frequently conduct (and the Aboriginal parties will frequently expect that mining companies will conduct) a cultural heritage survey of the relevant areas. That will typically require the engagement of an anthropologist or archeologist acceptable to the Aboriginal party and several Aboriginal people with relevant knowledge to conduct the survey, and may take several weeks to a couple of months to complete. The results and recommendations of that survey will then feed into the terms of the management plan, which will typically include:

- relocation of moveable objects of significance and protection of other objects;
- protocols for management of any cultural heritage finds during establishment and operation of the mine;
- protocols for management of any finds of human remains;
- cultural training for mine employees;
- engagement of cultural heritage monitors to supervise any activities which involve disturbance to the surface of the land or clearing of trees and objects from the surface; and
- possibly, the establishment of no-go zones being areas in which activities cannot be carried out or an area otherwise left undisturbed.

Management plans can include 'stop work' provisions in the event of certain finds being made (such as human remains).

The mining lease applicant will be expected to bear all the Aboriginal party's expenses in conducting the cultural heritage survey and in negotiating the management plan.

The process of negotiating an approved management plan generally takes a minimum of two months, and could potentially take ten months or more.

The management plan may be rolled-into, and form part of, any native title agreement required for the grant of the mining lease.

## ABORIGINAL CULTURAL HERITAGE REQUIREMENTS FOR EXPLORATION ACTIVITIES

In order to undertake any exploration activities, it will be necessary to comply with the cultural heritage duty of care under which it may be necessary to negotiate a CHMP with relevant Aboriginal parties. However, a management plan may not be required for certain low-impact activities, activities within a relatively small confined area or activities in already highly disturbed areas, so long as various guidelines are complied with. Any more intrusive activities such as larger scale drilling or bulk sampling are likely to require (at the least) consultation with local Aboriginal groups, and probably engagement of cultural heritage monitors to oversee the activity.

## DUTY OF CARE IN RELATION TO ABORIGINAL CULTURAL HERITAGE

Because the Aboriginal cultural heritage legislation generally imposes a duty of care to take all reasonable and practicable measures not to harm Aboriginal cultural heritage, it is up to the person carrying out activities to ensure that this duty is discharged. A search of a Cultural Heritage Register (kept by relevant State and Territory Authorities) alone will not be sufficient to discharge that duty.

Failure to adequately discharge the duty of care can result in large penalties and stop orders to prevent further harm. This can mean potentially significant delays to activities on the land and may adversely affect the reputation of the company.

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# ENVIRONMENTAL APPROVALS AND ASSESSMENT

Each Australian State has its own environmental legislation which requires that all resource activities in that State must be covered by an environmental approval or authority (**EA**) of some kind. In some States, (i.e. Western Australia), EAs can be administered by the same agency or government department that issues exploration and production tenures.

In addition, if the resource activities for a project are likely to impact on environmental matters classified as being of National Environmental Significance, then the project must be referred to the Federal Government under the national *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). If the Federal Government determines that the project is a controlled action (on the basis that it is likely to have a significant impact on Matters of National Environmental Significance (**MNES**)), it will require assessment and approval under the EPBC Act.

The EPBC Act was amended in 2013 to include a new MNES, specifically for large coal mining development and coal seam gas development. The new MNES trigger is 'Water Resources' which includes both surface and groundwater systems. Federal assessment of such projects can also involve review of assessment material relating to water resources by an Independent Expert Scientific Committee appointed under the EPBC Act. The State Governments can also seek advice from the Independent Expert Scientific Committee in their assessment.

The application and approval process for a State EA involves an assessment of the environmental impacts of the proposed resource activities and will generally involve, as part of the application, the preparation of an environmental management plan, a development plan, or operations plan which, together with the conditions of the EA, will govern the environmental aspects of the mining operation.

## ENVIRONMENTAL IMPACT ASSESSMENT

In Australia, environmental assessment of a major resources project will invariably be undertaken through an Environmental Impact Assessment (EIA) process involving an Environmental Impact Statement (EIS). An EIS will generally only be required for larger scale mining operations or where there may be significant impacts. An EIS will generally not be required for exploration activities.

An EIS may be required in conjunction with an application for an EA or the obtaining of Federal Government approval under the EPBC Act. In some cases, the project proponent may prepare an EIS on a voluntary basis. There are a number of reasons why a proponent would elect to prepare an EIS voluntarily, including to ensure the approvals process proceeds with as much certainty as possible.

The EIS process and preparation of the EIS can however take a significant period of time to complete (up to two years). All EIS processes involve public notification of the draft EIS which enables anyone to make submissions in relation to the draft EIS.

An EA application can proceed at the same time as the application for a mining lease but the EA cannot be granted until the EIS process is completed.

The purpose of an EIS is to assess likely impacts of the mining project on environmental values in the area (including, for example, any endangered regional ecosystem, any fauna habitat in the area, the effects of stream diversion and surface and groundwater systems) and to consider management measures to address those impacts. Ultimately the EIS will be used to assist the relevant Government Department in setting conditions for the EA or approval under the EPBC Act.

Each of the State Governments has bilateral agreements in place relating to the EIA processes. The agreements accredit the State-based EIA processes as an assessment process under the EPBC Act. Consequently, there would usually only be one EIS undertaken for a project, which would satisfy both State and Federal requirements. In general, both State and Federal Governments do try to coordinate their responses to project assessment to avoid duplication and inconsistent conditions.

An 'approvals bilateral', by which State approvals processes may also be accredited for Commonwealth purposes has been prepared in some States, but these have not yet been finalised.

## ENDANGERED REGIONAL ECOSYSTEMS

The existence of 'endangered' and 'of concern' regional ecosystems has the potential to impede the obtaining of a mining lease and associated EAs over the areas covered by the endangered and of concern regional ecosystems. However, the presence of an endangered regional ecosystem does not automatically mean that mining activities will be prohibited in these areas.

The extent to which interference with any endangered regional ecosystem may be permitted will be a matter entirely for assessment of the particular importance of the vegetation, the management measures proposed by the proponent including possibly, revegetation with the same species or other 'offset' arrangements. No definite position can be confirmed in advance of the relevant assessment. Mining activities have been permitted in areas of endangered regional ecosystems in the past.



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# PRESERVING AGRICULTURAL LAND AND REGIONAL PLANNING

Another issue that can be dealt with in the EIA process involves the potential conflict between the agricultural use of land under which mineral resources exist and the resource extraction. State laws have been developed to deal with these potential conflicts in different ways.

## QUEENSLAND

Increasingly, regional planning initiatives are being adopted to better regulate potentially conflicting land uses. An example is the *Regional Planning Interests Act 2014* (Qld).

This legislation establishes an approval requirement, namely a regional interest development approval which is a pre-requisite to carrying out development in areas identified as being of 'regional interest' under the legislation. Areas previously identified under the *Strategic Cropping Act 2011* (Qld) are included as areas of regional interest.

Areas of regional interest can include areas that contain priority agricultural land, urban areas, and strategic environmental areas. These areas are required to be identified and mapped. Some exemptions apply to the need to obtain a regional interests development approval, for example where the impact is not expected to be significant and agreement with the relevant landowner can be reached.

## NEW SOUTH WALES

The NSW Government finalised the implementation of its Strategic Regional Land Use Policy through further amendments to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP).

The reforms require all proponents of proposed State significant mining and petroleum developments on Strategic Agricultural Land to obtain a gateway certificate from the Independent Mining and Petroleum Gateway Panel before a development application may be lodged.

There are two kinds of Strategic Agricultural Land:

- **biophysical strategic agricultural land** being land identified as having high quality soil and water resources capable of sustaining high levels of productivity. This land plays a critical role in sustaining the State's agricultural industry; or
- **critical industry cluster land** being land where there is a concentration of highly productive industries within a region that are related to each other, contribute to the identity of that region, and provide significant employment opportunities, such as viticulture and equine land.

Applications for gateway certificates must be referred to the Commonwealth Independent Expert Scientific Committee and the NSW Minister for Primary Industries for advice regarding the impact of the proposal on water resources. In considering applications, the Panel must have regard to advice provided by the Minister and the Committee. The Panel cannot refuse to grant gateway certificates, but may grant a certificate conditionally or unconditionally. A conditional gateway certificate is to include recommendations of the Panel and specify further studies to be undertaken by the proponent.

Following the grant of a gateway certificate, a project proponent may lodge an application for a development consent.

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# WILD RIVERS

Wild rivers legislations may be relevant in applications for mining leases in Australia. The legislation generally involves identifying and protecting relatively untouched river systems by making a wild river declaration. These declarations will limit activities that may be undertaken within the wild river area but existing tenements will remain intact.

To date, six wild river declarations have been made in New South Wales.

Twelve wild rivers had previously been declared in Queensland under specific wild rivers legislation, however, the former State Government repealed this legislation in 2014. The current State Government has indicated

its intention to reintroduce a regime for the protection of 'pristine rivers', but details of the regime have not yet been released.

# ELECTRICITY AND WATER

## ELECTRICITY

A reliable source of competitively priced electrical energy is important for any mining operation. In many cases, mining operations in Australia are connected to Australia's national electricity grid via high voltage transmission and distribution powerlines.

New mining operations will often require new mine specific electricity distribution infrastructure to be constructed to deliver electricity to the mine site. In some cases upgrades to existing transmission infrastructure, or even new generating capacity, may also be required. In more remote locations, on-site diesel generators may be used to provide the necessary electrical energy.

## WATER

Australia is one of the driest continents on Earth, and ensuring a reliable long term supply of water is vital for any mining operation. Depending upon the location of a mining project there may be various sources of water for mining purposes. This might include water from nearby dams or rivers, water from underground aquifers, or even waste water from coal seam gas operations or recycled water from sewerage treatment plants.

In order to take water from dams, rivers or underground aquifers, a permit is required from the relevant State authority, and it may also be necessary to enter into arrangements with a water pipeline operator to arrange for

transportation of the water to the mine site. Water permits will provide an entitlement to take up to a stated volume of water each year (in megalitres), but different water entitlements may have different priorities in times of water shortage, and a water permit often does not provide any guarantee that the stated volume of water will in fact be available in times of drought.

Waste water from coal seam gas operations and recycled industrial or sewerage water might be secured under contract with the relevant parties.

Water rights are generally tradeable, and can be bought and sold.

# COMPETITION LAW

Australia's competition laws and regulations are relevant to many businesses participating in the Australian mining industry. Mergers and acquisitions, joint ventures, infrastructure investments and marketing arrangements may raise competition issues.

Cartel conduct is generally prohibited under the *Competition and Consumer Act 2010* (Cth).

However, there are very specific circumstances in which cartel arrangements may be allowed. For example, there is a limited exception in relation to certain types of joint venture arrangements. Alternatively, an entity may apply to the ACCC for formal authorisation of a proposed cartel agreement or arrangement. The ACCC's

conditional authorisation of the joint marketing and sale of natural gas produced by the North West Shelf Gas Project is an example of such authorisation.<sup>197</sup> Access to regulated infrastructure, including certain railway lines in Australia, may also raise competition issues which may need to be considered when investing in Australian mining projects.

