MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO THE PRODUCTIVITY COMMISSION ON MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESSES

MARCH 2013

April 13
HP TRIM ID 2013/053734

Contents

Executive Summary

The Australian mining industry is at the forefront of international competition. The industry is fully globalised, with investment, goods and expertise moving from nation to nation where opportunities are available. Performance is judged internationally, not just between firms but within the many large multinational companies that make up the modern industry. Australia has performed well in this global market – but past performance is never a guarantee of future returns.

The driver of the present opportunity for minerals products is well-known – the rapid industrialisation and urbanisation of the developing world, in particular China and India. This is a long-term, historic shift. Other nations, including many where in the past investment might have been considered risky, are rising to the opportunity that this economic revolution offers. Australia has a strong resource endowment – unique in its breadth of minerals but by no means exclusive.

While growing global demand based on further urbanisation and industrialisation in emerging economies could underpin Australia's minerals sector for many years, it is generally acknowledged that the era of premium export prices is over. Those prices created the impetus for a significant supply response from both existing and new producers which is now underway. Hence, the defining challenge for Australia's minerals industry is to transition from an era of 'price-led' growth to one of 'volume-led' growth.

Investment in, and efficient operation of, new mining developments and key export infrastructure (ports, railways etc.) is critical to making this transition successfully.

Unfortunately, Australian projects are also more prone to delays which contribute to cost escalation, as well as increasing perceptions of investment risk. These delays also inhibit our ability to compete for new market opportunities, an important factor in some commodities. In thermal coal, for example, the average Australian project experiences an additional 1.3 years of delay relative to those elsewhere (3.1 years compared with 1.8 for the rest of the world). Project delays in Australia have been increasing over the past decade, and the gap relative to other countries is likely to be higher now than it has been for some time.

Infrastructure is the pivot between production and exports and serves as an example of the challenge. The ramp up of demand for minerals from 2003 onwards revealed some major shortfalls in Australia's infrastructure capacity that took time to repair. A range of policy challenges were revealed, including complex, lengthy and duplicative approvals regimes, poor supply chain planning which in turn hampered expansion prospects and skills shortages. In general, through the phase of industry growth characterised by rapid price rises, there was a stark difference between the expansion record on the west coast (for iron ore) and the east coast supply chains (for coal, in particular).

The Productivity Commission is seeking to undertake a study to benchmark Australia's major project development assessment and approvals process. It is potentially a very broad exercise, and the Commission will quite rightly seek to narrow its scope so that it can uncover rich and relevant evidence to help guide future policy deliberations.

The Minerals Council of Australia (MCA) would urge the Commission, however, not to underestimate the interconnected effects of the broad suite of policy regulations that mining must address in seeking major development approval.

It is the suite of regulations which are the significant determining factor for both existing operations and future expansions. These are complex and increasing in number. Considering them as a suite, the deficiencies, barriers and burdens are revealed. Too often the simplest questions cannot be answered when regulations are put in place, modified, or left beyond their appropriate life – do they regulations make sense, are the justified and, finally, can they be implemented? This last question, or its apparent oversight by lawmakers, is of increasing concern.

More broadly for policymakers there is a fundamental question: do these measures, systems and approaches enhance or detract from productivity?

So while the terms of reference of this inquiry are aimed at major developments, the challenge is broader. The matters here go to the issue of microeconomic reform more generally. These issues are often described as 'cross-cutting' because they influence economic productivity through the three critical channels of incentives, capabilities and flexibility; they affect the allocation and efficiency of resource use and the affect the incentives for work and entrepreneurship. Broader economic reform which is good for the nation is good for major developments, and mining as well.

The MCA recommends that as the Commission designs this exercise it:

1. Takes a broad view of international competition – this means not just looking at similar developed economies and non-mineral trading partners but the developing world (existing and emerging) nations as well.

2. Takes a broad view of the component parts – policy is interconnected.

3. Appreciates the Federalist nature of the Australian mining sector – the MCA, recognises and appreciates the division of legal responsibilities between the Commonwealth and the States and Territories, including the Constitutional determination that ownership of Australia's minerals resources rests with the States. This underlines, rather than removes, the need for consistency (in form, content and application), simplicity and efficiency.

The mining development challenge

The investment imperative is a product of increasing international competition but comes against the backdrop of rising domestic costs and falling productivity. Policy geared for long-term expansion of the industry's mining and infrastructure capacity will be vital to achieving this potential.

The challenge, as Professor Henry Ergas has recently described it, is "rebooting the boom".

> *Policy-makers and companies need to identify and address the inefficiencies that give rise to cost increases and unnecessary development delays or in other ways undermine the competitiveness of Australia's resource industries. Rebooting the boom places a premium on cost control, timeliness, flexibility and adaptability along the full length of the minerals supply chain.*

This process has two elements:

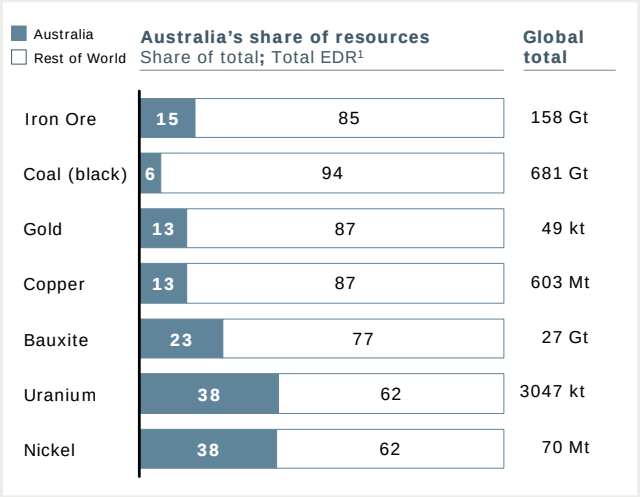
- securing new investment projects beyond 2013; and
- delivering on projected export volume growth out to 2025 in a much tougher global supply environment.

The continued urbanisation and industrialisation of the developing world will drive future minerals demand. Minerals demand growth is an inevitable consequence of economic development. And while growth in iron ore demand slows as basic infrastructure is developed there is likely to be new growth in demand for such products as copper, aluminium and other minerals and metals as consumers demand more sophisticated products. Growing global demand could underpin Australia's minerals sector for many years. According to consultancy Port Jackson Partners, if Australia can maintain market share through the next two decades, the country's minerals revenue could increase by $121 billion per annum by 2031 – a 65 per cent increase for a sector already twice the size it was in 2006.

Capturing this potential depends on out-competing our rivals for new projects. The high prices up to the middle of 2012 created the impetus for a significant supply response from both existing and new producers. Whatever the short term shifts in prices, in the long run, prices can be expected to settle around the costs of the most expensive suppliers. Continued growth in Australia's minerals sector depends on bringing new low cost brownfield and greenfield expansions into production.

