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AUSTRALIA'S GLOBAL
LAW FIRM

# Mining in Australia

## An introduction for investors

February 2013

# Foreword

We are pleased to publish *Mining in Australia – An introduction for investors*.

The Australian mining sector is important to Australia's economy and offers significant opportunities for investors.

The purpose of this guide is to provide you, as a prospective investor, with:

- an overview of Australia's legal and regulatory framework in relation to mining; and
- practical information to assist you in reaching your goals.

Strong and substantial growth in the Asia Pacific economies has created significant trade and investment flows between the region and the resources rich Australian continent. The high level of interest shown in the sector from China, India and Japan, in particular, has been an impetus for us developing this guide to the laws of the mining sector. We have a strong commitment to the Asia Pacific region and our regional clients, with offices in Singapore, Jakarta, Hong Kong, Shanghai and Tokyo.

Ashurst's Energy and Resources practice is recognised as one of Australia's best. Our expertise in the sector is supported by experience in related areas such as infrastructure, engineering and construction, native title, project finance, industrial relations, corporate and M&A, litigation and dispute resolution, taxation and property.

Our specialist knowledge, combined with our considerable experience in assisting our regional clients on their Australian investments, means we are well placed to provide you with legal assistance. We wish you every success for your business ventures in Australia.

**John Carrington**
Managing Partner Ashurst Australia

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# Introduction

Mining in Australia offers a diverse range of opportunities for overseas investors.

This guide highlights some of the key legal issues associated with a mining project of which investors should be aware. These issues often become apparent when an investor conducts due diligence with a view to acquiring mining assets and interests, or seeks to raise funds for mining projects in debt or capital markets.

The guide describes:

- laws made in relation to mining by Australian Governments and the right to mine;
- the different regulatory approvals required for mining projects, including mining tenements, land access rights and environmental approvals;
- the different activities investors in mining may undertake, such as exploration or production or building mining infrastructure;
- ways to structure mining interests;
- some taxation implications of an investment in mining activities;
- land access issues including possible compensation payments to private owners, and dealing with laws that protect the interests of Indigenous Australians;
- environmental law considerations;
- workplace health and safety issues relating to mining;
- competition issues and access to major infrastructure services; and
- regulation of foreign investment in Australia's mining sector.

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# Australia's lawmakers

"Australia offers international investors an effective and innovative place in which to do business."

## State and Federal Governments

In 1901, the Australian Constitution established Australia as a federal system. Under this system, powers are distributed between a national Government (the Commonwealth) and the six States – New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. The three Territories – the Australian Capital Territory, the Northern Territory and Norfolk Island – have self-government arrangements.

The Australian Constitution defines the boundaries of lawmaking powers between the Commonwealth, the States and Territories. State parliaments are subject to the Commonwealth Constitution, as well as their State Constitutions. A Commonwealth law overrides any inconsistent State law.

In practice, the two levels of Government cooperate in many areas where States and Territories are formally responsible.

## Mining laws

Mining regulation in Australia is State and Territory based. The starting point is that most minerals are owned by the State or Territory in which the minerals are located. State and Territory Governments also have certain taxation powers, for example to collect resource royalties and stamp duty.

The Commonwealth has certain powers in relation to native title, employment, the environment, access to infrastructure, taxation and foreign ownership.

The remainder of this Guide describes the State and Commonwealth laws governing the mining industry in Australia and the interaction between those laws.

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# Mining tenements

"Mining tenements granted by the relevant Government gives the holder the exclusive right to explore for minerals in, or extract minerals from, the subject area of the tenement, in accordance with its conditions."

A feature of Australia's mining laws is that the relevant State or Territory owns almost all minerals located in that State or Territory. The relevant Government then grants mining tenements to persons to allow mining activities in relation to those minerals. In some States, the Government can also grant many tenements to explore for and mine privately owned minerals if this is not being done by the owner of those minerals.

## Tenements

The details of legislative licensing regimes vary between jurisdictions, but all have common features. All of the regimes comprise at least two stages, exploration and production. Some regimes include a third intermediate stage allowing retention of an area after discovery until commercial production is feasible.

The mining tenement granted by the relevant Government typically gives the holder the exclusive right to explore for minerals in, or extract minerals from, the area specified in the tenement, in accordance with its conditions. The tenement overlays the underlying land title and generally allows the tenement holder to enter the land for prescribed exploration and mining purposes, subject to the payment of compensation to the landholder. Royalties are payable to the relevant Government in relation to minerals extracted and sold pursuant to that tenement.

Other tenements may also be required and may be granted to permit construction of infrastructure ancillary to a mine, such as roads, bores, pipelines and power lines. They may be granted over ground that is subject to an existing interest, such as a mining lease. Similarly, third party interests may be granted over land that is subject to an existing miscellaneous licence.

Typically, legislation in each State and Territory sets out:

- the types of tenements that may be granted;
- the processes to be followed in relation to the grant of tenements (including dealing with priority issues, for example where competing applications are lodged); and
- the revocation and surrender of tenements.

The relevant law also sets out the requirements that apply if a tenement is transferred or otherwise dealt with (such as the need to notify the relevant Minister or even obtain consent). However, the latter provisions rarely, if ever, apply where there is a change in the shareholding or control of the entity that holds the tenement (although this may be an issue to be considered when the tenement is due for renewal).

## Types of tenements

The main types of mining tenements granted by each State and Territory are summarised below. Mining tenements are regulated by each State and Territory under separate legislative regimes and the rights and obligations of tenement holders vary accordingly.

| | Exploration licence | Mining lease | Retention licence |
|---|---|---|---|
| **Purpose** | Exploration for mineral sources, drilling for core samples. | Extraction and disposal of minerals from lease area. | Title over mineral discovery where mining is impracticable. |
| **Coverage** | Designated area; limited extraction rights. | Designated area taken out of the exploration licence. | Designated area taken out of the exploration licence. |
| **Period** | Usually granted for 5 years (may be renewed) often subject to surrender of a portion of the area during each year of the term of the tenement. | As specified in the relevant State or Territory law (for example, the period approved by the Minister in Qld, and 21 years in WA) (may be renewed). | Usually granted for 5 years (may be renewed). |
| **Rights** | Land entry.<br>Drilling surveys and recovery on an appraisal basis.<br>Usually confer a priority right to apply for a mining lease over minerals discovered within exploration area. | Land entry.<br>Recovery and exploration.<br>Operation of production facility (usually subject to obtaining additional licences).<br>Disposal of minerals recovered subject to royalty payment. | Exploration and recovery on an appraisal basis.<br>Protects interests of the licence holders where production is likely to become commercially viable. |
| **Obligations** | Rent.<br>Expenditure commitments.<br>Reporting obligations.<br>Security deposit.<br>Restrictions on amounts of minerals which can be extracted. | Rent and royalties.<br>To develop and commercialise discovery.<br>Reporting obligations.<br>Security deposit. | Rent.<br>Licensee may be required to carry out works program to establish nature/extent of resource and/or commercial feasibility.<br>Security deposit. |

## Registers and interests in tenements

The laws of each State and Territory appoint an administering department and Minister to maintain registers of mining titles and interests. Some information from these registers is available to the public. The information made publicly available varies considerably in different jurisdictions.