# TAXATION AND ROYALTIES





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When examining any investment in the Australian mining industry, whether it is by way of the acquisition of an interest in a company which owns a mining project, or the acquisition of a direct interest in the assets and business of the mining project, it is necessary to consider the impact of the Australian taxation and royalty regimes in relation to the acquisition and the ongoing conduct of the mining activities.

## TAXATION IN AUSTRALIA

The Australian taxation system is sophisticated and complex in terms of both its coverage and administration and cannot be explained briefly without omitting some details. The taxation system in Australia has also undergone, and is likely to continue to undergo, significant reform. Accordingly, the following comments should only be used as a guide to the range of tax imposts that are commonly relevant in conducting business operations in Australia. Foreign investors also need to consider the tax regime in their home jurisdiction and any Double Taxation Agreement (**DTA**) between Australia and that jurisdiction.

Each level of Government (Federal, State and Territory and Local Government) imposes its own taxes. The Federal Government imposes the most significant taxes such as income tax, Fringe Benefits Tax (**FBT**), Goods and Services Tax (**GST**), customs duties and excise duties.

State, Territory and Local governments do not impose taxes on income or capital gains. However, each State and Territory Government raises revenues by imposing various charges such as stamp duty, payroll tax and land tax as well as imposing royalties on the production of minerals from within its borders (see below). Each Local Government levies annual charges (rates) on the owners of real property in its jurisdiction.

### INCOME TAX

The Federal Government imposes income tax.

Non-residents of Australia (including foreign companies) are, ordinarily, only taxed on income derived from sources in Australia and capital gains made from dealing with certain assets that have a substantial connection with Australia such as the sale of Australian real property (held directly or, in some cases, indirectly).

Residents of Australia (including Australian companies) are taxed on their worldwide income (that is, from sources both in and outside Australia).

A company incorporated in Australia, or which carries on business in Australia and has its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia, will be a resident of Australia for tax purposes under domestic law.

Income tax is levied on 'taxable income'. Taxable income is the product of a taxpayer's assessable income less any allowable deductions. Assessable income includes ordinary income (eg. business and investment income) and statutory income (eg. capital gains). In broad terms, allowable deductions include any expenditure incurred in gaining or producing assessable income or in carrying

on a business for that purpose. Where allowable deductions exceed assessable income for a year of income, a taxpayer incurs a tax loss. In general, tax losses from prior years can be carried forward indefinitely. In determining the future taxable income of a company, a tax loss may only be deducted against future assessable income if the company satisfies the 'continuity of ownership' test or, in some cases, the 'same business' test. Capital losses can only be offset against capital gains arising in the same or future tax years (but not carried back).

The utilisation of tax losses may be impacted by a company's entry into the tax consolidation regime (see below).

### RATES OF INCOME TAX

The current rate of tax for both resident and non-resident companies (other than 'base rate entities') is 30%. For the income year ended 30 June 2018, companies with aggregated annual turnover of less than A\$25 million (referred to as 'base rate entities') are subject to income tax at a rate of 27.5%.

The Federal Government has introduced a legislative program to progressively lower the corporate tax rate. It is proposed that this measure will have the effect of lowering the tax rate applicable to all corporate tax entities to 25% by the income year ended 2027. In the interim period, the tax rate applicable to base rate entities will

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be progressively lowered, and the turnover threshold of A\$25 million (relevant to determining whether a company is a base rate entity) will also be increased on an annual basis. Therefore, we recommend that company tax rates should be monitored on an ongoing basis.

## CONSOLIDATION REGIME

Wholly-owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to form a consolidated group for Australian income tax purposes. The election is a one-in-all-in election, meaning that each wholly-owned subsidiary will automatically become a member of that group, and is irrevocable. The formation of a tax consolidated group will not have any impact on the status of the group members for the purposes of other Australian taxes (eg FBT).

The principal benefits of forming a tax consolidated group include the lodgement of only one Australian income tax return on behalf of the group, the ability to effectively disregard (for income tax purposes) any intra-group transactions (i.e. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses attributable to the operations of a group member against the income generated by other group members.

There are special rules that give foreign-owned groups which have entry points into Australia via multiple Australian holding companies flexibility in defining the consolidated group.

The Australian head company for the tax consolidated group is responsible for lodgement of the income tax return for the group and for paying the group's income tax liability. However, other members can be jointly and severally liable for the tax liabilities of the group if the head company defaults in paying those liabilities to the Australian Taxation Office (**ATO**). The risk of joint and several liability can be

mitigated if all the members of the group execute a valid tax sharing agreement which (notionally) allocates the tax liabilities of the group to each of its members on a reasonable basis. In such circumstances, an individual member's liability if the head company defaults will be limited to its allocation of the income tax liability of the group as determined under the tax sharing agreement.

## TAX ON CAPITAL GAINS

The Capital Gains Tax (**CGT**) rules set out prescribed events that may give rise to a capital gain or a capital loss. Net capital gains (after offsetting any available capital losses) are included in assessable income.

A capital gain will generally arise if the capital proceeds from the relevant CGT event exceed the cost base of the underlying asset. A capital loss will arise if the capital proceeds are less than the asset's reduced cost base (effectively the cost base of an asset excluding certain items, such as deductible expenditure). Capital losses can only be offset against capital gains arising in the same year or carried forward to offset capital gains in future tax years (but not carried back) subject to satisfying certain conditions.

One event that may give rise to a capital gain or a capital loss is the disposal of a CGT asset. However, non-residents will only be subject to tax in Australia on capital gains derived from the sale of a limited class of assets known as 'Taxable Australian Property'.

In broad terms, this includes Australian real property, leases of real property and mining, quarrying or prospecting rights and Australian business assets. The disposal of shares in a company or units in a unit trust by a non-resident investor may also be taxable in Australia if the investor (together with its associates) has a greater than 10% interest in the company/trust and more than 50% of the value of the

company/trust is attributable to Taxable Australian Property.

Australian residents are generally subject to tax on capital gains derived in relation to their worldwide assets. However, the CGT rules will not apply to capital gains on shares held in non-resident companies, to the extent that the non-resident company has an underlying active business.

Generally, individuals and trustees of trusts (other than a trust that is a complying superannuation entity) may be entitled to discount the amount of their capital gain from a CGT event (i.e. after taking into account current year or carry forward capital losses) by 50%. A complying superannuation entity may reduce net capital gains by 33.3%. However, the CGT discount will only be available if the eligible entity has held the relevant asset for at least 12 months. Companies are not entitled to apply the discount.

As the CGT rules operate to include net capital gains in assessable income, companies are assessed on their capital gains at ordinary income tax rates.

## FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

The Federal Government has introduced a withholding obligation in relation to the sale of certain assets by non-resident vendors. The intention of the measure is to assist in collection of foreign residents' CGT liabilities upon sale of taxable Australian property (described above).

Under the withholding regime, a purchaser from a foreign resident vendor must withhold 12% of the purchase price in relation to the sale of taxable Australian real property (including mining, quarrying or prospecting rights) or indirect Australian real property interests in Australian entities, whose majority of assets consist of the above asset types. Options or rights to acquire any of the above asset types are also

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subject to withholding. If a vendor is an Australian resident, certain evidence or declarations (including, in some cases, a clearance certificate from the Australian Taxation Office) may be required to be obtained to confirm that no withholding is required.

## THIN CAPITALISATION

Deductions for interest incurred by inbound investment vehicles (which can include an Australian company 40% or more of whose shares are owned by a non-resident) and outbound investment vehicles (Australian entities investing overseas) may be limited under what are known as the Australian thin capitalisation rules.

Broadly speaking, a portion of interest (and related expenses) is denied as a deduction if the average debt of the Australian entity or operations exceeds 60% of the average assets of that entity, or the entity's Australian operations, that is, a 1.5:1 debt to equity ratio (the safe harbour test). However, deductions relating to debt in excess of this level may be allowed if the entity can establish that an arm's length lender would have lent a higher amount to the entity, considered on a stand-alone basis (the arm's length debt test) or the entity is geared up to 100% of the actual gearing of its worldwide group (the worldwide gearing test). Different tests apply to non-bank financial entities and Authorised Deposit-taking Institutions. It is important to note that even if the level of debt satisfies the safe harbour test, interest deductions may still be denied under the transfer pricing rules if the interest rate is not arm's length.

## DEBT / EQUITY RULES

Complex rules affect the taxation treatment of a variety of financial instruments. Under these rules, taxpayers are required to apply certain tests to determine whether an instrument will be classified as debt or equity for taxation purposes.

The rules are designed to replicate the economic characterisation of an instrument and may, in some circumstances, differ from the accounting treatment of an instrument as being debt or equity.

Instruments which take the legal form of debt may be classified as equity for Australian taxation purposes and, as a result, payments of interest could be treated as dividends and may not be deductible. There may also be implications under the rules relating to the imputation of dividends (see below).

Alternatively, instruments which take the legal form of equity might be classified as debt for Australian tax purposes. In such circumstances dividends paid will be treated as interest (and potentially deductible), but will not be able to be franked. The classification of an instrument as either debt or equity will also be a relevant consideration for a taxpayer's thin capitalisation analysis.

## TRANSFER PRICING

Australia's transfer pricing regime has recently undergone considerable reform and is broadly aligned with the OECD transfer pricing guidelines. Taxpayers need to self-assess how the transfer pricing rules apply in respect of their dealings with foreign counterparties which will require analysis of whether those arrangements are on arm's length terms. Where the Commissioner of Taxation considers that an Australian taxpayer is not dealing with a foreign party (related or unrelated) at arm's length (including as to pricing), the transfer pricing rules allow reconstruction to replace all or part of the actual arrangements with an arm's length arrangement which may require an adjustment to the profits of the taxpayer.

The transfer pricing rules can apply to arrangements in respect of the provision or acquisition of services, goods and financing (eg loans).

Importantly, taxpayers cannot have a 'reasonably arguable position' – which is relevant to the application of penalties – unless they have appropriate transfer pricing documentation in place before the time by which the taxpayer lodges its tax return.

There are special rules allowing adjustments to be made to interest deductions under the transfer pricing rules even where the level of debt is within the thin capitalisation safe harbour. Adjustments can also be made under a DTA, particularly in relation to the allocation of income and expenses as between the head office and Australian branches of foreign companies.

## IMPUTATION OF DIVIDENDS

An imputation system applies to the taxation of companies resident in Australia and their shareholders. Under this system, the payment of company tax gives rise to credits in the company's franking account. These credits can be attached to dividends paid by the company. Australian shareholders in receipt of these franked dividends can generally claim the credits against their own income tax liabilities.

Non-resident shareholders are not entitled to any credit or refund of the imputation credit in respect of franked dividends, but the fact that a dividend is franked does impact on whether Australian dividend withholding tax would apply to the payment of that dividend to non-resident shareholders (see below).

## WITHHOLDING TAX

Australian withholding tax can be imposed on dividends, interest and royalties paid by residents of Australia to non-residents. Under domestic law, the withholding tax rates are generally 30% on dividends and royalties and 10% on interest. However, if Australia has a DTA with the country in which the non-resident recipient resides, any lower rate specified in the DTA applies.