However, global competition for new minerals investment is intense. Australia's resource endowment alone will not guarantee market share or ongoing investment. Australia is not the only source of minerals.

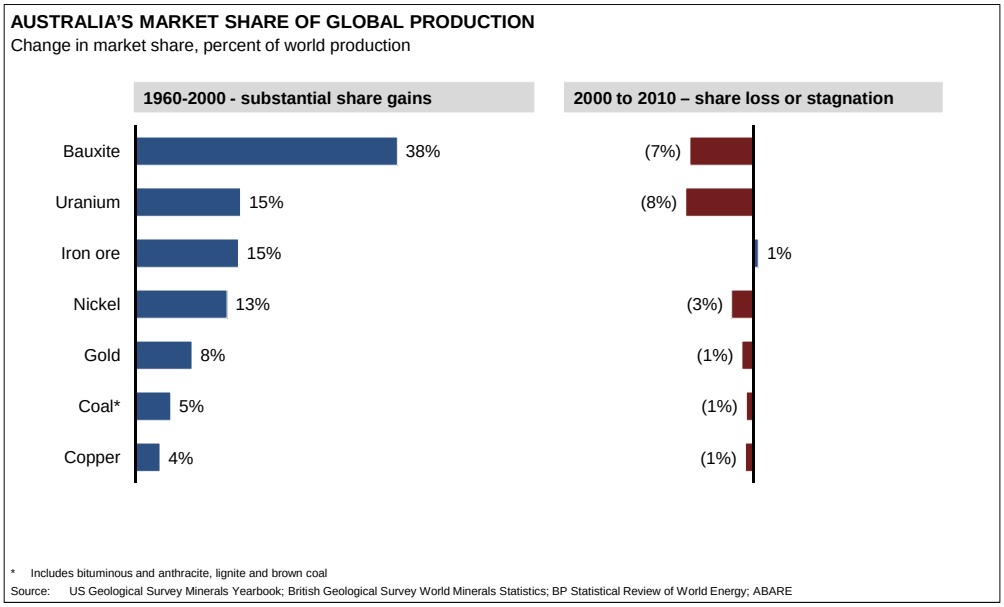
There is no shortage of mineral resources in the world



1 Economic Demonstrated Resources (EDR) as of 2008. Gt = Gigatonnes, Mt = Megatonnes, kt = kilotonnes

Source: Geoscience *Australia's Identified Mineral Resources* 2009

Australia's costs competitiveness has been declining and the number of competitive rivals is competing. Despite the impressive gains in volumes from 2000 to 2010, Australia lost market share in major commodities, except for a 1 per cent gain in iron ore market share.



Two important indicators of our competitive strength and the mining investment environment are also in decline.

First, mining industry productivity has fallen markedly and is now well below historical highs. Australia's minerals sector last delivered a productivity increase in 2003. Since that time, overall productivity in the minerals sector has fallen by 30 per cent.

New capacity currently under construction is about to come on stream. When this occurs, measured productivity will likely improve. Yet others have delivered growth without sacrificing productivity to anything like the same degree. Canada has mature resources and its minerals industry is in the midst of a massive investment boom – mining investment has risen from just C$2.5 billion in 2002 to almost C$16 billion in 2012.[i] Despite this boom, productivity levels in Canada's mining industry have held up comparatively well, with labour productivity declining by 17 per cent and multifactor productivity by only 9 per cent between 2001 and 2007.

Second, Australia's share of global exploration expenditure is falling. Throughout the 1990s, Australia consistently attracted close to 20 per cent of global non-ferrous metals exploration expenditure. This measure excludes the exploration activity needed to support ongoing iron ore operations. Since 2000, however, Australia's share of exploration has fallen to around 12 per cent. At a time when global exploration activity has grown strongly, this loss of share represents a considerable missed opportunity. It speaks directly to the relative weakness of Australia's competitive position outside iron ore.

Australia's main competitors (now and potential) are:

- Iron ore – Brazil, China, Russia, Guinea
- Coal – China, United States, Russia, Indonesia, Kazakhstan, Mongolia, Colombia. Mozambique
- Bauxite – Brazil, Guinea, China, Indonesia
- Copper – Chile, Mexico, Peru
- Nickel – Canada, Indonesia, New Caledonia, Philippines, Russia, Brazil, China

This list is a guide for the Productivity Commission when it considers its international benchmarking exercise.

The inefficiencies which developed or were sustained over the high price phase of the boom can no longer be sustained over the next decade. Tackling supply-side constraints is paramount if Australia is to maximise the benefits from the remaining window of resource-intensive growth in emerging Asia over the next 10 to 15 years.

Treasury Secretary Martin Parkinson has spoken of a "permanently larger mining sector" as the logical extension of changes taking place in the global economy. But while the window to take advantage of resource-intensive Asian development remains open, Australia's position as a premier minerals supplier is more fragile than it should be.

Regulation principles

Economic prosperity and growth depend on stable, well performing government institutions. The regulatory system – the laws, regulations, standards and codes, and the ways in which they are implemented in practice – provides the nuts and bolts to implement legislation and government policies.

The prosperity Australia has enjoyed in the last few decades is partly the result of past deregulation. Paradoxically, in recent years Australian governments have been adding new rules and regulations faster than they have removed or simplified existing rules.

Arguably more so than any other industry, regulation impacts all stages of minerals industry activities from exploration, mining, processing and closure to relinquishment of tenure. Mining is a complex undertaking which involves multiple interactions with regulators at all levels of government, contractual arrangements with multiple entities – public and private – as well formal and informal commitments with the communities where it operates.

Investment funds are mobile, and the perceptions of investment risk can change quickly. Mining investments are both capital intensive and long-lived, with projects needing to deal with significant technical and physical risk throughout the whole life of mine. Faced with such complex relationships, governments need ensuring the efficiency and effectiveness of the rules and guidelines that help manage those relationships requirements across the suite of policy concerns.

The variability in the content, administration and enforcement of project approvals and environmental protection processes carries large costs. Multiple layers of regulation also create artificial barriers to market access for water resources and land.

Regulation can help overcome market failure, ensure efficiency and enable a smooth-running society. Yet regulation can create more problems than it solves when it is inappropriately targeted, created for the wrong reasons or left too long unchecked. Where there is this outcome, the economy is unable to achieve its full potential as businesses incur unnecessary direct and indirect costs. Regulation therefore requires careful consideration at the drafting, implementation and review stages.

The MCA has long supported the Council of Australian Governments' (COAG) Principles of Good Regulation, which stress:

- clear intent based on an establish case for action;
- flexibility in instruments, including self-regulatory, co-regulatory and non-regulatory approaches;
- avoiding restrictions on competition;
- clear guidance on compliance requirements;
- reviews of regulation to ensure they remain relevant and effective;
- consultation with stakeholders; and
- consistency, transparency and proportionality in the exercise of bureaucratic discretion.