The entry of a tenement or interest in a tenement on a register is not conclusive proof of title to that interest or tenement, but failure to enter a dealing on the register may make a transfer of an interest or tenement "of no force".

There is no system of indefeasible title (ie guaranteed title) by registration. If there is a flaw in the process for application to grant a mining tenement, a court may rule the tenement invalid, regardless of the registration of the tenement. In most jurisdictions, a mining tenement does not give the holder an interest in the underlying land.

Verifying good title to a tenement generally requires a "chain of title" examination of the successive dealings of that tenement from the date it was granted.

## Tenement conditions

Tenements may be granted subject to conditions, mainly to regulate the manner in which activities may be conducted. Exploration licences will typically have "minimum expenditure" conditions, as well as time limits on exploration, while mining leases will require a certain level of expenditure. There will also be reporting obligations, which may exist under legislation and / or conditions attaching to the tenement. These obligations require the tenement holder to provide regular reports to the relevant Government department. To obtain approval to develop a mine, the licence holder is usually required to submit a development plan to the relevant Government department. Tenement holders are often required to lodge security deposits when licences are granted to ensure the performance of environmental and rehabilitation obligations.

Annual rental payments are generally required under each tenement based on area, and royalties must be paid based on the amount of the mineral extracted under a mining lease.

If a tenement holder does not comply with the conditions of a licence or obligation set out in legislation, including the rental or royalty obligations, various compliance or enforcement tools (depending on the State or Territory legislation) may be used. These include cancellation of the licence or imposition of a penalty on the holder of a tenement. Most jurisdictions also provide for third parties to seek forfeiture, and be rewarded with the tenement or fines depending on the level of under expenditure or non-compliance. This is the ultimate sanction and a pillar of the "use it or lose it" system in Australia.

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# Holding mining interests in Australia

"In Australia, private enterprise conducts the exploration and production operations and entities gain the right to undertake exploration and production activities through mining tenements."

In Australia, governments or their agencies rarely participate directly in mining ventures. Private enterprise conducts the exploration and production operations. Entities gain the right to undertake exploration and production activities through mining tenements granted by the relevant authority under statutory regimes. Foreign entities most commonly hold interests in mining tenements in Australia by way of a company structure or investment in a joint venture.

## Joint ventures

It is common in Australia to conduct mining activities as part of a joint venture. Different arrangements may be required for ventures formed for various mining related activities (eg exploration, production and the operation of a facility).

The joint venture agreement states the scope, purpose and duration of the joint venture, identifies the assets committed to it, describes and quantifies the interests of the participants and provides for the operation, management and control of the venture. The agreement also covers the subscription, holding and expenditure of funds, the apportionment of liability, the consequences of default, the use and disposal of the output of the venture, the assignment of interests and withdrawal from the venture.

There are two types of joint venture commonly used in Australia – incorporated and unincorporated joint ventures. Each structure has different legal and taxation implications which need to be carefully considered and assessed having regard to the commercial objectives of the parties.

## Incorporated joint ventures

An incorporated joint venture is operated by a special purpose company in which the joint venturers are shareholders. The joint venture has its own separate legal personality. A shareholders' agreement between the parties is entered into and, at the same time, the special purpose company is formed to own and control the venture, with an agreed number of directors appointed by each party.

## Unincorporated joint ventures

In unincorporated joint ventures, each of the parties agrees to cooperate in relation to a commercial undertaking, but the parties hold their interests and entitlements in the venture separately rather than jointly. As there is no company structure, the contract (ie the joint venture agreement) between the parties will govern their relationship, the operation of the venture and their obligations to each other.

## Farm-in agreements

Farm-in agreements are often used in conjunction with a joint venture structure to share the risk of the exploration and development stages of a tenement. In a typical farm-in agreement, the owner of a tenement would offer to sell part or all of its tenement to another entity in return for assistance with exploration and development. The farm-in agreement would generally specify the financial contribution to be made or work required to be carried out within a certain time frame in exchange for transfer of a proportionate interest. Following transfer, the parties may enter into a joint venture agreement to govern how they will work together to further develop the tenement and carry out mining operations.

## Comparison of incorporated and unincorporated joint ventures

The following table summarises the key features of incorporated and unincorporated joint ventures.

| | Incorporated joint venture | Unincorporated joint venture |
|---|---|---|
| **Legal entity** | Separate legal personality. | No separate legal personality (contractual in nature).<br>It is common in an unincorporated joint venture for the parties to appoint a manager (often a participant) to act as agent for the participants. |
| **Liability** | The liability of a participant as a shareholder is limited to the amount unpaid on its shares. | Liability is usually expressed to be several not joint. The liability of a participant is generally limited to its participating interest in the joint venture. |
| **Ownership** | Ownership of interest in the joint venture is held by way of shares in the joint venture company. | The parties own an interest in the assets of the joint venture according to their participating interests. |
| **Income** | Any profits of the joint venture company will be distributed by way of dividends.<br>Any losses of the joint venture company cannot be offset against a shareholder's own income. | A party is entitled to its share of production in kind from joint venture activities. The party is then free to market and sell that product to third parties.<br>Any income or loss from such a sale flows directly to the participant and forms part of overall income and losses of that participant. |
| **Partnership risk** | Avoids being categorised as a partnership by having a separate legal entity (in this case a company). | If taken to be a partnership, there may be undesirable tax consequences if there is a joint receipt of income (eg participants are taxed jointly on profit and cannot offset income against losses) or participants may be held to be jointly and severally liable. |
| **Transfer of ownership** | Transfer of shares rarely requires notification to, or consent of, the relevant Minister.<br>Pre-emptive rights between shareholders are usual. | Transfer of interests in mining tenements is likely to require notification to, and the consent of, the relevant Minister.<br>Pre-emptive rights between participants under the joint venture are not uncommon. |
| **Governance, reporting and decision making** | The joint venture company and board of directors will need to comply with the *Corporations Act* 2001 (Cth) provisions (eg reporting obligations, accounting and audit requirements, directors' duties etc) in addition to any contractual obligations. | The primary source of governance is the contractual arrangements between participants (eg joint venture agreement or joint operating agreement). |

## Competition

The competition law provisions of the *Competition and Consumer Act 2010* (Cth) should be considered before forming, or operating, a joint venture. Three of the provisions that commonly need to be considered are the prohibitions against cartel conduct, exclusionary provisions, and anti-competitive arrangements.