Under most DTAs, the rate on dividends is at least reduced to 15% (China, Korea and India) and may be reduced further to nil or 5% in others (United States and United Kingdom) depending on the circumstances. The rate on royalties may be reduced to 5% (Japan, United States and United Kingdom), 10% (China and India) or 15% (Korea). Notwithstanding the above, no Australian dividend withholding tax will apply to the extent a dividend paid to a non-resident is franked under the Australian imputation system.

There is no branch profits remittance tax in Australia.

Certain other payments made to foreign residents that do not have a permanent presence in Australia may also be subject to Australian withholding tax. These include payments for entertainment, sports activities and construction, installation and upgrade of buildings, plant and fixtures.

Employers must also make PAYG withholding deductions from salaries or wages paid to employees, which are then remitted to the ATO.

## DOUBLE TAXATION AGREEMENTS

Australia has a comprehensive DTA network covering most of its major trading partners, including China, Korea, India, Japan, the United States and the United Kingdom. A notable exception is Hong Kong which is not covered by the agreement with China.

## MULTINATIONAL ANTI-AVOIDANCE LAW, AND DIVERTED PROFITS TAX

In addition to income tax general anti-avoidance laws, Australia has a multi-national anti-avoidance law which is designed to prevent significant global entities (entities that are part of a group with global income exceeding A\$1 billion) using artificial arrangements to limit the attribution of profits to Australia.

Further, the Federal Government recently enacted a 'diverted profits tax' (**DPT**) to complement existing anti-avoidance rules and the multinational anti-avoidance law. The DPT commenced on 1 July 2017. Broadly, the DPT aims to prevent the diversion of profits by significant global entities offshore through contrived arrangements by imposing a 40% tax on diverted profits. It also contains measures to encourage such entities to provide sufficient information to the ATO to allow for the timely resolution of tax disputes.

## PETROLEUM RESOURCES RENT TAX (PRRT)

The PRRT is imposed on profits generated from the production of petroleum products in Australia. Petroleum products include stabilised crude oil, condensate, liquefied petroleum gas and shale oil. As of 1 July 2012, the PRRT applies to all Australian onshore and offshore oil and gas projects, including the North West Shelf, oil shale and coal seam gas projects.

PRRT is levied on an accruals basis at a rate of 40% of the taxable profit (being excess assessable receipts over deductible expenditure, as calculated pursuant to the PRRT rules) from an entity's interest in a project. An example of an assessable receipt is where recovered petroleum is sold before it is processed or after some preliminary processing. Deductible expenditure includes, amongst other things, expenditure on production platforms, plant and equipment and pipelines to transport petroleum from a well head. Where the deductible expenditure exceeds assessable receipts for a project for PRRT purposes, there will not be a PRRT liability. The excess deductible expenditure will instead be uplifted and carried forward to be offset against future assessable receipts. PRRT payments are deductible for income tax purposes.

## GST

In general, the supplier of goods or services is required to remit GST to the ATO equal to 10% of the value of the goods or services supplied. An 'input tax credit' will generally be available to a business that purchases goods or services for the GST component of the purchase price where both the recipient and supplier of the goods or services are registered for GST and a 'tax invoice' has been provided to the recipient. GST is also payable upon the importation of goods into Australia (usually by the importer).

A business is required to register for GST if it has an annual turnover of A\$75,000 or more. A branch of a foreign company is entitled to be registered for GST purposes. Businesses are required to account for GST to the ATO by lodging a Business Activity Statement monthly or quarterly (depending on the turnover of the business).

The liability for paying the GST is generally imposed on the supplier. Therefore, the supplier should determine its prices to take account of GST, or there should be a GST clause in all contractual arrangements which allows the supplier of a taxable supply to pass on its GST liability to the recipient.

Some supplies are GST-free and do not give rise to a GST liability to the supplier. Subject to satisfying prescriptive conditions, examples of supplies that may qualify as being GST-free include the export of goods or services from Australia, the supply of a business as a 'going concern' and supplies of some farmland. Other supplies may be input taxed (eg financial supplies such as loans and the transfer of shares) such that no GST liability arises for the supplier but there are limitations on the supplier's ability to claim input tax credits on acquisitions it makes in order to make the supply.

Groups of related entities may be eligible to form a GST group and



nominate a representative member to be responsible for recognising the GST liabilities and input tax credits in respect of supplies and acquisitions to and from entities outside the GST group. The representative member for the group is primarily responsible for the group's GST liability. Other members can be jointly and severally liable for the GST liability of the group if the representative member defaults in making a payment to the ATO. A group may mitigate the risk of joint and several liability arising by each member of the group entering into a valid indirect tax sharing agreement.

## STAMP DUTY

Stamp duty is levied in each State and Territory on certain transactions, such as:

- the purchase of business assets in NSW, WA, Qld and the NT, i.e. business transfer duty;
- in some jurisdictions, the purchase of interests in partnerships and trusts

where the partnership or trust holds property located in that jurisdiction; and

- in all States and Territories, the direct transfer of land and interests in land (which can, depending on the jurisdiction, include fixtures, chattels, mining leases and rights).

In addition, an indirect transfer of an interest in land may be subject to landholder duty. In general terms, landholder duty is imposed on the acquisition of shares or units in entities that hold (either directly or indirectly through related entities) land assets of a particular value in that State or Territory. Landholder duty is effectively a 'look through' tax that is imposed on an acquirer's proportionate indirect interest in the value of the underlying land (and, in some jurisdictions, also goods) held by the target entity. The tests and thresholds that apply for determining when an entity is a landholder and when a liability is triggered varies between each jurisdiction, as well as by entity type.

## SUPERANNUATION GUARANTEE CHARGE (SGC)

Under the SGC scheme, a charge is imposed on all employers who fail to provide a prescribed minimum level of superannuation support (i.e. contributions towards retirement benefits) for employees, including certain foreign employees working in Australia. The superannuation contributions must be paid to a superannuation fund which complies with complex Australian legislation. The minimum level is now 9.5% of the employee's taxable remuneration (up to a ceiling). There are long term proposals to incrementally increase this rate until it reaches 12%. If employers fail to provide the minimum level of superannuation support to their employees, they will then be liable to pay the Australian Taxation Office an SGC amount equivalent to the shortfall plus an interest charge and an administration fee that is non-deductible. Foreign employees are able to withdraw any Australian superannuation (net of tax) upon their permanent departure from Australia.

# ROYALTIES

In Australia, the production of minerals is governed by the legislation of the State or Territory in which the production occurs.

Each State and Territory has the power to impose State-based royalties on the production of minerals from within its borders. Royalties vary from State to State and, within States, royalties vary from mineral to mineral. Royalties can also vary depending upon the nature of the mining operation, and whether the minerals are for domestic or export consumption.

For most minerals, a fixed rate of royalty per tonne is often specified. Royalties for coal and iron ore, however, are calculated according to more complicated formulae. By way of example, in the case of coal, the State based royalties in the major coal producing jurisdictions are:

- in **Queensland** – a royalty of between 7% and 15% of the value of the coal, with the percentage rate varying according to the sale price of the coal;
- in **New South Wales** – a royalty of either 6.2%, 7.2% or 8.2% of the value of the coal, depending on whether the coal is recovered by deep underground (coal extracted below 400 metres), underground or open-cut mining. A royalty is also payable on coal reject that is used or disposed of for the purpose of producing energy (at a rate up to, but not exceeding, half the rate applicable to coal); and
- in **Western Australia** – a royalty of A\$1 per tonne (indexed annually) for domestic coal, and 7.5% of the value for export coal.

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# EMPLOYMENT RELATIONS AND SKILLED LABOUR



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## MINIMUM EMPLOYMENT ENTITLEMENTS IN THE MINING INDUSTRY

The *Fair Work Act 2009* (Cth) (**FW Act**) is the primary piece of legislation governing employment in Australia. It applies to most employees in Australia, other than certain State public sector employees. The legislation establishes a number of instruments that determine the terms and conditions of employment for employees, including those engaged in the mining industry.

### NATIONAL EMPLOYMENT STANDARDS

The FW Act contains ten minimum standards of employment known as the National Employment Standards (**NES**) which apply to all employees covered by the FW Act (including executives). These minimum standards relate to four weeks' annual leave (five weeks for shift workers), 10 days' personal / carer's leave, and compassionate leave, community service leave, unpaid parental leave, public holidays, long service leave, notice of termination and redundancy pay, reasonable maximum working hours, flexible working arrangements and the provision of an information statement to all new employees.

### MODERN AWARDS

Supplementing the NES are modern awards made and updated by the Fair Work Commission (**FWC**) (Australia's principal industrial tribunal). Modern awards apply to employers and employees on an industry or occupation specific basis. The key modern awards in the mining industry are the *Black Coal Mining Industry Award 2010* (which covers coal mining), the *Coal Export Terminals Award 2010* (which covers coal export terminals) and the *Mining Industry Award 2010* (which covers mining for metals, minerals or ores).

Modern awards are not intended to cover managers or senior employees, though some modern awards contain classifications that may capture such employees. For example, the classifications in the *Black Coal Mining Industry Award 2010* cover employees who hold 'staff' positions including statutory management positions such as Undermanager (in charge).

### ENTERPRISE AGREEMENTS

The FW Act promotes bargaining at an enterprise level, and protects the role of trade unions in that process by allowing employers, employees and trade unions to negotiate the terms and conditions of an agreement that applies specifically to the particular enterprise. Enterprise agreements are widely used throughout the mining sector, and provide the flexibility to determine site and/or employer specific terms and conditions of employment. Enterprise agreements have a maximum 'nominal' term of four years, but will continue to operate until they are replaced or terminated.

In order to approve an enterprise agreement, the FWC must be satisfied it passes the 'better off overall test'. This requires that each employee covered by the enterprise agreement is, on balance, better off than they would be under the modern award that would otherwise apply to the employee's employment.

Generally, the terms of a modern award will not apply to an employee covered by an enterprise agreement while the agreement is in operation, unless the parties 'call up' such terms by incorporating them in the agreement.

Under the FW Act collective bargaining regime:

- employers may be required to collectively bargain for an enterprise agreement with their employees where the majority of their employees wish to do so;

- employees have the right to appoint a bargaining representative to undertake bargaining on their behalf. If an employee does not appoint a bargaining representative and is a member of a trade union, the trade union will be the default bargaining representative for the employee;
- employers, trade unions and employee representatives are required to bargain in good faith; and
- employees may lawfully engage in strikes or other industrial action in support of claims made during negotiations (which is known as protected industrial action), and employers may respond to such action by 'locking out' the employees.

Where a company is establishing a new business or undertaking in Australia, it may be possible to enter into a 'greenfields agreement' with one or more trade unions prior to employing any of the employees needed to conduct the business. This type of agreement allows an employer to conclude its terms without the risk of industrial action disturbing the commencement phase of a new project.

However, one of the major concerns for mining companies in Australia is the deadlock that often arises between employers and unions during the negotiation of greenfields agreements, delaying the commencement of new projects. Employers are, however, able to notify unions of a six month 'negotiation period'. At the end of those six months, the employer is able to apply to the FWC for approval of an agreement, without union consent. The FWC can approve the agreement if satisfied that it provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work.