Much more competitive, market-orientated reform is needed at the State, Territory and local government levels. While some States are attempting to improve their approach to regulation, in general, the effort is too narrow and independent, regulatory review agencies overseeing this reform work are inadequately resourced. According to a qualitative survey of mining stakeholders by URS, commissioned by the MCA, stakeholders believe that the principles are being given only cursory attention. It finds that the greatest challenge facing governments is to change the mind-set that views regulation as the natural first, and sometimes only, means of addressing perceived problems with market outcomes.

Some specific regulation of the mining and minerals processing industry has always been accepted by the industry to assist with the ongoing maintenance of the "social licence to operate". However, application of laws should generally be universal – selecting specific sectors or even sub-sectors runs contrary to good regulatory principles.

Regulations should be employed to enhance rather than to impede the minerals industry's contribution to achieving an enduring balance between the financial viability of the industry, its environmental credentials and its positive social contribution.

Government legislation, regulations and codes set the minimum standards for mining. Many companies operate at a higher level than this. It is in the industry's interests to promote a level of performance above the minimum standard expected to the community.

The greatest challenge facing governments is to change the mind-set that sees regulation as the natural first, and sometimes only, means of addressing perceived problems with market outcomes. The recommended position of the minerals industry is one that:

- embraces the primacy of the market – that the free and unhindered operation of the market will lead to efficient outcomes;
- enacts regulation only when it is demonstrably the most economically efficient way of addressing market failure and /or a specific social objective;
- applies "light-handed" measures such as reporting and monitoring when market failure warrants regulation;
- applies more intrusive approaches only when light-handed approaches and non-regulatory options have demonstrably failed;
- sets efficiency (least cost), national consistency, harmonisation and coordination as the hallmarks of regulation;
- assigns responsibility for prioritising streamlining and simplifying Australian regulations to the COAG Ministerial Councils; and

- targets regulations at the identified problem or issue without imposing unnecessary burdens on those affected.

Regulatory reform, then, means developing minimum effective regulation that conforms with best practice without diminishing standards and that:

- is not unduly prescriptive;
- is clear and concise;
- is the best regulatory approach available to address a defined problem (government should assess whether self-regulation, co-regulation or no regulation is the efficient response);
- is enforceable;
- can be administered by accountable bodies in an equitable and consistent manner by competent and adequately resourced regulator; and
- is monitored and periodically reviewed.

Regulation that falls short of these criteria is likely to fail in its objectives, impose unnecessary costs, impede innovation and/or create barriers to efficiency and productivity.

At its heart is the challenge of boosting productivity from which the benefits of wealth (jobs, income, returns on investment, exports) and the enhancing wellbeing (particularly the contribution to sustainable development flow. These challenges have been succinctly summarised by the previous Commissioner, Gary Banks, in speeches at the end of 2012. In summary, he argues:

> *… what is needed is an approach to 'productivity policy' that embraces both the drivers and enablers of firm performance, and is consistently applied. That in turn requires policy-making processes that can achieve clarity about problems, reach agreed objectives and ensure the proper testing of proposed solutions (including on the 'detail' and with those most affected). The beneficial and enduring structural reforms of the 1980s and 1990s are testimony to the value of these policy-making fundamentals. Good process in policy formulation is accordingly the most important thing of all on the 'to do list', if we are serious about securing Australia's future productivity and the prosperity that depends on it.*

Regulation in practice

There is a universal acceptance within the minerals sector for formal assessment and approval processes, but growing concern that the Principles of Best-Practice Regulation, established by the Council of Australian Governments two decade ago – are not being followed.

Mining regulation is mounting at an alarming pace – with little evidence that outcomes have improved or that the quality of regulation is improved. Too many pieces of legislation are focussed on processes not outcomes; there is little ongoing evaluation of the cost effectiveness of statutes.

Duplication and multiplication is increasing, particularly where requirements for action and reporting differ across Acts. The integration and co-ordination in the administration of processes is lacking, not least because of a

failure of the government agencies to agree on the data required to inform their regulatory decisions. High rates of churn within agencies, and across entire departments, are arguably self-defeating.

In 2006, the Minerals Council of Australia conducted an audit of regulations faced by the industry – from mining, to environmental approval, land access and planning, heritage and water. This audit is now being re-examined.

The findings are disturbing. Across the nation it found there are 144 pieces of primary legislation faced by the sector, compared with 94 in 2006. There are today 119 pieces of subordinate legislation or guidelines, up from 66. In the two largest mining states the regulatory landscape is particularly onerous with 23 pieces of primary legislation in Western Australia (up from 15) and 24 in Queensland (up from 12).

Even where changes were of a technical nature, the persistent "churn" of legislation means that multiple Acts need to be consulted by project proponents and operators seeking to undertake exploration and mining in Australia. Overall the pieces of primary legislation have increased by 53 per cent and the pieces of subsidiary legislation by 80 per cent.

Consultancy firm URS conducted interviews with 90 stakeholders, including government administrators, on scope and application of laws that affect the mining sector across Australia and New Zealand. A select group of large consultancy firms, with experience across *all* jurisdictions, were surveyed to ascertain their opinions on the operation of laws that affect mining.

Within this churn of legislation, the "problem" requiring legislative redress and the "intent" of the resultant legislation were often not defined; monitoring or enforcement regimes were either impractical or unduly focussed on dictating process rather than outcomes; and the relentless creep of duplication was a continuing burden for industry and good policy.

The results, in the Appendices attached to this submission show a deterioration in the legislative and administrative environment across Australian States. Scores have deteriorated in every State except Queensland, where the results were, on average, the same as 2006. The Commonwealth scored an improvement overall but remains equal bottom (with Tasmania) on the average score across all criteria, particularly on clarity, certainty, efficiency of the measure and stakeholder appeals.

As part of the consultations undertaken, meetings were sought with Offices of Best-Practice Regulation, or the equivalent section within the Central Government Agency responsible for overseeing the application of the COAG Principles. Based on these meetings, the general conclusion is drawn that such offices tend to become involved too late to have a significant influence on the development of policy initiatives and associated regulatory measures.

Their involvement in facilitating the ongoing cost-effective management of regulatory systems, from the perspective of all affected parties, also appears limited. This would appear to be the result of the focus of the offices on the type of, and justification for, intervention in the development of the regulations rather than how those regulations would need to be implemented, and the associated governance arrangements required, in order to be successfully implemented.

Responses from company representatives provide a set of best-practice principles similar to the COAG Principles. If applied, regulatory arrangements would:

- have clearly specified outcomes with measures of success determined and enunciated;
- be non-prescriptive;
- be risk-based and applied on a case-by-case basis;
- not be applied retrospectivity;
- remain stable;
- be predictable;
- provide certainty;
- possess clarity of purpose and obligations;
- be consistent;
- be open and transparent;
- clearly assign responsibilities;
- be cost-effective;
- achieve procedural fairness;
- be simple and practical to implement such as through the use of lead government agencies, a single approval process (from the perspective of the applicant) and the issuing of a single approval authority; and
- be monitored and enforced with the ongoing need reviewed periodically.