If a joint venture is formed between competitors or potential competitors, care needs to be taken to avoid contravening the cartel conduct and exclusionary provision prohibitions in the *Competition and Consumer Act*. In Australia, making or giving effect to a "cartel provision" may attract both civil and criminal penalties, and making or giving effect to a exclusionary provision may attract civil penalties.

For example, a cartel provision may arise in a joint venture agreement which provides for the joint marketing of minerals produced by the joint venture and which requires the joint venturers to reach agreement on the prices at which the joint venture sells the products. The joint venturers may also contractually limit their capacity to produce minerals outside of the joint venture and this may contravene the prohibition on cartel conduct, as well as the prohibition against exclusionary provisions.

The prohibition on cartel conduct is subject to an exception, and the prohibition against exclusionary provisions is subject to a defence, which aims to avoid punishing certain types of legitimate collaborative business activity (the Joint Venture Exceptions). However, the Joint Venture Exceptions only apply to certain types of joint venture.

Even where the Joint Venture Exceptions apply, the formation and operation of a joint venture is subject to other provisions of the *Competition and Consumer Act*, including the general prohibition against anti-competitive arrangements. These other provisions also apply to joint ventures between parties that are not competitors or potential competitors with each other.

It is therefore important to consider competition law issues carefully.

There are range of ways to manage competition law risk. One option for dealing with these issues is to apply to the Australian Competition and Consumer Commission (ACCC) for an official authorisation for conduct that may breach the *Competition and Consumer Act* (including the prohibition against cartel arrangements). Such an authorisation provides immunity from prosecution if the ACCC is satisfied that the public benefits outweigh the anti-competitive detriment. However, as the authorisation process can be time consuming, and is public, businesses may need to take this into account when forming a joint venture, and may wish to carefully consider their options before applying for authorisation.

## State Agreements

A feature of Australia's resources law is the use of agreements between Governments and project proponents which facilitate the implementation of large scale resource projects (State Agreements). These agreements are particularly prevalent in Queensland and Western Australia (in the latter case around 70 State Agreements appear on the State's books).

A State Agreement is an agreement that is authorised or ratified by the Parliament of a State (or sometimes the Commonwealth) which specifies the rights, obligations, terms and conditions for the development of a project. The content of a State Agreement differs case by case, because it depends on what has been negotiated, and what is ultimately agreed, between the State and the relevant project proponent.

The key benefit of a State Agreement is the process of statutory endorsement outlined above. Typically, this process may grant the project proponent certain "dispensations" from the law that would otherwise apply in respect of the relevant project.

Some of the key features commonly negotiated by a project proponent under a State Agreement include:

- an obligation on the State to make tenure available for the project;
- the right to construct critical infrastructure, such as ports and railways;
- the grant of mining tenements on a "successive" renewal basis, over larger areas than otherwise would be possible; and
- concessional royalty rates.

While a State Agreement may override certain laws under the State's mining legislation, the agreement will not typically grant the project proponent a dispensation from environmental protection laws or Aboriginal heritage processes. The State Agreement also cannot override a Commonwealth Act, so processes under the *Native Title Act 1993* (Cth) will also apply.


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# Royalties and taxes

"In Australia, three levels of Government impose different taxes or duties."

The Commonwealth imposes income taxes, goods and services tax (GST), customs and import duties, fuel tax and withholding taxes. The Commonwealth Government has also introduced a new Minerals Resource Rent Tax and expanded the Petroleum Resource Rent Tax. State and Territory Governments impose stamp duties, land tax, payroll tax and resource royalties. Local Governments may impose land tax in the form of rates.

## Minerals resource rent tax

The Commonwealth Government has introduced a minerals resource rent tax (MRRT) from 1 July 2012 on coal and iron ore projects. The key aspects of the MRRT are as follows:

- The MRRT rate is 30%. Projects are entitled to a 25% offset of MRRT liability, making the effective rate 22.5%.
- Miners with resource profits below $50 million a year will not be liable to pay MRRT.
- The uplift rate for undeducted expenditure under the MRRT will broadly be the Government long term bond rate plus 7%. The national consumer price index (CPI) is used when the market value starting base is elected (although the application of the uplift rate depends on the relevant expenditure).
- Royalties will be creditable against the MRRT liability. Unutilised credits for royalties paid will be uplifted.
- Capital expenditure which is incurred after 1 July 2012 can be written off immediately (rather than depreciated over time).
- MRRT losses will be transferable to other Australian iron ore and coal projects (losses are only transferable within the same commodity class).

## Royalties

Each State and Territory of Australia currently imposes royalties relating to the extraction of minerals. The rates of royalty imposed differ between States and Territories and between different commodities. In most cases, royalties are calculated on a production basis.

Set out in Appendix A to this guide is a table which summarises the royalty regimes for each State and Territory for certain minerals.

## Income tax

Broadly, a non-resident company will only be subject to tax on income that is sourced in Australia, subject to the application of any applicable double tax agreement (DTA). If a DTA applies to a non-resident company, the company will only be taxed on income attributable to any permanent establishment it has in Australia (other Australian sourced income such as dividends, interest, royalties and payments for construction and related activities are subject to a withholding tax regime).

Under a DTA, Australia generally has the right to tax the profits attributable to the non-resident company's permanent establishment. The profits are subject to tax at the corporate tax rate of 30%. The term permanent establishment is defined in a DTA. There are also provisions in a DTA which can deem a non-resident to (and deem a non-resident to not) have a permanent establishment. Ultimately, a determination of whether the non-resident company has a permanent establishment will be based on the actual activities undertaken by the non-resident company in Australia.

## Withholding taxes

Only certain forms of income derived by non-residents are subject to Australia's withholding tax regime.

The table below sets out the rates of withholding tax applied on a gross basis.

| Income | Withholding Tax Rate |
|---|---|
| **Dividends*** | 30%** |
| **Interest** | 10%** |
| **Royalties** | 30%** |
| **Construction or related activities***** | 5% |

* No withholding tax is imposed on fully franked dividends. Broadly speaking, a fully franked dividend is a dividend paid out of profits on which the Australian company has paid underlying Australian corporate tax.

** The rate applied under Australian domestic law. The rate may be lower under an applicable DTA.

*** The ATO may grant an exemption or variation to the 5% foreign resident withholding tax in certain circumstances (such as where the non-resident does not have an Australian permanent establishment and is resident of a DTA country).

## Capital gains

Broadly speaking, a non-resident shareholder is only subject to capital gains tax (CGT) in respect of a gain derived from the disposal of:

- Australian real property (including mining and petroleum interests);
- more than 10% of shares in a "land rich" Australian company (ie more than 50% of the market value of the company's assets relate to Australian real property) and the interest held by the non-resident passes the "non-portfolio interest test". The 10% test is applied on an associate inclusive basis with a "look back" period of up to two years before the disposal; or
- assets used in carrying on business at, or through, an Australian permanent establishment.