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## LONG SERVICE LEAVE

In addition to the minimum entitlements set out in the NES, legislation in the States and Territories provide a general entitlement to long service leave for all employees who have completed a specified period of continuous service with their employer (with a pro-rata amount payable after a shorter period in some certain circumstances). Enterprise agreements can also provide for additional long service leave entitlements.

Employees in the black coal mining industry throughout Australia are subject to the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth), which replaces obligations under state or territory law. Under this Act, eligible employees are entitled to 13 weeks of long service leave after completing eight years of 'qualifying service'. This is a portable scheme, which means periods of qualifying service with different coal mining industry employers count towards an employee's total period qualifying service. The scheme is funded through employer contributions. This means that for every eligible employee, the relevant employer must pay (on a monthly basis) 2.7% of the employee's monthly wage to the relevant fund.

## SUPERANNUATION

Employers in Australia are required to make contributions to complying superannuation funds on behalf of their employees. The minimum contribution is currently 9.5% of each employee's earnings, and is scheduled to increase to 10% by 2021.

Enterprise agreements may contain additional superannuation entitlements.

## INDUSTRIAL RELATIONS AND UNION ENGAGEMENT

The FW Act sets out a detailed framework for industrial relations issues, including powers to hear and determine disputes, to make orders suspending or stopping strikes and other forms of industrial action and to take other steps to intervene in and facilitate collective bargaining. The FWC has a key role in enforcing these laws.

Trade unions that are eligible to represent the industrial interests of employees in a workplace will also be entitled to enter that workplace to hold discussions with employees, and to investigate suspected breaches of legislation, awards or agreements. Union representatives also have a right in certain circumstances to enter workplaces where they have concerns regarding the health and safety of employees at the workplace. This 'right of entry' is subject to a number of notification and procedural requirements.

## EMPLOYMENT PROTECTIONS

The FW Act provides protection from unfair dismissal in certain circumstances, including if a modern award or enterprise agreement covers the employee and the employee has over six months' service, or 12 months' service if their employer is a small business. Senior employees or high income earners generally are not protected from unfair dismissal, unless they are covered by an enterprise agreement or modern award.

There are also a range of protections contained in the FW Act which prohibit adversely affecting employees and others (including prospective employees) for reasons including a person's workplace rights (which is broadly defined to include making a complaint in relation to

employment), industrial activity and various grounds of discrimination. Prohibitions on discrimination in employment also exist in other Federal and State legislation.

## TRANSFER OF BUSINESS

The FW Act contains rules that apply when there is a 'transfer of business', such as when there is a transfer of assets from one employer to another. Generally speaking, if there is a transfer of business, the industrial instruments that applied to an employee who transfers their employment will continue to apply to the employee and bind the new employer, subject to an order from the FWC that can be sought on application by an employer, employee or union. The new employer may also be required to recognise the continuous service and any leave entitlements the employee accrued while working for the old employer.

## HEALTH AND SAFETY

Health and safety in the mining industry is governed by a range of legislation at both State and Federal levels.

In most States and Territories, the mining industry is subject to nationally harmonised work health and safety legislation (**WHS Laws**). Under the WHS Laws, there is a primary duty placed on persons conducting a business or undertaking (**PCBUs**) to ensure the health and safety of people at workplaces (whether employees or other workers, visitors or members of the public), and people affected by the PCBU's business or undertaking, so far as is reasonably practicable. The WHS Laws are backed by criminal penalties for non-complying companies, and in certain circumstances their directors and/or managers.

The mining industry is also subject to mine-specific legislation. For example, in New South Wales, the

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*Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) and the *Work Health and Safety (Mines and Petroleum Sites) Regulations 2014* (NSW) apply to mining operations. This additional legislation creates particular responsibilities for people in the mining industry and sets out specific powers and administrative arrangements.

## WORKERS' COMPENSATION

Legislation in each State and Territory requires employers to hold workers' compensation insurance for their workers, which includes their employees and, in some circumstances, independent contractors. Workers' compensation insurance provides payments of compensation to workers for any time off work as a result of an injury sustained in the course of their employment, and any medical costs that arise as a result of the injury.

## EMPLOYMENT OF FOREIGN WORKERS

Australian or overseas businesses can apply to sponsor an overseas skilled worker to fill nominated

positions in Australia on a temporary basis if they cannot find an appropriately skilled Australian citizen or permanent resident to fill the position.

The Department of Immigration and Citizenship can issue a Temporary Work (*Skilled*) – Standard Business Sponsorship (*Subclass 457*) visa (**subclass 457 visa**) to skilled workers from outside Australia for this purpose. A subclass 457 visa is valid for a period of up to four years.

The employer sponsor must ensure that the terms and conditions of employment provided to a sponsored person are no less favourable than the terms and conditions the employer provides, or would provide, to an Australian citizen or Australian permanent resident to perform work in an equivalent position in the employer's workplace at the same location.

This includes paying market salary rates to overseas workers. In the mining industry, workers on subclass 457 visas are mostly business and science professionals, managers and engineers, but also include tradespeople such as fitters, machinists, welders and electricians.

In April 2017, the Federal Government announced the planned abolition

of the subclass 457 visa, which is intended to occur in March 2018. The 457 visa is to be replaced with a 'Temporary Skilled Shortage' visa (**TSS visa**).

The TSS visa is available for a period of two or four years. It is intended to include a high level English language test, reduced occupation lists and tests to ensure employers are not actively discriminating against Australian workers. The introduction of these measures will occur gradually from April 2017 to March 2018.

## ENTERPRISE MIGRATION AGREEMENTS

Enterprise Migration Agreements (**EMAs**) are a temporary migration pathway to address skill needs for large-scale resource projects. EMAs are intended to provide quicker and more flexible immigration pathways for businesses looking to employ supplementary foreign workers, in return for a commitment to train Australian workers to meet future needs. It is unclear at this point what the impact of the abolition of the subclass 457 visa will be on EMAs.

# HOT TOPIC

## LABOUR HIRE LICENSING SPREADING FAST

Three Australian states have recently moved to implement labour hire licencing schemes. The trend follows a number of inquiries and reports into labour hire operators which revealed significant breaches of WHS Laws, the FW Act, workers' compensation laws, superannuation obligations and visa requirements.

Queensland enacted legislation regulating labour hire in early September 2017, while South Australia introduced a similar bill in late September and Victoria has announced its intention to follow suit this year. These three Labour State governments initially advocated for a national system regulating labour hire and have since acted independently, but along similar lines.

The intention of all three states is to regulate labour hire through a

mandatory licensing system which includes a 'fit and proper' person test and imposes substantial penalties for those operating without a licence, or hiring labour from unlicensed operators. The definition of labour hire is very broad and in Queensland labour hire between related companies is covered.

All businesses which provide or use labour hire will need to review their arrangements to ensure compliance with these new laws.

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# DUE DILIGENCE ON AUSTRALIAN MINING PROJECTS



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**Due diligence is an important part of any M&A transaction in the mining sector in Australia. Foreign buyers who have purchased mining interests in other parts of the world will find that due diligence in the Australian context is very similar to due diligence on a mining transaction elsewhere in the world.**

Due diligence on a potential acquisition of a mining interest will typically cover:

- technical matters (such as resource quality and quantity, geological and geotechnical conditions, infrastructure, etc.);
- commercial / financial matters;
- accounting / tax matters; and
- legal matters.

Buyers will typically draw upon expertise from within their own organisation, and supplement that with suitably qualified external advisers, to assist in the conduct of due diligence across each of the above areas.

## LEGAL DUE DILIGENCE

The results of the legal due diligence will rarely be the deciding factor in the final decision to proceed or not proceed with a transaction. However, the conduct of legal due diligence is nevertheless a very important part of an M&A transaction, because legal due diligence will often uncover issues which:

- have a timing, value or risk impact (and therefore need to be taken into account in the financial model);
- need to be addressed in some way in the sale or bid documentation (in the case of a private M&A deal as a condition precedent, indemnity, warranty or purchase price adjustment, and in the case of public M&A as a walk away right); or
- need to be addressed, following completion of the acquisition, as an implementation or integration issue.

A foreign buyer should discuss with its lawyers, and clearly agree upfront, the scope of the legal due diligence that is to be carried out having regard to the objectives of the buyer and the nature of the acquisition. This would include agreement on a materiality threshold (if any), the documents to be reviewed, the searches to be carried out, any legal advice to be provided, and the form of due diligence report to be provided (for example, a short-form 'exceptions-based' report, or a long-form full legal due diligence report).

Foreign buyers should also agree with their lawyers whether they will be looking after tax, stamp duty and insurance issues. Often foreign buyers will have separate accounting and tax advisers who will look after tax and stamp duty issues, and separate insurance advisers who will look after insurance issues, so it is best to be clear about this up front. Where the seller has prepared a data room containing information about the relevant mining project, the foreign buyer should agree with their lawyers which documents, or categories of documents, in the data room the lawyers are to review. Where the seller has not prepared a data room, lawyers should help the buyer prepare a list of the information and documents that the foreign buyer should ask to see as part of their due diligence investigations. It may be in the context of a listed company that any due diligence is limited to publicly available information (including information sourced from ASX announcements). In addition, the foreign buyer's lawyers should recommend the searches of public registers that should be carried out.

As the legal due diligence progresses, the foreign buyer's lawyers will typically identify gaps in the available information, and will submit questions to the seller or its advisers to obtain additional information to help fill the gaps.

Where possible, the legal structure of the proposed transaction should be resolved before the conduct of the due diligence, because the transaction structure will impact on aspects of the accounting, tax and legal due diligence. However, it is not always possible to resolve the structure before the due diligence commences, and often the results of the due diligence will influence the choice of transaction structure.

When carrying out legal due diligence on a mining project, the foreign buyer's lawyers will generally need to review materials relating to:

- corporate matters (although the extent of the records that need to be reviewed will depend upon the structure of the sale transaction and the number of corporate entities involved);
- farm-in / farm-out, joint venture or shareholder arrangements (where the mining project is owned by multiple parties);
- commodity sales / off-take and marketing / sales agency arrangements;
- infrastructure and services (including agreements for the supply and delivery of electricity and water, and access to road, rail and port infrastructure and services);
- private royalty (or commission) agreements;
- the supply of equipment, spares and consumables;

- the construction, operation and maintenance of the mine (including arrangements for drill and blast services, overburden removal, mining, processing, transporting, stockpiling, train loading, etc.);
- mining tenure;
- environmental issues;
- other Governmental licences, permits and approvals;
- land tenure and landowner consents and compensation;
- native title;
- cultural heritage;
- employee, safety and superannuation (i.e. pension) matters;
- existing or threatened legal claims; and
- intellectual property and information technology.

In addition to reviewing materials provided by the seller which cover the areas outlined above, the foreign buyer's lawyers will generally recommend that they carry out a variety of searches, such as:

- company searches (of the seller and each other relevant corporate entity);
- mining tenure searches (for each relevant exploration licence and mining lease, and for overlapping petroleum, greenhouse gas storage or geothermal licenses);
- land tenure searches (for each parcel of land that is owned by the seller or project, or which underlies the mining leases);
- native title searches;
- cultural heritage searches;
- environmental searches; and
- court searches.