Regulatory arrangements that exhibited these characteristics were seen as leading to regulations that were being applied in the spirit of "good faith" that, in turn, would lead to mutual trust and respect between all parties involved in the approval process. Such mutual trust and respect was seen as essential for increasing commercial and community confidence associated with investments in the mining sector.

Microeconomic reform is the key

As stated earlier, the MCA would urge the Commission not to underestimate the interconnected effects of the broad suite of policy regulations that mining must address in seeking major development approval.

The broad sweep of priorities for the MCA was mapped out in its *2013-14 Pre-Budget Submission* in March this year. These include:

- Roadmap for fiscal sustainability – Improving the long-term structural health of the Budget remains critical, notwithstanding cyclical impacts on the budget bottom-line. To ensure this is done in a way that supports growth and productivity, the focus should be on cutting poor quality spending, not higher taxes.

- Efficient capacity building – Efficient public sector investments and targeted policy reforms are needed to overcome current and future capacity constraints in social and physical infrastructure and skills, given the structural changes taking place in the Australian economy. Priorities should include skills development and improved infrastructure, especially in regions where governments have abrogated their core responsibilities to deliver citizenship entitlements.

Lifting the speed limits to national growth – by building the pool of skilled labour, through market responsive education and training in vocations and professions and enabling the ready import labour where there are critical skills shortages; and unfettered access to foreign direct investment and globally competitive suppliers – will ease the inflationary pressures on labour costs, energy (diesel fuel) and raw materials costs.

Australia should continue to promote international trade and investment liberalisation. The accent should be on beyond-the-border trade restrictions, services and, in particular, investment.

- Best practice regulatory reform – reforms are urgently needed to poorly developed and administered regulation at all levels of government. Inefficient and overlapping regulation is creating higher costs and uncertainty for the minerals industry in the key areas of:
    - project approvals –Federal/State relations should be streamlined to institute strategic land use assessment and planning, and to limit the Commonwealth to a strategic oversight and enforcement role while devolving assessment and approvals processes to the States;
    - water market access –the minerals industry should be included in water planning and entitlement regimes and the development of a national water trading market;
    - occupational health and safety – nationally uniform, risk-based and consistent legislation should be introduced across jurisdictions, sectors and industrial activities; and
    - infrastructure regulation reform – market based solutions should provide closer alignment between the owner and those with a direct economic interest in the operation of the logistics chain.

- Stable, predictable, efficient and internationally competitive taxation system – Notwithstanding significant reforms to Australia's taxation system over several decades, it remains complex, economically inefficient and administratively complex across all aspects – personal income tax, the tax social security interface, business tax arrangements including resource rents, and indirect taxes both the GST and State taxes and royalties.

  Australia's tax system should fairly balance the need to protect the taxation revenue base with the principles of a good tax system – efficiency, fairness (horizontal and vertical equity), simplicity, transparency, and with low compliance costs. The tax system should enhance competitiveness in providing a climate conducive to improved investment within and into Australia and from Australia for Australian-based entities and individuals, and should not impede organisational restructuring.

- Workplace arrangements should be flexible for both employers and employees, encouraging direct collaborative relationships, promoting productivity and safety and health – The Federal Government's Fair Work Act contains substantial flaws, principally restrictions on legitimate individual agreements, expanded scope of subject matter in agreements beyond those directly relevant to employment arrangements, expanded union right of entry (that goes beyond worker interest to union claims of coverage) and broader than necessary Good Faith bargaining rules.

- Reconciling climate change policy and energy security –- Reducing greenhouse gas emissions and the carbon intensity of the Australian economy need not compromise the international competitiveness of trade exposed industries nor the incentive to invest in new energy capacity – electricity generation, gas and transport fuels.

Pricing carbon through a market mechanism in a manner which is both in sync with the development of low emissions technologies and aligned with a comprehensive global protocol (which at minimum contains an understanding of the imperative to act and agreement by all to respond) is superior to Australia's current array of policies – the Clean Energy Future (carbon tax), the Renewable Energy Target and the plethora of state based initiatives.

- Deep benchmarking for global competitiveness – The Federal Government's Asian Century White Paper establishes a broad framework and aspiration for enhanced Australian prosperity, but it is not compelling on the mechanisms to drive and enable higher productivity. The Productivity Commission should be given a sweeping mandate for 'deep benchmarking' of Australia's international competitiveness with an enhanced focus on Asian benchmarks.

All arms of policy – macroeconomic and structural, Commonwealth and State – should be geared towards enhancing the economy's productivity and flexibility. Without a coherent roadmap for economic reform gains that seem possible will fail to materialise.

Minerals Council of Australia
March, 2013

The mining development challenge

The Australian mining industry is at the forefront of globalisation and international competition. The driver of this growth is well-known – the rapid industrialisation and urbanisation of the developing world, in particular China and India. Other nations, including many where in the past investment might have been considered risky are rising to the opportunity that this economic revolution offers. Australia has a strong resource endowment – unique in its breadth of minerals but by no means exclusive.

In 2002-03, the year before the mining boom began, mineral and energy resources exports totalled $46 billion (in 2011-12 dollars) and accounted for just over 24 per cent of Australia's total exports. By 2011-12, the value of Australia's mineral and energy resources exports had more than tripled in real terms to be $158 billion, accounting for just over 50 per cent of the total value of Australia's exports. Notwithstanding this strong growth in export values, over the decade from 2000 to 2010 Australia's market share of production in major commodities fell, with the exception of a small increase in iron ore.

While growing global demand based on further urbanisation and industrialisation in emerging economies could underpin Australia's minerals sector for many years, it is generally acknowledged that the era of premium export prices is over. Those prices created the impetus for a significant supply response from both existing and new producers which is now underway. Hence, the defining challenge for Australia's minerals industry is to transition from an era of 'price-led' growth to one of 'volume-led' growth. Investment in, and efficient operation of, new minerals operations and key export infrastructure (ports, railways etc.) is critical to making this transition successfully.

Infrastructure is the pivot between production and exports and serves an example of the challenge. Mismatches in, or inadequate provision of, infrastructure mean that Australia misses out on maximising the export potential of its resources base either through product not being shipped or, ultimately, mines not developed.

The ramp up of demand for minerals from 2003 onwards revealed some major shortfalls in Australia's infrastructure capacity that took time to repair. A range of policy challenges were revealed, including complex, lengthy and duplicative approvals regimes, poor supply chain planning which in turn hampered expansion prospects and skills shortages. In general, through the phase of industry growth characterised by rapid price rises there was a stark difference between the expansion record on the west coast (for iron ore) and the east coast supply chains (for coal, in particular).