## GST

The Commonwealth Government imposes a GST on supplies made by entities which are registered, or required to be registered, for GST. An entity is required to be registered for GST when its annual turnover from supplies connected with Australia (having regard to the previous 12 months and the following 12 months) exceeds A$75,000. An entity can elect to register for GST if it is carrying on an enterprise.

GST is imposed at a rate of 10%. Supplies can be subject to GST if they are connected with Australia and made in the course or furtherance of an enterprise. Some transactions are not subject to GST because they are GST-free (such as exports) or are input taxed (such as supplies of certain precious metals). Except to the extent an entity makes input taxed supplies, an entity which is registered, or required to be registered, for GST can claim back as input tax credits any GST incurred on its costs and expenses, subject to holding a valid tax invoice.

Participants in a joint venture can apply to the Commissioner of Taxation to have the venture approved as a GST joint venture. Where a GST joint venture is approved, the joint venture operator (either one of the joint venturers or another entity) has the responsibility, on behalf of all of the participants, to account for GST liabilities, input tax credit entitlements and adjustments relating to the operations of the joint venture. Supplies that are made by the joint venture operator to other participants are not subject to GST.

## Stamp duty

All Australian States and Territories impose stamp duty on the transfer of interests in real property and goods transferred with real property.[1] Stamp duty can also apply to transfers of business assets, transfers of shares / units and the grant of mortgages in some Australian jurisdictions. Different rates apply in each State and Territory and the rates also vary between different types of transactions.

The table below sets out the types of duty and the relevant rates in each Australian jurisdiction.[2]

| State/ Territory | Duty on transfer of interests in land and goods transferred with land[3] | Duty on transfer of non-real property such as goodwill and intellectual property[3] | Duty on transfer of shares/units in unlisted companies/trusts[2] | Duty on grant of mortgages |
|---|---|---|---|---|
| ACT | 7.25% | Not imposed | Not imposed | Not imposed |
| NSW | 5.5% | 5.5% | 0.6% | 0.4% |
| NT | 5.45% | 5.45% | Not imposed | Not imposed |
| QLD | 5.75% | 5.75% | Not imposed | Not imposed |
| SA | 5.5% | 5.5% | 0.6% | Not imposed |
| TAS | 4.5% | Not imposed | Not imposed | Not imposed |
| VIC | 5.5% | Not imposed | Not imposed | Not imposed |
| WA | 5.15% | 5.15% | Not imposed | Not imposed |

1 Real property may include mining and exploration interests, depending on the jurisdiction.

2 Unlisted Trusts that hold dutiable property are likely to be subject to duty at 5.25%.

3 Rates listed are the top rates of duty in the scale.

All Australian States and Territories impose stamp duty on the acquisition of interests in companies or trusts that own Australian real property. This is known as "land rich" or "landholder" duty. The duty is generally imposed on the value of the land held by the relevant entity (or the value of land and goods in New South Wales and Western Australia) and is imposed at the same rate as that imposed on the transfer of land.

The table below sets out the relevant thresholds in each State and Territory for duty to apply.

| State / Territory | Land Rich Threshold Test [4] | Local Land Holdings Value Test | Acquisition Threshold [5] |
|---|---|---|---|
| **ACT** | NA | NA | 50% or more for companies and wholesale unit trusts, 50% or more for private unit trusts |
| **NSW** | NA | $2,000,000 | 50% or more if unlisted, 90% or more if listed / widely held |
| **NT** | NA | $500,000 | 50% or more if unlisted, 90% or more if listed |
| **QLD** [6] | NA | $2,000,000 | 50% or more if unlisted, 90% or more if listed, nil for private unit trusts |
| **SA** [7] | NA | $1,000,000 | 50% or more if unlisted, 90% or more if listed |
| **TAS** | 60% | $500,000 | 50% or more |
| **VIC** | NA | $1,000,000 | 50% or more if unlisted, 90% or more if listed/ widely held, 20% or more for private unit trusts |
| **WA** | NA | $2,000,000 | 50% or more if unlisted, 90% or more if listed |

4 Total land-holdings of the corporation within and outside Australia as a percentage of all of its property excluding certain "liquid" assets.

5 Percentage that must be owned in the company or unit trust.

6 Separate rules for trusts.

7 Separate rules for trusts that are not registered managed investment schemes, approved deposit funds or pooled superannuation trusts.

# Summary

The table below summarises each of the taxes described above.

| Tax | Rate | Comments |
|---|---|---|
| **Corporate tax** | 30% | Consolidated regime to all 100% owned subsidiaries |
| **Withholding tax** | | |
| **Unfranked dividends** | 30% | DTA rate may be lower |
| **Interest** | 10% | DTA rate may be lower |
| **Royalties** | 30% | DTA rate may be lower |
| **Construction or related activities** | 5% | Exemptions or variations may apply |
| **Minerals Resource Rent Tax** | 30% (22.5% effective rate) | All States / Territories. Only applies to coal and iron ore |
| **GST** | 10% | Generally not payable on exports or Input taxed supplies |
| **Stamp duty** | | |
| **Transfer of land or shares/unit in a landholder company/trust** | 4.5% – 7.25% | All States / Territories |
| **Transfer of certain non-real property assets** | 5.45% – 5.75% | NSW, QLD, NT, WA, SA |
| **Transfer of unlisted shares / units** | 0.6% | NSW and SA |
| **Mortgage duty** | 0.4% | NSW |

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# Land access

"Companies looking to invest in Australia need to consider access and compensation issues."

The primary issues that exploration and mining companies face in relation to land access include:

- obtaining access to land controlled by the Commonwealth, or the relevant State or Territory Government (known as Crown Land);
- compensating private land holders; and
- native title (discussed in more detail in Chapter 7).

## Private land access

There are some limits on the access that a mining tenement application can obtain over private land without the agreement of the relevant land owner. These circumstances tend to be very limited and subsurface rights can still be obtained without the agreement of the private land owner. The mining legislation of each State and Territory will prescribe these limits.

An important issue concerning access to private land is the payment of appropriate compensation to landholders. Arrangements for determining compensation payable to private landholders are described in the mining legislation of each State and Territory. In all jurisdictions, a mining tenement applicant will need to enter into compensation arrangements with underlying land holders like pastoral lessees and if those arrangements cannot be agreed, compensation will be determined by a Court process. Compensation is generally payable for land surface damage, restrictions on right of way, damage to improvements and reasonable expenses to control damage.

In Victoria, Western Australia, South Australia and New South Wales, compensation is also payable for loss of use of land, loss of earnings and social disruption.

Most State and Territory legislation prohibits access to private land in residential areas or near to key industrial infrastructure such as power stations. This is not usually a major concern as most mining projects are in more remote locations.

## Crown Land access

Access to Crown Land such as State forests, roads, Aboriginal land and other reserves for exploration and mining activities is generally restricted and varies according to the land category and the State or Territory in which the activity is carried out. Often approval from the relevant Minister is required to conduct exploration or mining activities on Crown Land.