Upon completion of the review of the legal due diligence materials the foreign buyer's lawyers will prepare a written legal due diligence report. As previously noted, this might be a short-form exceptions-based report, or a long-form full legal due diligence report, depending upon what the foreign buyer has agreed with their lawyers.

A full legal due diligence report will be much more detailed, and therefore longer, than an exceptions based report, and will contain more background information which can be helpful to a buyer who is not familiar with the legal and regulatory regime which governs mining projects in Australia.

Irrespective of whether the legal due diligence report is a short form or long form report, it should clearly set out issues identified by the lawyers that the foreign buyer may wish to address in the sale documentation, and the lawyers should recommend how each of those issues can be addressed. For example, in the case of a private M&A deal the lawyers may recommend that a specific condition precedent, indemnity or warranty be included in the sale agreement to address an issue which presents a risk to the buyer.



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# THE FINANCING OF MINING PROJECTS



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**Financing of mining projects can be undertaken through a range of methods, although the method and availability of finance is dependent on what stage the project is at and the appetite of financiers to fund the commodity in question.**

## **BANKABILITY**

For any financier contemplating financing a resource project, consideration is required to be given to the bankability of the project. This means the ability of the borrowers to give adequate security of tenure to the project resource rights, with sufficient sponsor support, adequate contractual undertakings to ensure that the project is developed and operates effectively, sufficient infrastructure to enable the product to meet its market, reliable cash flow through appropriate offtake arrangements, a social licence to operate and appropriate and ongoing authorisations.

While the types of funding are not specific to resource projects, they do have to accommodate the specific nature of the asset, as well as the bankability of the project, and have to take into account a number of factors including whether: the asset is a wasting asset which is subject to a licence authorising the exploitation of the asset, the government issuing the licence has a right to acquire an interest in the project (more usual outside of Australia), negotiation will be required with multiple stakeholders (particularly if the resource company does not own the land or is in a joint venture), the project is highly speculative, royalties may need to be paid to a third party, and the rights of the indigenous people to the land will need to be accommodated.

## **EXPLORATION STAGE**

The exploration stage of any resource project is high risk for financiers, as the project will have limited or no cash flow to service debt unless the project is being undertaken by an entity with other sources of income. As a result a number of resource companies generally have to turn to the investment structures discussed above to access capital to undertake exploration activities. If the mining company has other operating assets, it may be able to secure funding that would otherwise only be available during the development phase of the project.

Accordingly, availability of bank debt tends to be limited, and project vehicles frequently turn to non-traditional financiers willing to accept a greater level of risk in return for the opportunity of higher returns.

## **DEVELOPMENT AND CONSTRUCTION STAGES**

Once a project is able to prove its bankability, the types of financing available to the mining company are more varied.

### **NON-TRADITIONAL FINANCING**

While bank debt used to be regarded as the primary source of funding of natural resource projects, this is no longer the case.

Non-traditional lenders typically provide funding under one or a combination of the following methods:

### **1 Limited term debt**

Limited term debt is the most straightforward method of non-traditional financing. Conceptually it is no different to ordinary bank debt financing except the interest is priced above the market rate to account for the risk premium, and the financier is unlikely to be a traditional bank, but is more likely to be a specialist fund. The project vehicle's application of the finance may also be restricted. It is unlikely to be available for exploration work, unless the borrower has other sources of income that can be used to repay the loan.

### **2 Borrowing base facilities**

Finance is provided based on the net asset value of the reserves of the assets under development and which will be secured in favour of the financiers. Increasingly, this form of finance requires a diversified portfolio of producing assets in addition to development assets.

In calculating the appropriate level of finance, financiers generally only permit the financing to equal the lesser of a discount value of the borrowing base assets or expected cash flows.

This method of financing is used as it provides financiers with a degree of security in the intermediary period between exploration and production where no cash flow is generated. Security is in the form of a mortgage over the project's mining rights and tenements. Accordingly the quality of the borrowing base and potential mine life is critical.

Where a borrowing base facility is provided over producing assets, lenders will require regular reporting from an independent party to confirm current reserves from time to time, with a repayment obligation if the borrower base reserves breach specified levels.



### 3 Commodity loans

Commodity loan finance is provided on the basis that the borrower will deliver to the financier a percentage of the commodity extracted, and is more commonly used in bullion markets.

The amount of finance is based on the value of the commodity to be delivered. The value can be agreed and fixed between parties, or a spot price can be used.

A borrowing fee is also commonly charged to reflect the delay between the provision of finance and repayment.

### 4 Forward purchase agreements

Forward purchase agreement financing is a commodity loan variant under which financiers purchase the commodity to be extracted and make payment in advance. No borrowing fee is charged because the contract is a prepaid commodity purchase agreement rather than a loan arrangement.

While there may be some advantage in having the commodity loan unhedged, to benefit from upswings in the commodity price, most financiers require the borrower to hedge the commodity price or immediately onward sell the commodity provided the market is liquid.

The primary risk to financiers is the inability of onward selling in the market. Requiring the borrower to repurchase after delivery can mitigate this, provided the borrower is an adequate credit risk.

### 5 Royalty financing

This method of financing is typically provided by specialist financiers who have an industry or commodity specific expertise but do not wish to take an equity stake in the project.

Traditional financiers do not generally provide this form of financing because of the risk of non-repayment.

Key features of royalty finance include:

- there is usually no obligation to repay the capital;
- rather than earning interest, the investor earns a royalty payment; and
- covenants and events of default are limited.

The two most common types are:

#### (i) Production payment financing

In production payment financing the financier advances cash in return for a percentage of the future project cash flow.

#### (ii) Stream financing

This is similar to a commodity loan whereby the finance is provided in return for a right of ownership over a portion of the extracted commodity. The difference is the level of finance is not directly determined by the commodity value, although it remains a factor to be taken into account.

Whether a royalty financing constitutes debt will depend on the terms of the financing.

### 6 Offtake financing

Offtake financing came to prominence as a result of the global financial crisis reducing risk appetite in the capital markets.

Offtake financing involves the off-taker providing the finance as opposed to commercial banks or private equity funds. Typically the finance will be a standard debt arrangement albeit with below market interest rates. It is also increasingly common for a direct equity stake to be taken in the project.

The benefit to off-takers of providing finance at the exploration or development stage is that once an asset is producing they will be entitled to purchase the extracted commodity at prices discounted to the world price, thereby providing them with a price advantage over competitors.

### 7 Convertible loan

A convertible loan or note is financing that is initially provided as debt but on the occurrence of an event will convert the outstanding debt, including any outstanding interest, into equity in the project. Typically this is effected by the issue of new marketable shares in the project vehicle.

It is important for financiers to note that prior to conversion:

- (i) interest is accruable on the debt; and
- (ii) it is possible for the borrower to repay the debt in full prior to the conversion event.

### 8 Subordinated or mezzanine debt

This type of debt may be provided by traditional lenders or special purpose mezzanine funders. This debt is generally provided on substantially the same terms as bank debt, but is subject to higher margins to compensate for the deep subordination of the debt (in that it is generally unable to enforce until any senior debt has been repaid). Mezzanine debt may be secured (on a second ranking basis) or unsecured.

## PROJECT FINANCE

Traditionally, funding for the development and construction of mining projects was undertaken by way of project finance. Sponsors lacking the equity and capacity to develop the project themselves may be able to access project finance to finance the development and construction of a project by leveraging the strength of the project.

Prior to committing funding, the financier will require an independent feasibility study to be conducted that identifies all project risks, as the project financier attempts to ensure that all risks are addressed to minimise the risk of the debt not being repaid, as project finance is generally provided on a no recourse or limited recourse basis.

Project Risk Analysis		
Risk	Nature of Risk	Mitigation
Market risk	There may not be a market for the commodity, or the price may not be sufficient to repay the debt	<ul style="list-style-type: none"> <li>Hedging arrangements</li> <li>Offtake arrangements</li> </ul>
Construction risks	Construction will not be completed on time and at the estimated price	<ul style="list-style-type: none"> <li>Fixed price contracts</li> <li>Confirmation by independent engineers of the construction program, progress and variations</li> </ul>
Infrastructure risk	Infrastructure to move the product to port or the offtaker is not sufficient	<ul style="list-style-type: none"> <li>Rail haulage agreements</li> <li>Port access arrangements</li> </ul>
Regulatory risk	The mining company will not have the required licences to mine the commodity	<ul style="list-style-type: none"> <li>Ensure all necessary licences are obtained prior to funding being made available</li> </ul>
Mine life and reserve value	The mine will not produce sufficient product to repay the debt	<ul style="list-style-type: none"> <li>Technical due diligence</li> <li>Ongoing reporting on mine life and reserve value</li> <li>Reserve tail ratio testing</li> </ul>
Environmental risk	Non-compliance with environmental laws	<ul style="list-style-type: none"> <li>Ongoing disclosure</li> <li>Provision of remediation bonds</li> </ul>
Economic risk	Interest rates may rise disproportionately to the cash flows of the project company, or the project company is unable to service the debt	<ul style="list-style-type: none"> <li>Interest rate hedging arrangements</li> <li>Periodic project ratio testing (loan life cover ratio or project life cover ratio, as well as debt service cover ratio and interest cover ratio)</li> </ul>
Cash flow risk	Project cash flow is inadequate to satisfy project expenses, debt repayments and equity distributions	<ul style="list-style-type: none"> <li>Managed through detailed financial modelling and the provision of a detailed cash flow waterfall</li> <li>In addition, financiers may require the project company to establish a number of predetermined project accounts to hold cash for specific purposes, such as a construction account, proceeds account, debt service reserve account, maintenance reserve account and ramp up reserve account</li> </ul>
Social risk	Native title rights and interests, or cultural heritage, may impact on the project	<ul style="list-style-type: none"> <li>Due diligence</li> <li>Entry into native title and cultural heritage agreements (or other measures permitted under legislation)</li> </ul>
Political risk	Civil war or insurrection, or expropriation by the state	<ul style="list-style-type: none"> <li>Political risk insurance</li> <li>Entry into state agreements so that the rights of the project company to be recognised by the state</li> </ul>
Force majeure risk	Force majeure occurring	<ul style="list-style-type: none"> <li>Insurances</li> </ul>
Tax risk	The structure of the project causes unintended tax consequences	<ul style="list-style-type: none"> <li>Detailed tax due diligence</li> <li>Potentially complex financing structures</li> </ul>

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At a bare minimum project risk analysis will include consideration of the factors set out in the table below.

Sponsor support (through corporate guarantees) may be required where the project debt levels are greater than 60%, sponsors lack commercial history and expertise, or the value of the underlying project reserves are weak or untested.

The existence of a committed off-take arrangement at a pre-agreed price can be vital, but creates tension between the financiers' need for cash flow certainty, and the mine developer's ability to capitalise on commodity price increases.

A number of countries and financial institutions have adopted the 'Equator Principles',<sup>198</sup> a framework to safeguard environmental and social responsibility risk. Financiers generally require strict adherence to environmental and social laws with ongoing disclosure requirements.

The project vehicle for a project finance can either take the form of a special purpose company or an unincorporated joint venture.

## EXPORT CREDIT AGENCIES

Export credit agencies (**ECAs**) are usually government-backed agencies that provide credit insurance (including political risk insurance) and guarantees for the obligations of project proponents that have a link to the home jurisdiction of the ECA. As government or quasi-government organisations, the support an ECA can provide is often limited by their government's regulatory framework and rules (eg frequently a minimum local content requirement).