Infrastructure capacity restricted the supply response of the minerals industry during the expansion period of 2003 to 2008. The shortfalls – catalogued in the MCA's infrastructure audit, the *Vision 2020 Project* – were both physical (the capacity of ports, railways, roads, energy, water and telecommunications) and regulatory (the poorly regulated multi-user/multi-owner bulk commodities infrastructure of the east coast of Australia and the uncertainty for investment by application of mandated third party access on the west coast). As a result Australia lost market share in key commodities despite some increases in volumes.

The industry has made significant progress but capacity remains inadequate to meet the opportunities. While the pipeline of work underway should see the industry meet the challenge of maintaining its global market share through to 2015 – provided the environmental and planning policy framework is applied fairly, consistently and transparently – there are dangers that beyond that date opportunities may be lost.

The previous expansion phase revealed a range of policy challenges which still need to be addressed: complex, lengthy, duplicative approvals regimes, poor planning by supply chain participants on expansion prospects, materials and equipment shortages and eventually skilled labour shortages.

Rising costs and increased regulation are an additional challenge. A report by Port Jackson Partners in September 2012, *Opportunity at Risk: regaining our competitive edge in minerals resources,* warned that Australian costs were now rising faster than other competing jurisdictions, whereas five years ago the costs of major iron and coal projects were on par. Australian iron ore projects are currently 30 per cent more expensive than the global average while capital costs for thermal coal projects are estimated at 66 per cent above the global average. Delays and costs escalations are hampering the ability of Australia to capitalise on demand opportunities. In thermal coal, for example, the average project experiences an additional 1.3 years of delay relative to those elsewhere (a total delay from studies to completion of 3.1 years in Australia compared with 1.8 years for the rest of the world).

The Australian Government has expanded and improved capital investment in infrastructure in recent years and this is welcome. The MCA argued as early as 2004 that policy needed to be refocussed away from fuelling consumption and towards supporting investment. Over the past six budgets, $40 billion of infrastructure spending has been committed through to 2013-14. Government has chosen to concentrate this funding on infrastructure in and around urban conurbations. This policy choice means there needs to be an even greater focus on facilitating private sector investment in regional infrastructure. This challenge has been partly recognised through National Ports Strategy and the Land Freight Strategy developed by Infrastructure Australia but greater urgency is needed.

A new expansion phase

It is imperative for Australia to shift from the phase of price-led expansion in the first growth period (2003-2008) to the new era of volume-led growth. This imperative is a product of increasing international competition but comes against the backdrop of rising domestic costs and falling productivity. Policy geared for long-term expansion of capacity will be vital to achieving this potential.

The challenge, as Professor Henry Ergas has recently describes it, is “rebooting the boom”.

> *Policy-makers and companies need to identify and address the inefficiencies that give rise to cost increases and unnecessary development delays or in other ways undermine the competitiveness of Australia’s resource industries. Rebooting the boom places a premium on cost control, timeliness, flexibility and adaptability along the full length of the minerals supply chain.*

This process has two elements:

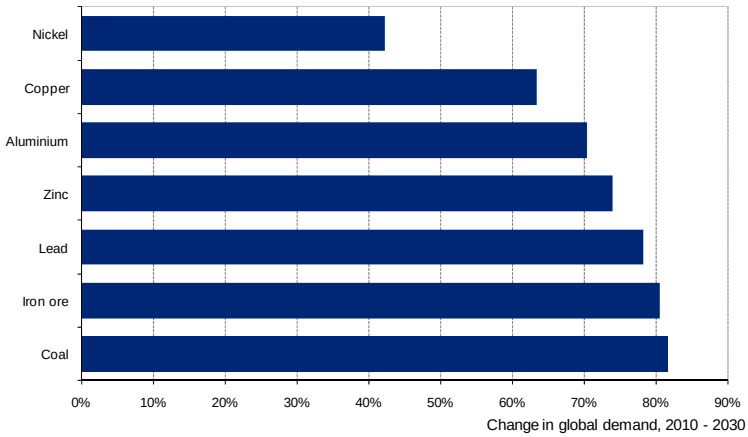
- securing new investment projects beyond 2013; and
- delivering on projected export volume growth out to 2025 in a much tougher global supply environment.

The inefficiencies which developed or were sustained over the high price phase of the boom can no longer be sustained over the next decade. Tackling supply-side constraints is paramount if Australia is to maximise the benefits from the remaining window of resource-intensive growth in emerging Asia over the next 10 to 15 years.

The content of the expansion

The fundamental drivers of global commodities demand are the rapid industrialisation and urbanisation of the developing world.

Chart 1: Forecast growth in Global commodity demand (consumption), 2010 – 2030



Source: ABARES, Deloitte Access Economics

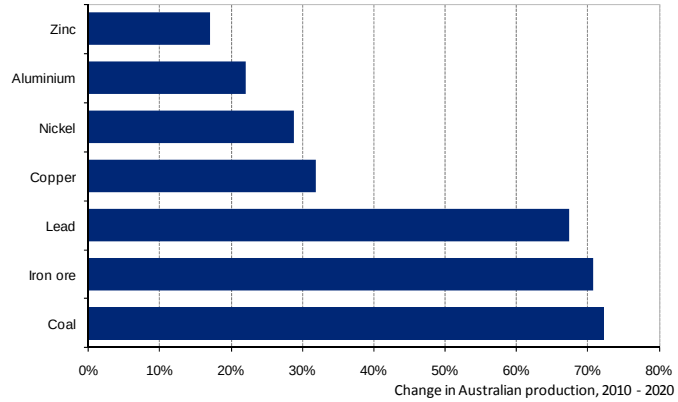
The potential opportunity for Australia – and the size of the infrastructure challenge to go with it – is significant. Tracking known investment through to 2016 and then presuming Australia simply maintains market share from 2016 onwards, indicates the need for a large increase in the scale of supply.

The graph bellows shows the expected lift in Australian mineral output to 2020. The forecasts use a combination of global demand forecasts in further combination with:

- Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) 2011 production forecasts to 2016; and
- beyond 2016, an assumption that Australia maintains its global market share by mineral.

The conclusion is that Australian production of a number of minerals will need to increase well beyond 2010 levels over the next decade. Annual coal and iron ore volumes would need to rise by 343 million tonnes and 300 million tonnes respectively over and above their 2010 levels. That is more than double the lift in coal output achieved over the past decade, and more than 20 per cent larger than the matching increase in iron ore production.

Chart 2: Potential change in Australian commodity production levels, 2010 – 2020



Source: Deloitte Access Economics

As large as these numbers appear, Australia's relative competitive performance over that period was mixed. Australia's relative global market share of coal and iron ore of grew little more than 10 per cent, while the share of other minerals would fell by as much as 21 per cent across the decade.