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# Access to infrastructure

"A company investing in significant infrastructure should consider the potential for third parties to utilise an access regime to gain access to the infrastructure."

In Australia, many publicly and privately owned infrastructure facilities are subject to access regulation. There are both Commonwealth and State statutory access regimes, as well as frameworks for infrastructure owners to submit voluntary access undertakings. Access regulation is particularly common in relation to gas pipelines, railways and ports.

## What does access regulation mean for investors in Australia?

Access regulation can have significant consequences for investors in Australia. There is an opportunity for private investors to build, own and operate their own infrastructure in Australia such as ports, railways or mineral processing facilities. However, a company investing in significant infrastructure should consider the potential for third parties to utilise an access regime to gain access to services provided by the infrastructure. Providing access to third parties under an access regime may significantly affect the commercial returns to a facility owner, the financial stability of proposed infrastructure as well as limiting the owner's operational control and flexibility in its use of the infrastructure. Third party access may also impose regulatory and compliance costs, including involvement in expensive disputes.

Conversely, an investor interested in using another company's infrastructure facility may have the option of negotiating access under an existing access regime, or applying to have the infrastructure facility subjected to an access regime, if that other company is not prepared to reach a reasonable commercial agreement.

## Part IIIA of the Competition and Consumer act

Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA) establishes a general national regime for access regulation that can be applied to nationally significant infrastructure.

Under Part IIIA of the CCA a party may apply to the National Competition Council (NCC) to have access to a service provided by an infrastructure facility "declared". Declaration confers a legally enforceable right on third parties to negotiate with an infrastructure owner for use of that service. Part IIIA sets out a process under which the NCC reviews the application for declaration and makes a recommendation to the relevant Minister. The Minister then decides whether or not to grant declaration of access to that service.

In making the decision, the Minister must be satisfied that:

- access would promote a material increase in competition in a relevant market;
- it would be uneconomical to develop another facility to provide the same service;
- the facility is of national significance;
- use of the facility is not already subject to an effective access regime; and
- access would not be contrary to the public interest.

If a service is declared and an access dispute arises, the regulator can arbitrate the terms and conditions of access, including price.

A State or Territory access regime may be "certified" as an effective regime. Access to infrastructure services which are subject to an effective access regime cannot be declared under the Part IIIA access regime. For example, some Australian railways are already regulated under State access regimes.

## Voluntary access undertaking

Under the CCA, an infrastructure owner may seek approval from the Australian Competition and Consumer Commission (ACCC) for an access undertaking which is offered on a voluntary basis by the infrastructure owner. This access undertaking is intended to provide a framework for negotiation of the terms and conditions upon which the owner will provide access to third parties. If the ACCC approves the voluntary access undertaking, access to the infrastructure cannot be declared under Part IIIA of the CCA. Once approved, the undertaking is binding on the owner and enforceable by the ACCC.

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# Native title and cultural heritage

"A licence holder's relations with Indigenous Australians can be a key determinant of the successful implementation of a mining project in Australia."

## Australian law recognises and protects the traditional connection to land of Aboriginal people and Torres Strait Islanders (Indigenous Australians).

A licence holder's relations with Indigenous Australians can be a key determinant of the successful implementation of a mining project in Australia.

From a legal perspective, the issues requiring consideration include:

- whether the project affects land where native title does or may exist, in which case processes in the *Native Title Act 1993* (Cth) will need to be followed;
- the potential for the project to affect places or objects within the landscape which are of cultural significance to Indigenous Australians; and
- whether the land proposed to be used for a project is reserved under State or Territory based land legislation introduced for the benefit of Indigenous Australians.

## Native title overview

Native title is the set of rights and interests of Indigenous Australians over land and waters arising from their traditional laws and customs. These rights are recognised by Australia's common law.

The Native Title Act is Commonwealth legislation which establishes the system through which native title is integrated into the Australian legal system. It applies in each State and Territory. The Native Title Act has four objectives which are reflected in its operation:

- **Protection of native title:** to provide for the recognition and protection of native title.
- **Validation of prior invalid tenures:** to provide for, or allow, the validation of past acts – and intermediate period acts – invalidated because of the existence of native title.
- **Validity of future acts:** to establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings.
- **Native title claims resolution process:** to establish a mechanism for determining claims to native title.

### Where does native title exist?

In general, native title does not exist over, or has been extinguished by, freehold. It can exist in relation to Crown Land but much of Australia is comprised of Crown Land, for example in Western Australia over 90% of that State is Crown Land.

## Extinguishment of native title by the grant of certain tenures and construction of public works

The Native Title Act confirms that the grant of certain classes of land tenure, including freehold and leases conferring exclusive possession, as well as the construction of public works, have extinguished native title. It is usual to review the area of a proposed project to assess whether native title to the relevant land parcels continues or has been extinguished. If extinguished, there is no need to consider the requirements of the Native Title Act any further.

## Native title claims

Indigenous Australians have made several hundred claims seeking recognition of their native title through the processes in the Native Title Act. Many claims have been determined in favour of native title claimants, and there are large areas of land in Australia where native title has been formally determined to exist. For mining proponents, in practical terms there is not a great difference between determined native title holder and registered claimants. Both enjoy the same procedural rights under the Native Title Act in respect of the grant of mining tenements.

## Future land use

The Native Title Act protects native title from invalid interference by setting out a regime that governs all "acts" (such as the grant of tenures and mining licences) that occur on land and waters after 1 January 1994 that affect native title (called "future acts"). A future act will be valid if it is done pursuant to the requirements of the Native Title Act.

The procedural requirements associated with the particular classes of future act vary. Generally, the greater the impact on native title rights, the more onerous the procedural requirements.

In most cases, the creation of a right to mine or the compulsory acquisition of native title for use by a non-Government party will attract the "right to negotiate". This requires a minimum of six months good faith negotiation as to the terms on which the acts proposed can occur, between the relevant State or Territory, the tenure applicant and registered native title holders or claimants. Such agreements commonly involve the payment of money, provision of employment opportunities to native title group members and protection for areas of cultural heritage significance. If no agreement is reached, the National Native Title Tribunal can determine whether the grant or compulsory acquisition can proceed.

In most cases, the future act processes will not confer a right of veto to native title claimants and holders over whether a project will proceed. However the processes can be time consuming and create critical delays if not managed carefully. Some projects cannot be implemented without an indigenous land use agreement to ensure that the project is valid from a native title perspective. In those circumstances, the native title claimants have a veto. This is usually dictated by State policy or legislation rather than the Native Title Act. An indigenous land use agreement requires the consent of the relevant native title parties and can therefore operate as a veto in some circumstances.

## Aboriginal cultural heritage overview

Areas and objects of archaeological importance or cultural heritage significance to Indigenous Australians are protected from harm under Commonwealth, State and Territory laws. Indigenous cultural heritage is protected irrespective of whether the heritage is listed on a register or is otherwise identified and located.