However, ECAs can also provide additional debt funding to a project, and this is usually relevant to projects with significant capital requirements. As ECAs have lower

capital charges than traditional lenders, this can be an attractive source of funds for both mine developers and the mandated lead arrangers of traditional debt funding.

Significantly, they will often step in where:

- a bank has deemed a project unviable because the debt to equity ratio exceeds 60% or the time frame for positive cash flow exceeds 5 years; and
- equity investments are unavailable because the returns are too low for the risk involved or existing stakeholder equity will be diluted too much.

ECA involvement can also create a 'halo-effect' when the ECA provides a guarantee over the project. ECA guarantees replace a project's credit rating with that of the Australian Government. The improved credit rating may encourage funding from commercial banks.

While historically ECAs have not negotiated the terms of the financing directly, but have rather required senior lenders and the mine developer to develop terms that will be acceptable to the ECA. ECAs have recently played a more significant role in the development of financing documents.

## PRODUCTION AND EXPANSION STAGES

Once a project achieves production, project finance and other bespoke financing arrangements can fall away and be replaced by traditional corporate finance or pure reserve base lending finance. However, because resource projects have limited reserves any refinancing or the provision of new finance will depend on the extent to which the project's mine life exceeds the financing term.

At a bare minimum mine life should exceed the loan term by 5 years. This will ensure the project can service its debt in the event that a loan facility needs to be refinanced or extended.

Where finance is required for an expansion of a single producing asset this is typically provided based on the reserve life and value as discussed. However, if the project sponsor is considered an investment grade company it may be extended finance on a corporate finance basis or have access to debt capital markets.

Investment grade sponsors are typically companies with:

- a large portfolio of producing assets;
- assets in development and exploration; and
- exploration licences and tenements.

Given the range of assets required there are very few investment grade resource companies in the world. Some notable Australian examples are Rio Tinto and BHP, who both own tier 1 assets in a range of commodities (including coal, iron ore and petroleum).

Resource companies with access to corporate finance can source finance from the debt capital markets like any other investment grade company outside the resource sector would. Debt capital markets became a popular form of financing during the mining boom, due to the longer tenor, reduced covenants, flexibility for issuance and reduced costs, and have been frequently used by resource companies with operating assets. However, the end of the mining boom has made investors more cautious about investing in bonds from mining companies unless the company has significant producing assets.

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## PROTECTING A FINANCIER'S INTEREST

Financiers will generally require clear security over the project assets.

In Australia, interests are easily enforceable however the process changes depending on the type of security interest. Specifically, the States and Territories have jurisdiction over land and all mining interests, leases, tenements. The Commonwealth's *Personal Properties Securities Act 2009* (Cth) (**PPSA**) has jurisdiction over all other personal property generally.

Registration is the usual method of perfection. A registered security interest will have priority over an unregistered security interest or a security interest registered later in time.

The Commonwealth and each State and Territory have different rules around registration of security.

The key areas of difference are:

### 1 Ministerial consent

Ministerial consent is generally required for taking security over mining tenements and leases but is not required for registration of securities under the PPSA.

### 2 Indefeasible title

The registration of an interest in a mining tenement does not gain the benefit of indefeasibility. The result is financiers must enquire into the validity of the proposed security interest and whether it is encumbered by any defects in title.

### 3 Sub-classes of mining tenements and leases

Each Australian State and Territory has different mining tenement sub-classes. For example, Western Australia has prospecting, exploration and retention licences as well as mining leases.

The sub-classification complicates the provision of finance because some classifications are not transferable. This acts as an impediment to finance because financiers cannot take security over the particular interest.

Another issue is some States and Territories require an instrument effecting a transfer of a mining tenement to be in writing. This also varies depending on the sub-classification.


## 4 Personal property

For perfection of security over personal property, the security interest must either be registered or must be perfected by control. Registration is the preferred method of perfection, although in certain instances financiers will also require a security to be perfected through control (for example by taking title certificates for marketable securities).

The *Personal Properties Securities Act 2009* (Cth) (**PPSA**) allows for the registration of a general security that attaches to all present and future assets of the project vehicle that are not expressly excluded from the operation of the PPSA. Significantly, this will include the project's production as soon as it is extracted.

In addition to a general security interest, financiers will also require specific security by way of a purchase money security interest (**PMSI**) over machinery, equipment or vehicles that the financier has a retention of title interest in (due to the equipment being funded via a hire purchase arrangement or finance lease).

A PMSI once registered gains a super priority that will trump most other registered interests, including a financier's general security interest registered earlier in time.



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# GLOSSARY OF TERMS

<b>A\$</b>	Australian dollar
<b>ABARE</b>	Australian Bureau of Agricultural and Resource Economics
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASX</b>	Australian Securities Exchange
<b>ATO</b>	Australian Taxation Office
<b>AWA</b>	Australian workplace agreement
<b>BREE</b>	Bureau of Resources and Energy Economics
<b>CGT</b>	Capital gains tax
<b>CHMP</b>	Cultural heritage management plan
<b>Clean Energy Act</b>	<i>Clean Energy Act 2011</i> (Cth)
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth)
<b>CPM</b>	Carbon price mechanism
<b>DEHP</b>	Department of Environment and Heritage Protection
<b>DNRM</b>	Department of Natural Resources and Mines
<b>DTA</b>	Double taxation agreement
<b>EA</b>	Environmental approval or authority
<b>EDR</b>	Economic demonstrated resource
<b>EIA</b>	Environmental impact assessment
<b>EIS</b>	Environmental impact statement
<b>EM Plan</b>	Environmental management plan
<b>EMA</b>	Enterprise migration agreement
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
<b>ETS</b>	Emissions trading scheme
<b>FATA</b>	<i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth)
<b>FBT</b>	Fringe benefits tax
<b>FIRB</b>	Foreign Investment Review Board
<b>FTA</b>	Free trade agreement
<b>FW Act</b>	<i>Fair Work Act 2009</i> (Cth)
<b>FWC</b>	Fair Work Commission
<b>GST</b>	Goods and services tax
<b>ILUA</b>	Indigenous land use agreement
<b>ISP</b>	Independent Scientific Panel
<b>ITSA</b>	Indirect tax sharing agreement
<b>LNG</b>	Liquefied natural gas
<b>lhs</b>	Left hand side (of the graph)
<b>M&amp;A</b>	Mergers and acquisitions
<b>MERA</b>	<i>Mineral and Energy Resources (Common Provisions) Act 2014</i> (Qld)
<b>MNES</b>	Matter of national environmental significance

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<b>MPCCC</b>	Multi-Party Climate Change Committee
<b>MRA</b>	<i>Mineral Resources Act 1989</i> (Qld)
<b>MRRT</b>	Minerals Resource Rent Tax
<b>Mt</b>	Million tonnes
<b>Mtpa</b>	Million tonnes per annum
<b>NCIG</b>	Newcastle Coal Infrastructure Group
<b>NES</b>	National employment standards
<b>NTA</b>	<i>Native Title Act 1993</i> (Cth)
<b>NNTT</b>	National Native Title Tribunal
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PAYG</b>	Pay-as-you-go
<b>PCI</b>	Pulverised coal injection
<b>PRAIC</b>	Pilbara Rail Access Interdepartmental Committee
<b>rhs</b>	Right hand side (of the graph)
<b>SCL</b>	Strategic cropping land
<b>SGC</b>	Superannuation guarantee charge
<b>SOE</b>	State owned enterprise
<b>SWF</b>	Sovereign wealth fund
<b>US\$</b>	United States dollar
<b>WHC</b>	UNESCO World Heritage Committee
<b>WHS</b>	Work health and safety
<b>WICET</b>	Wiggins Island Coal Terminal



# FOOTNOTES

- 1 International Monetary Fund, World Economic Outlook (April 2017), <http://www.imf.org/-/media/Files/Publications/WEO/2017/April/pdf/text.ashx?la=en>, page 47.
- 2 World Economic Forum, The Global Competitiveness Report 2016-2017 [September 2016], [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf), page 102.
- 3 World Economic Forum, The Global Competitiveness Report 2016-2017 [September 2016], [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf), page 102.
- 4 World Economic Forum, The Global Competitiveness Report 2016-2017 [September 2016], [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf), page 102.
- 5 Australian Government Department of Foreign Affairs and Trade, Status of FTA Negotiations, <http://dfat.gov.au/trade/agreements/Pages/status-of-fta-negotiations.aspx> (accessed 27 June 2017).
- 6 Australian Government Department of Foreign Affairs and Trade, Status of FTA Negotiations, <http://dfat.gov.au/trade/agreements/Pages/status-of-fta-negotiations.aspx> (accessed 27 June 2017); The Trans-Pacific Partnership was signed on 4 February 2016. Following the withdrawal from the United States on 23 January 2017, the Senate Foreign Affairs, Defense and Trade References Committee tabled a report to Parliament on 7 February 2017 recommending that Australia should defer undertaking any binding treaty action until the future of the Trans-Pacific Partnership is clarified: Senate Foreign Affairs, Defense and Trade, Parliament of Australia, Proposed Trans-Pacific Partnership (TPP) Agreement (2017), [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/TPP/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP/Report), page 6.
- 7 Australian Government Department of Foreign Affairs and Trade, Australia-India Comprehensive Economic Cooperation Agreement, <http://dfat.gov.au/trade/agreements/aifta/Pages/australia-india-comprehensive-economic-cooperation-agreement.aspx> (accessed June 2017).
- 8 Australian Government Department of Foreign Affairs and Trade, Australia-India Comprehensive Economic Cooperation Agreement, <http://dfat.gov.au/trade/agreements/iacepa/Pages/indonesia-australia-comprehensive-economic-partnership-agreement.aspx> (accessed June 2017).
- 9 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 7.
- 10 Geoscience Australia, Australia's Identified Mineral Resources 2013, [https://d28rz98at9flks.cloudfront.net/78988/78988\\_AIMR\\_2013.pdf](https://d28rz98at9flks.cloudfront.net/78988/78988_AIMR_2013.pdf) page 27: there are locally important coal mining operations at Collie in Western Australia, Leigh Creek in South Australia and at Kimbolton and the Fingal Valley in Tasmania.
- 11 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 4.
- 12 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 4.
- 13 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 4.
- 14 Department of Industry, Innovation and Science, Australian Energy Update 2016 (October 2016), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/aes/2016-australian-energy-statistics.pdf>, page 16: 73.5% of total Australian energy production (which, it should be noted, now excludes energy produced from Uranium) comes from the production of black coal.
- 15 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 11.
- 16 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 4.
- 17 Geoscience Australia, Australia's Identified Mineral Resources 2016, [http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf), page 4.
- 18 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, pages 34 and 42.
- 19 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyJune2017/documents/Resources-and-Energy-Quarterly-June-2017.pdf>, page 40. Updated figures for December 2017 were not available at the time of publication.
- 20 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf> page 34.
- 21 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 43.
- 22 Bureau of Resources and Energy Economics, Australian Bulk Commodity Exports and Infrastructure – Outlook to 2025 (July 2012), [https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Australian-bulk-commodity-exports-and-infrastructure%E2%80%94outlook-to-2025-\(full-report\).aspx](https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Australian-bulk-commodity-exports-and-infrastructure%E2%80%94outlook-to-2025-(full-report).aspx), page 3.
- 23 Department of Industry, Innovation and Science, Energy in Australia 2015, <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/energy-in-aust/Energy-in-Australia-2015.pdf>, page 68; Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 29.
- 24 Department of Industry, Innovation and Science, Energy in Australia 2015, <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/energy-in-aust/Energy-in-Australia-2015.pdf>, page 68; Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 36.
- 25 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, pages 35 and 44.
- 26 Department of Industry, Innovation and Science, Australian Energy Update 2016 (October 2016), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/aes/2016-australian-energy-statistics.pdf>, page 21.
- 27 Department of Industry, Innovation and Science, Energy in Australia 2015, <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/energy-in-aust/Energy-in-Australia-2015.pdf>, page 71; Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 10: the real value of Australia's iron ore exports is forecast to be around A\$62.7 billion.
- 28 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 10.
- 29 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 30.
- 30 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 41.
- 31 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 29.
- 32 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 36.
- 33 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, pages 29 and 36.
- 34 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 29.
- 35 Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2017), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlyDecember2017/documents/Resources-and-Energy-Quarterly-December-2017.pdf>, page 36.
- 36 BREE, Resources and Energy Quarterly (December Quarter 2017) page 31.