Work by the Bureau of Resource and Energy Economics tells a similar story. In iron ore, metallurgical coal and thermal coal, projects under construction will be sufficient through to the middle of the decade across of a range of growth scenarios, but will be found wanting after than period. The decisions for these long lead-time investments will be over the next two to three years.

Figure 8.1: Long term outlook for thermal coal: nameplate capacity and export volumes

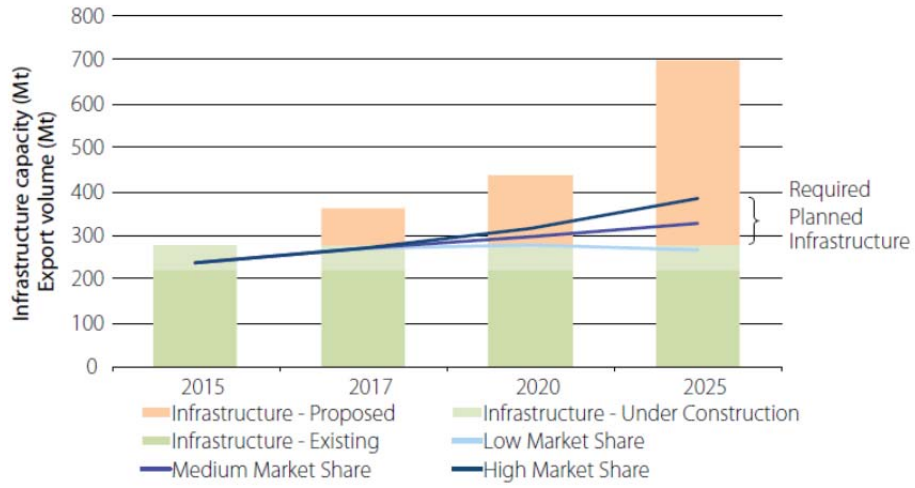


Figure 8.4: Long term outlook for metallurgical coal: nameplate capacity and export volumes

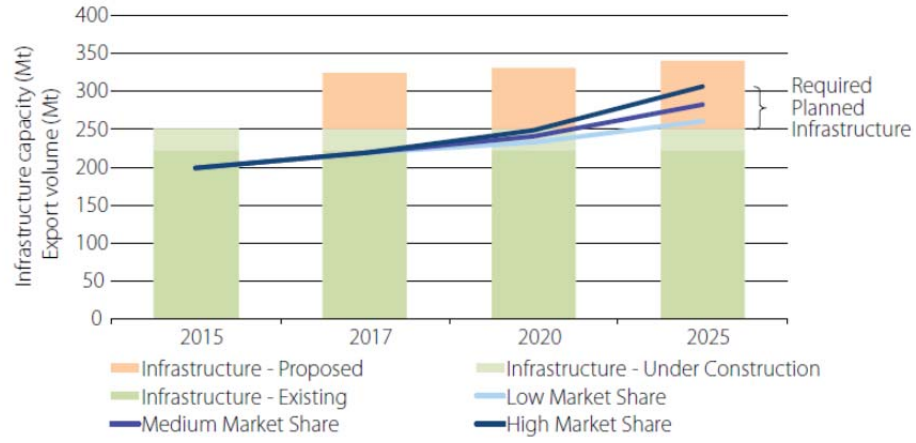
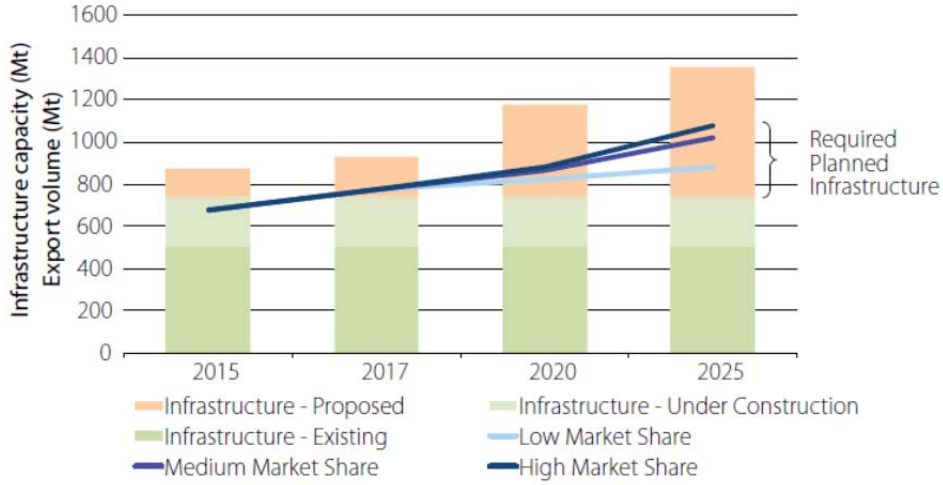