The States and Territories each have their own Aboriginal cultural heritage protection laws, which vary considerably across the jurisdictions. Queensland, Victoria and New South Wales, in particular, impose significant approval obligations and significant monetary penalties if unauthorised harm to indigenous cultural heritage occurs. Proponents may also be ordered to stop work if protected heritage is at risk of harm. In practice, regardless of the specifics of the regulatory regime, cultural heritage protection requirements are often time consuming and onerous approvals to obtain which can cause considerable delay to a project.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (Commonwealth Heritage Act) also operates to protect areas or objects of particular heritage significance at imminent risk of harm. In those circumstances, under the Commonwealth Heritage Act, the Minister can require the works to stop.

The laws regarding heritage protection in Australia have become considerably stricter in the past decade. The penalties, statutory obligations and risk of being ordered to stop work after construction has commenced mean that it is important to assess and address cultural heritage risk early in any major project.

Obtaining an approval to conduct a project that will impact Aboriginal cultural heritage will require the proponent to engage with Indigenous Australians with traditional connection to the land in question. Proponents will often, but not always, be dealing with the same Indigenous Australian group in connection with both native title and cultural heritage approvals.

## State and Territory land rights schemes overview

Many States and the Commonwealth in the Northern Territory established schemes allowing the transfer of freehold interests in certain public lands to Indigenous Australian groups with connection to those lands. Reserves created for the benefit of Indigenous Australians also exist in many States. There are, as a result, large areas of land held as freehold by Indigenous Australians for the benefit of their communities.

The use of this land for mining and infrastructure projects will require the consent of the relevant community and is tightly regulated. As a result, the agreements that need to be negotiated in respect of these lands can be more difficult to negotiate and more favourable to Indigenous Australians than native title agreements. It is also possible for native title to exist over these areas.

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# Environmental law

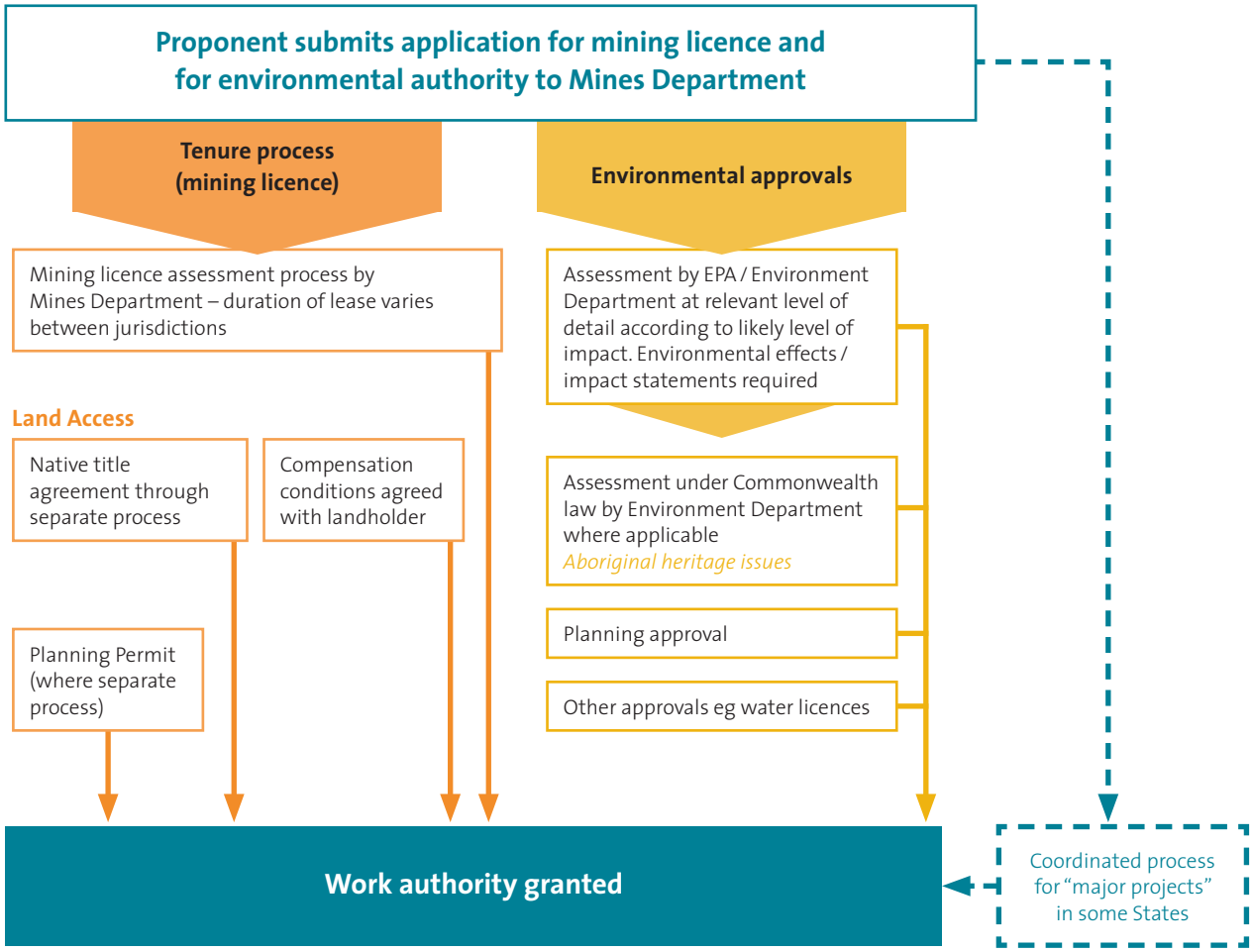
"In many cases when a project is likely to have a significant environmental impact, it must be referred to the relevant Commonwealth Minister to decide whether the project requires an environmental assessment and a decision under Commonwealth Law."

## Overview

A key issue for the mining industry in Australia is to minimise potentially negative environmental impacts. This involves both assessment before the commencement of exploration and adherence to environmental conditions and regulations during production and after closure of the mine.

The diagram below describes the interaction between licensing and environmental approvals.

### General process for mining project approvals in Australian jurisdictions



## Environmental assessment

The environmental assessment of mining projects in Australia is largely governed by State and Territory environmental protection legislation, which set out requirements for assessing environmental issues. This legislation is typically administered by an environment protection agency or authority, or environment department in each jurisdiction.

The key matters addressed by State and Territorial environmental legislation include:

- managing air, water, land and noise pollution;
- protection of flora, fauna and habitat; and
- recognising and preventing impact on indigenous sites.

Proponents of a mining project may be required to prepare an assessment of the environmental impact of their project in accordance with the relevant State or Territory legislation.

The assessment may be open to public consultation and appeals (including by third parties in some jurisdictions).