- 37 BREE, Resources and Energy Quarterly (December Quarter 2017) page 35.
- 38 BREE, Resources and Energy Quarterly (December Quarter 2017) page 35.
- 39 BREE, Resources and Energy Quarterly (December Quarter 2017) page 34.
- 40 BREE, Resources and Energy Quarterly (December Quarter 2017) page 44.
- 41 BREE, Resources and Energy Quarterly (December Quarter 2017) page 44.
- 42 BREE, Resources and Energy Quarterly (December Quarter 2017) page 43.
- 43 BREE, Australian Energy Projections to 2049-50 (November 2014) page 42.
- 44 BREE, Australian Energy Projections to 2049-50 (November 2014) page 42.
- 45 Adani, Carmichael Rail Project – The Project, <<http://www.adaniaustralia.com/>> [accessed October 2017].
- 46 Adani, Adani Abbot Point Terminal 0 – Environmental Impact Statement, <<http://www.adaniaustralia.com/>> [accessed October 2017].
- 47 Department of Transport and Main Roads, Coal transport infrastructure development, <<https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Coal-transport-infrastructure-development>> [accessed October 2017].
- 48 Department of Transport and Main Roads, Coal transport infrastructure development, <<https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Coal-transport-infrastructure-development>> [accessed October 2017].
- 49 NSW Department of Planning & Environment, Hume Coal Project Submissions Released, <<http://www.planning.nsw.gov.au/News/2017/Hume-Coal-Project-submissions-released>> [accessed October 2017].
- 50 BREE, Australian Energy Projections to 2049-50 (November 2014) page 42.
- 51 BREE, Australian Energy Projections to 2049-50 (November 2014) page 42.
- 52 BREE, Australian Energy Projections to 2049-50 (December 2012) page 53.
- 53 BREE, Australian Energy Projections to 2049-50 (November 2014) page 42.
- 54 DNRm, Minerals and Energy Resources: outlook profile for Queensland’s priority commodities – Metallurgical coal <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0018/1226052/metallurgical-coal-outlook-profile.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0018/1226052/metallurgical-coal-outlook-profile.pdf)>, page 1.
- 55 Geoscience Australia, Australia’s Identified Mineral Resources 2016, <[http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf)>, page 4.
- 56 DNRm, Minerals and Energy Resources: outlook profile for Queensland’s priority commodities – Metallurgical coal <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0018/1226052/metallurgical-coal-outlook-profile.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0018/1226052/metallurgical-coal-outlook-profile.pdf)> page 2
- 57 DNRm, Minerals and Energy Resources: outlook profile for Queensland’s priority commodities – Metallurgical coal <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0018/1226052/metallurgical-coal-outlook-profile.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0018/1226052/metallurgical-coal-outlook-profile.pdf)> page 2
- 58 Geoscience Australia, Australia’s Identified Mineral Resources 2016, <[http://d28rz98at9flks.cloudfront.net/100121/100121\\_AIMR%202016\\_V2.pdf](http://d28rz98at9flks.cloudfront.net/100121/100121_AIMR%202016_V2.pdf)>, page 4.
- 59 BREE, Australian Bulk Commodity Exports and Infrastructure – Outlook to 2025 (July 2012) page 3.
- 60 BREE, Australian Bulk Commodity Exports and Infrastructure – Outlook to 2025 (July 2012) page 3.
- 61 DNRm, Queensland coal map, <<https://www.business.qld.gov.au/industries/invest/mining/resources-potential/mineral-resources/coal-resources>> accessed October 2017.
- 62 Department of Natural Resources and Mines, Queensland coal – mines and advanced projects (July 2017) <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0011/238079/coal-mines-advanced-projects.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf)>, page 6.
- 63 Department of Natural Resources and Mines, Queensland coal – mines and advanced projects (July 2017) <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0011/238079/coal-mines-advanced-projects.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf)> page 4.
- 64 Department of Natural Resources and Mines, Queensland coal – mines and advanced projects (July 2017) <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0011/238079/coal-mines-advanced-projects.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf)> page 5.
- 65 Department of Natural Resources and Mines, 2016 calendar year – Coal production statistics, <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 66 Department of Natural Resources and Mines, 2016 calendar year – Coal production statistics, <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 67 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 68 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 69 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 70 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 71 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 72 Department of Natural Resources and Mines, 2016 calendar year – Coal sales statistics <<https://data.qld.gov.au/dataset/annual-coal-statistics>>
- 73 NSW Department of Planning & Environment – Resources & Energy, NSW coalfields, <<http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/minerals-and-coal/geoscience-for-landholders/coalfields>> [accessed October 2017].
- 74 NSW Department of Planning & Environment – Resources & Energy, NSW coalfields, <<http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/minerals-and-coal/geoscience-for-landholders/coalfields>> [accessed October 2017].
- 75 Geoscience Australia, Australia’s Identified Mineral Resources 2016 [3 June 2014] page 4; BREE, Resources and Energy Statistics [2014] page 44.
- 76 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 47.
- 77 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 47.
- 78 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 49.
- 79 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 49.
- 80 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 50.
- 81 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 50 and 51.
- 82 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 51.
- 83 NSW Minerals Council, NSW Mining 2012 – A Snapshot [2013], page 6.
- 84 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, pages 50 and 51.
- 85 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 50.
- 86 Coal Services, Annual Report 2016, <[http://www.coalservices.com.au/MessageForceWebsite/Sites/340/Files/Annual%20Report\\_2016\\_Mid%20Res.pdf](http://www.coalservices.com.au/MessageForceWebsite/Sites/340/Files/Annual%20Report_2016_Mid%20Res.pdf)>, page 46.
- 87 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 51.
- 88 Coal Services, Annual Report 2017, <[https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report\\_2017\\_Low-Res.pdf](https://www.coalservices.com.au/wp-content/uploads/2017/12/Annual-Report_2017_Low-Res.pdf)>, page 51.

---

## FOOTNOTES

- 89 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 33.
- 90 Australian Government, Geoscience Australia, Australian atlas of minerals resources, mines & processing centres, <[http://www.australianminesatlas.gov.au/education/fact\\_sheets/iron.html](http://www.australianminesatlas.gov.au/education/fact_sheets/iron.html)> [accessed July 2017].
- 91 Australian Government, Geoscience Australia, Australian atlas of minerals resources, mines & processing centres, <[http://www.australianminesatlas.gov.au/education/fact\\_sheets/iron.html](http://www.australianminesatlas.gov.au/education/fact_sheets/iron.html)> [accessed July 2017].
- 92 Australian Government, Geoscience Australia, Minerals: Mineral Resources; Iron Ore, <<http://www.ga.gov.au/scientific-topics/minerals/mineral-resources/iron-ore>> [accessed July 2017].
- 93 Australian Government, Geoscience Australia, Minerals: Mineral Resources; Iron Ore, <<http://www.ga.gov.au/scientific-topics/minerals/mineral-resources/iron-ore>> [accessed July 2017].
- 94 Citic Pacific Mining, Sino Iron Project, <<http://www.citicpacificmining.com/our-operation/sino-iron-project/>> [accessed July 2017].
- 95 Australian Government, Geoscience Australia, Minerals: Mineral Resources; Iron Ore, <<http://www.ga.gov.au/scientific-topics/minerals/mineral-resources/iron-ore>> [accessed July 2017].
- 96 Geoscience Australia, Australia In Situ Iron Ore Resources (2012 Edition) <<https://data.gov.au/dataset/australian-in-situ-iron-ore-resources-sheet-1-hematite-sheet-2-magnetite-2012>> [accessed July 2017].
- 97 Geoscience Australia, Australia In Situ Iron Ore Resources (2012 Edition) <<https://data.gov.au/dataset/australian-in-situ-iron-ore-resources-sheet-1-hematite-sheet-2-magnetite-2012>> [accessed July 2017].
- 98 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 16.
- 99 Pilbara Ports Authority, Annual Report 2016-17, <<https://www.pilbaraports.com.au/PilbaraPortsAuthority/media/Documents/ANNUAL%20REPORTS/PPA%202016-17/PPA-AR-2017-web.pdf>> [accessed October 2017].
- 100 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 12.
- 101 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017) <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>>, page 1 [accessed July 2017].
- 102 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 4.
- 103 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 30.
- 104 BHP, BHP approves South Flank Initial Funding (26 June 2017) <<http://www.bhp.com/media-and-insights/news-releases/2017/06/bhp-approves-south-flank-initial-funding>> [accessed July 2017].
- 105 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 32.
- 106 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 28.
- 107 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 28.
- 108 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017) <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>>, page 1 [accessed July 2017].
- 109 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 28.
- 110 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 33.
- 111 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 38.
- 112 Rio Tinto, Global Iron Ore & Steel Forecasting Conference 2017 Presentation (March 2017), <[http://www.riotinto.com/documents/170329\\_Presentation\\_Global\\_Iron\\_Ore\\_and\\_Steel\\_Forecast\\_Conference\\_slides.pdf](http://www.riotinto.com/documents/170329_Presentation_Global_Iron_Ore_and_Steel_Forecast_Conference_slides.pdf)> [accessed July 2017], page 6.
- 113 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39; Rio Tinto, Global Iron Ore & Steel Forecasting Conference 2017 Presentation (March 2017), [6] <[http://www.riotinto.com/documents/170329\\_Presentation\\_Global\\_Iron\\_Ore\\_and\\_Steel\\_Forecast\\_Conference\\_slides.pdf](http://www.riotinto.com/documents/170329_Presentation_Global_Iron_Ore_and_Steel_Forecast_Conference_slides.pdf)> [accessed July 2017], page 6.
- 114 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 31; Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39.
- 115 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 31.
- 116 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39.
- 117 Pilbara Ports Authority, Annual Report 2016-17, <<https://www.pilbaraports.com.au/PilbaraPortsAuthority/media/Documents/ANNUAL%20REPORTS/PPA%202016-17/PPA-AR-2017-web.pdf>> [accessed October 2017].
- 118 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 32.
- 119 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 30.
- 120 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 30.
- 121 McKinsey & Company, Tsunami, spring tide, or high tide? The growing importance of steep scrap in China, <<http://www.mckinsey.com/~media/mckinsey/industries/metals%20and%20mining/our%20insights/the%20growing%20importance%20of%20steel%20scrap%20in%20china/the-growing-importance-of-steel-scrap-in-china.ashx>> [accessed July 2017], page 3.
- 122 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 31.
- 123 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 35.
- 124 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 32.
- 125 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 9.
- 126 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 9.
- 127 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 9.
- 128 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39.
- 129 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017), page 1. <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>> [accessed July 2017], page 1.
- 130 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017), page 1. <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>> [accessed July 2017], page 1.