Figure 8.7: Long term iron ore outlook: nameplate capacity and export volumes

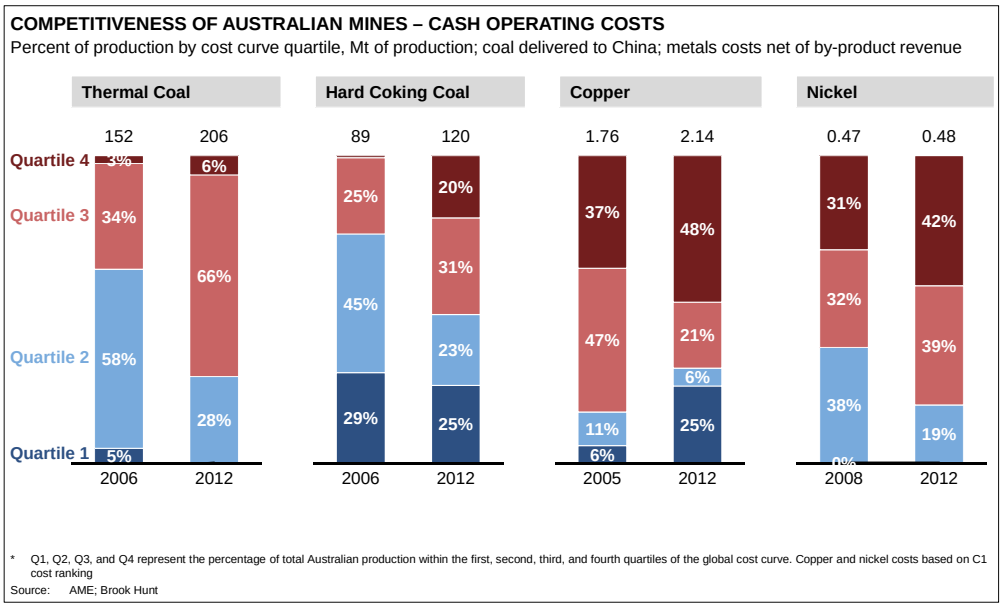


Source: Bureau of Resources and Energy Economics

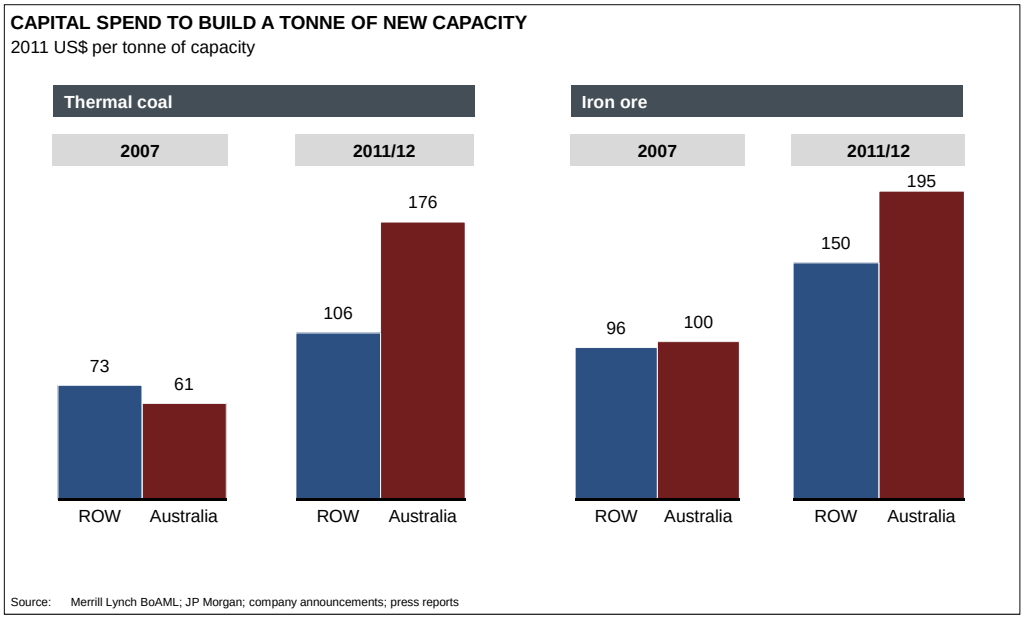
Low cost operations have been the foundation of Australia's competitive position. Lower costs deliver higher returns under any conditions. But when future prices and margins are uncertain, as they are today, cost competitiveness is crucial to attract investment. The evidence is, however, that Australia's mining operations and projects are no longer as cost competitive as they once were.

As Port Jackson Partners noted in its landmark study for the MCA, *Opportunity at risk: Regaining our competitive edge in minerals resources*, Australia existing resource operations have become high cost. Ranked against competing producers in the thermal coal, coking coal, copper and nickel markets, more than half of Australia's mines have costs above global averages. For example, PJP calculate that only six years ago, 63 per cent of Australia's thermal coal production fell within the first two quartiles of the global cost curve. In 2012, this has fallen to 28 per cent. The picture is similar in coking coal. In copper and nickel, an already weak cost position shows no sign of improvement. In both metals, nearly half of Australia's production is now in the most expensive

25 per cent of mines globally. Even in iron ore, Australia has lost its operating cost advantage for all but established Pilbara operations.

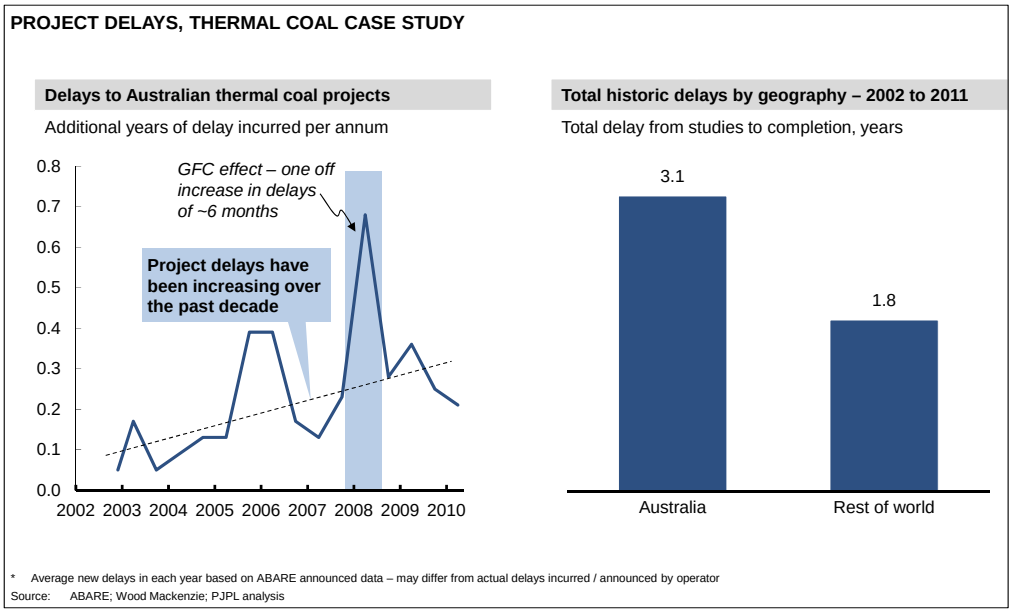


Rising capital costs mean our new projects are also becoming less attractive. Globally, industry costs are rising for key inputs like labour, equipment, contracting services and raw materials. Yet capital costs for projects in Australia are rising faster than elsewhere. Only five years ago, the costs of Australian iron ore and coal projects were on par with our competitors. Australian projects are now at a distinct capital cost disadvantage relative to peers. Australian iron ore projects, for example, are currently 30 per cent more expensive than the global average. The situation in thermal coal is worse; project capital costs are 66 per cent above the global average.



Australian projects are also more prone to delays which contribute to cost escalation, as well as increasing perceptions of investment risk. These delays also inhibit our ability to compete for new market opportunities, an

important factor in some commodities. As cited earlier, in thermal coal the average Australian project experiences an additional 1.3 years of delay relative to those elsewhere (3.1 years compared with 1.8 for the rest of the world). Project delays in Australia have been increasing over the past decade, and the gap relative to other countries is likely to be higher now than it has been for some time.



Project delays, regulatory complexity and rising costs come as other nations make a concerted effort to gain a share of the growing market. For the Productivity Commission conducting a benchmarking exercise comparison with many of these competitor nations is technically difficult, but cannot be avoided.