A determination about the proposed project is made by the relevant environmental authority or department with a final determination made by the relevant State or Territory Minister. The grant of an environmental approval will usually be subject to conditions to minimise environmental impacts.

## Planning approvals

Like all development activities, mining projects involve the construction of buildings, roads and other infrastructure which may require Local Government or State Government planning approval. In some jurisdictions, planning approval is integrated into the project approvals process or is covered by the mining licence.

Planning approvals are driven by State and Territory planning legislation and standards. Local Governments have a key role under this legislation in formulating and administering planning schemes. Assessments for issuing permits under planning schemes need to take account of the potential for a mine or mineral processing project to affect future uses of the area.

## Project facilitation

In some States proposed mining projects can receive special status which leads to the involvement of a centralised government coordinating authority. These bodies can facilitate large scale mining projects by planning and coordinating land and infrastructure requirements including land tenure and infrastructure.

Beyond facilitation, specific legislation known as State Agreements can also be passed for specific mining projects. State Agreements are essentially stand alone contracts between the State Government and the proponents of major mining projects (including processing facilities) which are ratified by an Act of Parliament. Each agreement specifies the rights, obligations, terms and conditions for development of the project and establishes processes for ongoing relations between the Government and the proponent. State Agreements are discussed in more detail in Chapter 3.

## The Commonwealth

While land management and mining is not generally a Commonwealth responsibility, the exploration and mining approval framework is affected by certain Commonwealth laws, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

The EPBC Act is concerned with the protection of matters of national environmental significance. It sets out the circumstances in which an environmental impact assessment may be required and provides legislative timeframes in which Commonwealth decisions must be made.

When a project is likely to have a significant impact on a matter of national environmental significance (generally sensitive areas or species, but environmental impacts, on Commonwealth land, in Commonwealth waters and arising from nuclear actions like uranium mining are also captured), it must be referred to the relevant Commonwealth Minister, who will decide whether the project requires an environmental assessment and a decision under the EPBC Act. Large resources projects are frequently referred under this regime either to afford certainty or because they may affect a matter of national environmental significance.

The Commonwealth can delegate supervision of the process to the relevant State or Territory, provided agreements are in place between the State or Territory and the Commonwealth that accredit that State's or Territory's environmental assessment processes and systems.

This means that in some cases the EPBC ACT assessment can be combined with the relevant state assessment thereby avoiding duplication and potentially reducing delays.

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# Foreign investment approval framework

"A foreign person proposing to acquire mining interests needs to make an application to the Foreign Investment Review Board for approval where such an interest provides the right to occupy urban land; and the term of the licence or lease (including extensions) is likely to be more than five years."

## Who needs to apply?

Investments by foreign persons in Australia are regulated under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA). Foreign persons include Australian subsidiaries of foreign companies.

A privately owned foreign company acquiring 15% or more (or 40% or more in aggregate with other foreign companies) in an Australian business or corporation with a value over certain specified (and indexed) monetary amounts must notify the Commonwealth Treasurer of its proposed acquisition.

A foreign government (including any State-owned enterprise and sovereign wealth fund) and its related entities must notify the Treasurer before making a "direct investment" in an Australian business or corporation regardless of its value or before beginning a new business. Under Government policy, a direct investment is described as one which is made with the objective of establishing a lasting interest in, and strategic long term relationship with, the target. Generally, but not in all circumstances, the acquisition of an interest above 10% is required.

## Additional provisions applicable to mining interests

Foreign persons proposing to acquire an interest in certain mining tenements need to make an application to the Foreign Investment Review Board (FIRB) for approval where:

- such an interest provides the right to occupy urban land and the term of the licence or lease (including extensions) is likely to be more than five years; or
- such a licence or lease provides an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, urban land.

"Urban land" includes any land that is not rural land (ie land that is used wholly and exclusively for carrying on a business of primary production). There is a view, which is supported by Government policy, that mining leases are covered by the definition of urban land.

There is a view, which is supported by Government policy, that mining leases confer rights that will generally confer an interest in "urban land".

As of 1 January 2012, Government policy now also suggests that certain prospecting and exploration licences may also confer interests in "urban land", to the extent that they can satisfy any of the criteria set out above.

## What should be included in the notification?

FIRB provides advice to the Treasurer on foreign investment proposals. The Government encourages investors to engage with FIRB prior to making an application. Proposals are treated confidentially by FIRB, if requested by the applicant.

At a minimum the application should include information about:

- the relevant parties;
- the investment (including its nature, the method of acquisition, its value, and the timetable); and
- the investor's intentions (immediate and future).

As the Government considers each application against national interest considerations, the application should also indicate how the proposal will impact:

- national security;
- competition;
- other Australian Government policies (including tax and environmental matters); and
- the economy and the community,

and include information about the character of the investor.

## Within what period will the Treasurer respond?

The Treasurer has 30 days from receipt of the application to make a decision, unless an interim order is made to allow up to a further 90 days to decide. An applicant will be informed of the Treasurer's decision within 10 days of it being made. The Treasurer can make an order prohibiting the acquisition if satisfied that it would be contrary to the national interest or can apply conditions to ensure that the acquisition is not implemented in a manner contrary to the national interest. Often these conditions are the subject of negotiation.

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# Industrial relations, employee relations and workplace health and safety

## Employment and Industrial Law

An employer in Australia must navigate a layered safety net of minimum terms and conditions of employment. A negotiated collective agreement with employees or their union(s) may prove to be the crucial element in gaining the right balance in the employee-employer equation.

### Legislative framework

Currently, the centrepiece of the Australian industrial relations legislative framework is the Fair Work Act 2009 (Cth). The Fair Work Act applies to the employees and corporate employers (of foreign, trading or Australian constitutional corporations).

### Safety Net entitlements

The Fair Work Act governs a system of minimum terms and conditions of employment that cannot be undercut in an individual contract. These "safety net entitlements" can be found in:

- The National Employment Standards (NES), setting a statutory minimum for leave entitlements, termination of employment, maximum hours of work and flexible working arrangements;
- Modern Awards, prescribing the minimum terms and conditions relating to employers and employees in particular industries (eg mining, construction and oil & gas); and/or
- Enterprise Agreements, allowing an employer and its employees to negotiate a collective agreement that sets out the minimum conditions of employment that will apply in a particular business. As a general principle, industrial action (eg strike or work ban) is only allowed during negotiations for a new enterprise agreement.

### Unions

The Fair Work Act empowers employee representational organisations (trade unions) as the default representatives of employees. Unions have an entrenched and privileged role in bargaining a collective enterprise agreement and their agreement is crucial in setting up new projects (greenfield agreement).

### Union right of entry

Unions are entitled, through an officer or employee holding a relevant permit, to enter the employer's premises in each of these situations:

- holding discussions with those employees the union is entitled to represent;
- investigating a suspected breach of industrial laws; and
- investigating a suspected breach of State Occupational Health and Safety laws.