- 131 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017), page 1, <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>> [accessed July 2017], page 1.
- 132 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017), page 1, <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>> [accessed July 2017], page 1.
- 133 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 29.
- 134 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39.
- 135 Department of Industry, Innovation and Science, Resources and Energy Quarterly (March 2017), page 39.
- 136 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 32.
- 137 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 32.
- 138 BREE, Promoting Australian Prosperity – Sustaining the Boom with Export Infrastructure [www.export.org.au/LiteratureRetrieve.aspx?ID=151754](http://www.export.org.au/LiteratureRetrieve.aspx?ID=151754) [2014], page 3.
- 139 Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2017), page 16.
- 140 Asciano Limited, Full Year Report to 30 June 2016, [https://pacificnational.com.au/investors/financial\\_reports](https://pacificnational.com.au/investors/financial_reports), page 17.
- 141 Aurizon, Central Queensland Coal Network, <http://www.aurizon.com.au/what-we-deliver/network#central-queensland-coal-network--cqcn-> [accessed on 6 October 2017].
- 142 Australian Rail Track Corporation, Annual Report 2015/2016, [http://www.artc.com.au/uploads/AR\\_2016\\_FINAL\\_Spreads\\_LR.pdf](http://www.artc.com.au/uploads/AR_2016_FINAL_Spreads_LR.pdf), page 21.
- 143 Australian Rail Track Corporation, Annual Report 2014/2015, [https://www.artc.com.au/library/annual\\_report\\_2014.pdf](https://www.artc.com.au/library/annual_report_2014.pdf), page 4.
- 144 Australian Rail Track Corporation, About ARTC, <http://www.artc.com.au/Content.aspx?p=14> [accessed October 2017].
- 145 Transport for New South Wales, NSW rail network <<https://www.transport.nsw.gov.au/operations/logistics-network/nsw-rail-network>> [accessed November 2017].
- 146 Pacific National, Pacific National Coal, <https://pacificnational.com.au/pacific-national/coal> [accessed October 2017].
- 147 Asciano Limited, Full Year Report to 30 June 2016, [https://pacificnational.com.au/investors/financial\\_reports](https://pacificnational.com.au/investors/financial_reports), page 17.
- 148 Aurizon Holdings Limited, Annual Report 2015-16, <http://www.aurizon.com.au/~media/aurizon/files/investors/documents%20and%20webcasts/2016/full%20year%20results/annual%20report%202016.pdf>, page 14.
- 149 Aurizon, ASX Announcement – Market update, <<http://www.asx.com.au/asxpdf/20151223/pdf/4340rv505m3mzm.pdf>> [released 23 December 2015], page 2.
- 150 Arc Infrastructure, Rail Network, <<http://www.arcinfra.com/Rail-Network>> [accessed October 2017].
- 151 Arc Infrastructure, At a Glance, <<http://www.arcinfra.com/>> [accessed October 2017].
- 152 Brookfield Rail, Our Network – Mid West Rail Upgrade, <<http://www.brookfieldrail.com/about-us/our-network/midwest/>> [accessed July 2017].
- 153 Parliament of New South Wales, Second reading of the Transport Administrations Amendment (Transport Entities) Bill 2017, <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#docid/HANSARD-1323879322-97088/link/66>> [accessed July 2017].
- 154 Economic Regulation Authority, Rail Access <<https://www.erawa.com.au/rail/rail-access>> [accessed July 2017].
- 155 Economic Regulation Authority, Rail Access <<https://www.erawa.com.au/rail/rail-access>> [accessed July 2017].
- 156 Economic Regulation Authority, Roy Hill Infrastructure Pty Ltd <<https://www.erawa.com.au/rail/rail-access/roy-hill-infrastructure-pty-ltd>> [accessed July 2017].
- 157 Port of Newcastle, Port of Newcastle 2016 Trade Report, <http://www.portofnewcastle.com.au/Resources/Documents/Trade-Report-2016---Version-1---low-res.pdf>, page 3.
- 158 Queensland Government, Coal exports by ports – Total exports of coal for the financial year by port–tonnes, <https://data.qld.gov.au/dataset/coal-industry-review-statistical-tables/resource/c5e5a864-fda1-49e1-b3c7-f5251b4bb4c3>.
- 159 BREE, Australian Bulk Commodity Exports and Infrastructure – Outlook to 2025 (July 2012), [https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Australian-bulk-commodity-exports-and-infrastructure%E2%80%944outlook-to-2025-\(full-report\).aspx](https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Pages/Australian-bulk-commodity-exports-and-infrastructure%E2%80%944outlook-to-2025-(full-report).aspx), page 95.
- 160 Department of Natural Resources and Mines, Queensland coal – mines and advanced projects (July 2017) <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0011/238079/coal-mines-advanced-projects.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf)> page 4.
- 161 Department of Natural Resources and Mines, Queensland coal – mines and advanced projects (July 2017) <[https://www.dnrm.qld.gov.au/\\_data/assets/pdf\\_file/0011/238079/coal-mines-advanced-projects.pdf](https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf)>, page 6.
- 162 BHP Billiton, BMA's Hay Point Expansion project celebrates docking milestone (16 February 2015) <http://www.bhp.com/media-and-insights/news-releases/2015/02/bmas-hay-point-expansion-project-celebrates-docking-milestone> [accessed October 2017].
- 163 The Gladstone Observer, First WICET coal shipment sails to Hong Kong, <https://www.gladstoneobserver.com.au/news/salvo-fired-as-wicet-ship-sails/2622104/>.
- 164 WICET, Access, <http://www.wicet.com.au/irm/content/access1.aspx?RID=379&RedirectCount=1> [accessed October 2017].
- 165 BREE, Australian Bulk Commodity Exports and Infrastructure – Outlook to 2025 (July 2012), <https://industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/other/export-infrastructure-report.pdf>, page 79.
- 166 NSW Department of Planning & Environment, Coal in NSW, <https://www.industry.nsw.gov.au/invest-in-nsw/industry-opportunities/mining-and-resources/coal/coal-in-nsw> [accessed October 2017].
- 167 Government of Western Australia, Department of State Development, Western Australian Iron Ore Industry Profile (June 2017), page 1. <<http://www.dsd.wa.gov.au/docs/default-source/default-document-library/wa-iron-ore-profile-0617.pdf?sfvrsn=8>> [accessed July 2017].
- 168 Department of Transport, Ports Handbook Western Australia 2016 <[http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf)> [page 3] [accessed June 2017].
- 169 Department of Transport, Ports Handbook Western Australia 2016 <[http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf)> [page 3] [accessed June 2017], page 3.
- 170 Department of Transport, Ports Handbook Western Australia 2016 <[http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf)> [page 4] [accessed July 2017], page 3.
- 171 Department of Transport, Ports Handbook Western Australia 2016, <[http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf)> [accessed July 2017], page 15.
- 172 Department of Transport, Ports Handbook Western Australia 2016, <[http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf)> [accessed July 2017], page 15.

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## FOOTNOTES

- 173 Department of Transport, Ports Handbook Western Australia 2016 accessible at [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed July 2017), page 28.
- 174 Department of Transport, Ports Handbook Western Australia 2016 accessible at [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed July 2017), page 28.
- 175 Pilbara Ports Authority, 'Port of Port Hedland' <https://www.pilbaraports.com.au/Port-of-Port-Hedland> (accessed 30 June); Department of Transport, Ports Handbook Western Australia 2016 [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed July 2017), page 18.
- 176 Department of Transport, Ports Handbook Western Australia 2016 [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed July 2017), page 21.
- 177 Department of Transport, Ports Handbook Western Australia 2016 [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed July 2017), page 21.
- 178 Pilbara Ports Authority, Integrated Marine Operations Centre, <https://www.pilbaraports.com.au/Home/IMOC> (accessed July 2017).
- 179 Department of Transport, Ports Handbook Western Australia 2016, [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (page 30) (accessed July 2017), page 30.
- 180 Department of Transport, Ports Handbook Western Australia 2016 accessible at [http://www.transport.wa.gov.au/mediaFiles/projects/MAC\\_B\\_WAPortsHandbook2016.pdf](http://www.transport.wa.gov.au/mediaFiles/projects/MAC_B_WAPortsHandbook2016.pdf) (accessed June 2017), page 5.
- 181 Fortescue Metals Group, 2016 Annual Report <http://fmgl.com.au/media/2862/fy16-fortescue-annual-report-final-with-cover.pdf> (accessed July 2017), page 15.
- 182 ABC News, 'BHP expansion suspended in WA's Pilbara pending environmental inquiry', <http://www.abc.net.au/news/2017-02-08/bhp-expansion-suspended-over-port-hedland-dust-review/8252586> (accessed July 2017).
- 183 For a detailed discussion on the Finkel Report, see our article [here](#).
- 184 Northern Territory of Australia v Griffiths (2017) 346 ALR 247. The Full Federal Court handed down its decision on 20 July 2017.
- 185 See Mining Act 1978 (WA) section 125A; Mining Act 1992 (NSW), section 281B.
- 186 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 103
- 187 Environmental Protection Act 1994 (Qld) s 19(1)
- 188 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 104
- 189 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 104
- 190 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 119
- 191 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 4
- 192 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 47
- 193 Mineral and Energy Resources (Financial Provisioning) Bill 2017 s 55
- 194 In Queensland, an exploration licence is called an 'exploration permit'. In all other States and territories it is called an 'exploration licence'.
- 195 The right to mine is called a 'Mining Lease' in all Australian States and Territories except for Victoria (where it is called a 'Mining Licence') and the Northern Territory (where it is called a 'Mineral Lease').
- 196 In Western Australia, the relevant body is the Warden's Court. In Queensland it is the Land Court. In New South Wales it is the Land and Environment Court. In Tasmania it is the Mining Tribunal. In Victoria and the Northern Territory it is the relevant Civil and Administrative Tribunal. In South Australia the relevant body, depending on the amount of compensation, is the Environment, Resources and Development Court or Warden's Court.
- 197 Australian Competition & Consumer Commission, The North West Shelf Project – Authorisations – A91220 – A9122, <http://transition.accc.gov.au/content/index.phtml/itemId/922104/fromItemId/401858> (accessed October 2017).
- 198 The Equator Principles Association, About the Equator Principles, <http://equator-principles.com/about/> (accessed December 2017).

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