### Transfer of business

Investment often implies the transfer of assets from one company to another, with or without transferring the employees of that business. The Fair Work Act generally requires that the enterprise agreement applying to the "transferring" employees transfers to bind the purchaser or the business.

### Unfair dismissal and adverse action

Under the Fair Work Act, employees are able to claim reinstatement or compensation if they can prove their termination was harsh, unjust or unreasonable. The Fair Work Act further forbids any "adverse action" by the employer that results in the dismissal, injury, prejudicial alteration of position or discrimination of an employee for a prohibited reason listed in the Fair Work Act.

### Limits on certain senior management employment termination benefits

The termination benefits of management personnel is generally limited to the amount of salary received in the previous 12 months, unless shareholder approval has been obtained.

## Workplace health and safety

The States and Territories each have in place workplace health and safety (WHS) legislation that applies generally (with some exceptions) throughout the State or Territory. Some States and Territories also have specific mining and offshore oil and gas WHS legislation.

### WHS Legislation

On 1 January 2012, new WHS laws commenced in most jurisdictions in Australia. This followed a lengthy process of national review and harmonisation of Australia's WHS laws. As at 1 January 2013, the new WHS laws operate in all jurisdictions in Australia with the exception of Victoria and Western Australia. In Victoria and Western Australia, existing WHS laws continue to operate.

Specific laws also regulate WHS in the mining and resources industries. Workplace health and safety on offshore oil and gas facilities operates under a national statutory framework, separate to the WHS laws.

### Liability

Under the new WHS laws, the primary duty of care is imposed on a person who conducts a business or undertaking. This person must ensure, so far as is reasonably practicable, the health and safety of workers. A worker includes direct employees and also other workers such as contractor personnel.

The new WHS laws also impose obligations on those who manage or control workplaces and on those who design, manufacture, import and supply plant, substances or structures for use at work. Duties are also imposed on those who install, construct or commission plant or structures for use at work.

Officers of corporations owe duties to exercise due diligence to ensure that the relevant business or undertaking complies with the WHS laws. Workers, too, owe duties to take reasonable care for their own health and safety and to ensure their acts or omissions do not adversely affect the health or safety of other persons.

### Safety management system

Compliance with the WHS duty of care is generally done by developing and implementing a safety system of work that has various components, including a risk management system and management structure (which identifies positions having responsibility for applying the safety management system).

### Compulsory workers compensation

The States and Territories each have legislation in place that regulates workers compensation in the event of a workplace injury or illness. An employee does not need to prove a fault by the employer in order to be entitled to workers compensation. The employer is required to obtain appropriate insurance against the risks of workers compensation claims.

# Appendix A

## State and Territory royalty regimes for certain minerals

| Mineral | Rate and basis of calculation |
|---|---|
| **Queensland** | |
| Coal | 7% of the value of the coal up to $100 per tonne, 12.5% of the value between $100 per tonne and $150 per tonne and 15% of the value thereafter |
| Cobalt | Variable rate of 2.5% – 5% (varying in 0.02% increments) depending on average metal prices<br>Discount of 20% if processed in Qld and metal content is at least 50%<br>No royalties payable on first $100,000 of combined value of minerals sold, disposed of or used in a year |
| Copper | Variable rate of 2.5% – 5% (varying in 0.02% increments) depending on average metal prices<br>Discount of 20% if processed in Qld and metal content is at least 95%<br>No royalties payable on first $100,000 of combined value of minerals sold, disposed of or used in a year |
| Gold | Variable rate of 2.5% – 5% (varying in 0.02% increments) depending on average metal prices<br>No royalties payable on first $100,000 of combined value of minerals sold, disposed of or used in a year |
| Iron ore | 1.25% per tonne, if average price is up to $100 per tonne and if average price is greater than $100 per tonne, $1.25 per tonne plus 2.5% of the value above $100 per tonne<br>Discount of 20% if processed in Qld and metal content is at least 95% |
| **New South Wales** | |
| Coal | Depends on type of mining:<br>• open cut mining: 8.2% of value of mineral<br>• underground mining: 7.2% of value of mineral<br>• deep underground mining: 6.2% of value of mineral |
| Cobalt | 4% of value of mineral |
| Copper | |
| Gold | |
| Iron ore | |
| **Northern Territory** | |
| Coal | 20% of net sales value of mineral<br>If the net sales value is $50,000 or less - no royalty is payable<br>If the net sales value is more than $50,000, the royalty payable is reduced by $10,000 |
| Cobalt | |
| Copper | |
| Gold | |
| Iron ore | |
| **Tasmania** | |
| Coal | Variable rate of 1.9% – 5.35% based on net sales value of mineral<br>A rebate of up to 20% is available for a production of a metal within the state |
| Cobalt | |
| Copper | |
| Gold | |
| Iron ore | |

| Mineral | Rate and basis of calculation |
|---|---|
| **South Australia** | |
| Coal | 5% of value of mineral |
| Cobalt | 3.5% of value of mineral |
| Copper | 2% of value of mineral for new mines for first 5 years if application approved by Minister |
| Gold | 3.5% of value of mineral |
| Iron ore | 5% value of mineral |
| **Victoria** | |
| Coal | Depends on type of coal:<br>• brown coal: A$0.0588 per gigajoule unit of brown coal produced, adjusted in accordance with the CPI<br>• other than brown coal: 2.75% of value of mineral |
| Cobalt | 2.75% of value of mineral |
| Copper | 2.75% of value of mineral |
| Gold | No royalty payable |
| Iron ore | 2.75% of value of mineral |
| **Western Australia** | |
| Coal | Depends on import / export status:<br>• if exported: 7.5% of value of mineral<br>• if not exported: A$1 per tonne (adjusted each year at 30 June in accordance with comparative price increases) |
| Cobalt | Depends on form of metal:<br>• if sold as concentrate: 5% of value of mineral<br>• if sold in metallic form: 2.5% of value of mineral<br>• if sold as nickel by-product: royalty rate is calculated by multiplying the gross cobalt metal price per tonne by the number of units per 100 of cobalt metal in the nickel by-product sold, multiplied by 2.5% |
| Copper | Depends on form of metal:<br>• if sold as concentrate: 5% of value of mineral<br>• if sold in metallic form: 2.5% of value of mineral<br>• if sold as nickel by-product: royalty rate is calculated by multiplying the gross copper metal price per tonne by the number of units per 100 of copper metal in the nickel by-product sold, multiplied by 2.5% |
| Gold | Royalty not payable on first 2500 ounces of production per annum<br>2.5% of value of mineral thereafter |
| Iron ore | Depends on type of ore:<br>• beneficiated ore: 5% of value of mineral<br>• fine ore: if shipment date between 1 July 2012 - July 2013: 6.5% of value of mineral<br>if shipment date after 1 July 2013: 7.5% of value of mineral<br>• lump ore: 7.5% of value of mineral |

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