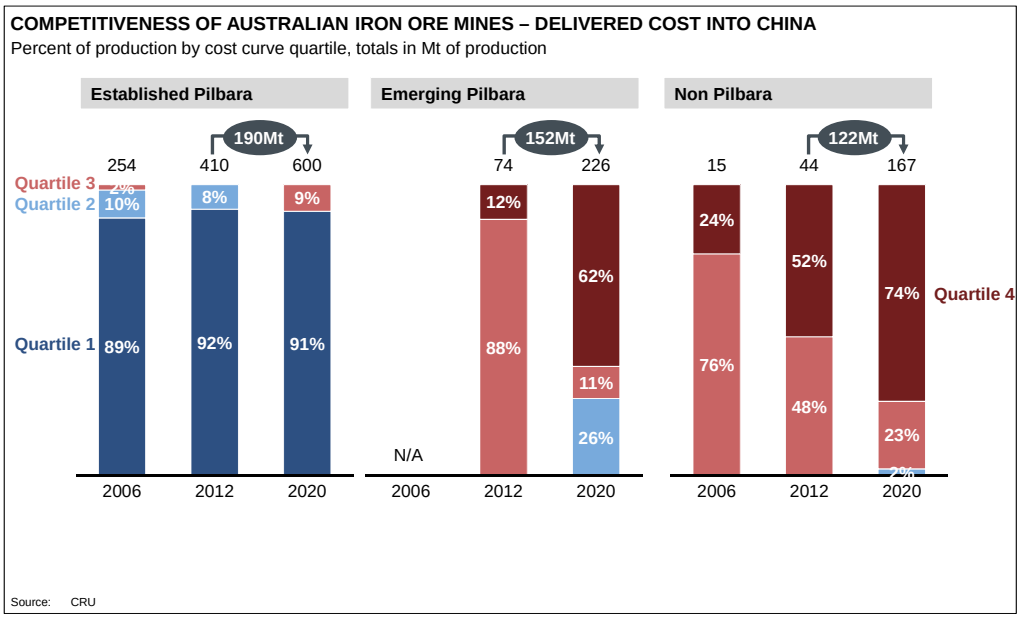
As PJP notes the broad ingredients needed to attract minerals sector investment are increasingly known and widely disseminated, facilitating the funding of new projects. In Mongolia, for example, the World Bank actively influenced the development of the investment agreement for Oyu Tolgoi with the development of genuine risk sharing arrangements between investors and Government during the development stage, to be repaid through project dividends. In other countries the lesson of minerals sector reform are providing competitive strength. Chile and Peru, for example, were able to revive their dormant copper industries through important investment reforms. The Democratic Republic of the Congo is making similar reforms, including privatisation, on the back of a new minerals code developed with the support of the World Bank. Mongolia and Mozambique are emerging as major new producers of coking coal. Guinea and other West African countries are working to bring projects capable of producing 400 million tonnes per annum of high quality iron ore on line over the next 15 years.

PJP notes that whilst operating in developing nations remains risky – there will be 'bumps in the road' for investors – it is now clear that these countries have steep growth trajectories.

In addition, new technologies are aiding the discovery of new resources and, in some resource sectors, lowering the production costs of large, low-grade ore bodies, such as in Kazakhstan's uranium industry. Mongolia has used advances in geographical information systems, satellite imaging and 3-dimensional visualisation programs to explore previously inaccessible areas. These are all examples of how new, more potent, competitors are emerging to challenge Australia.

In iron ore, Australia has lost its competitive advantage in all but the best Pilbara developments. PJP suggest Australia's iron ore industry is best considered in three groups: 'Established Pilbara', which includes the existing and future operations of miners with decades of experience in the Pilbara; 'Emerging Pilbara', which includes the post-2008 commercially producing operations of miners with less experience in the Pilbara; and 'Non-Pilbara' operations outside the northwest. If we are to hold and potentially grow share, projects from all three groups will be needed. Approximately 60 per cent of projected growth in Australia's iron ore production to 2020 will come from projects outside Established Pilbara.

These three groups have starkly different operating cost positions. Measured by delivered cost into China, Established Pilbara operations, aided by low cost infrastructure and high quality resources, remain highly competitive. Most Established Pilbara operations are in the cheapest quartile of the global iron ore cost curve. Other projects are less well positioned. Based on current estimates, Emerging Pilbara and Non-Pilbara operations will be in the less attractive half of global projects. Non-Pilbara projects will almost exclusively be in the most expensive 25 per cent.

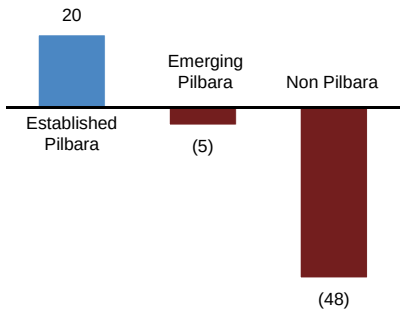


At an average capital intensity of US$235 per tonne, projects outside the Pilbara are 75 per cent more expensive to build than West African alternatives. Even expansions within the Pilbara are at a 20 per cent cost disadvantage. In 2020, Brazilian iron ore will be cheaper to deliver to China in operating cost terms than ore from all but the Established Pilbara projects. Emerging Pilbara operations will be at best competitive, while those outside the Pilbara will be substantially higher cost. Australian projects will also have uncompetitive capital costs relative to the most important source of new iron ore developments, West Africa.

COMPETITIVE POSITION OF AUSTRALIAN IRON ORE PROJECTS

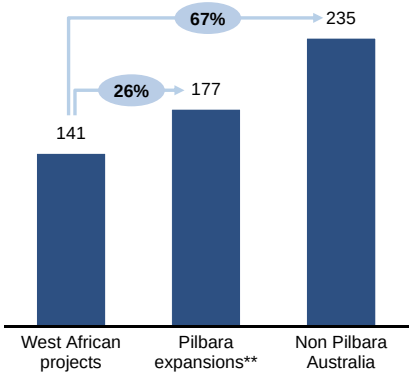
Delivered cost advantage vs Brazil by 2020*

2012 US cents per dmtu, CIF to China



Regional average capital spend for one tonne of iron ore capacity

US$ per tonne of capacity



* Growth volume only. For expansions at existing operations, growth volume is assumed to have the same cost structure as existing volume. FMG operating costs adjusted to exclude capital charges for off-balance sheet capital expenditure of $10/t of capacity

** FMG estimated at $110/t. Based on announced capex of $84/t, broker estimates of equipment costs of $16/t, and finance and operating leases of $10/t as per initial 55Mtpa investment.

Source: CRU; JP Morgan; FMG annual reports, company announcements

The state of the global coal market encapsulates this challenge. Despite 6 per cent of world's resources Australia has 38 per cent of global seaborne trade on the back of historic competitive performance.

Global coal producers thermal (steaming) and metallurgical (coking) coal

Top Ten Steam Coal Producers (2011e)

PR China	2831Mt	Australia	199Mt
USA	849Mt	Russia	178Mt
India	509Mt	Kazakhstan	98Mt
Indonesia	373Mt	Colombia	80Mt
South Africa	250Mt	Poland	65Mt

Top Ten Coking Coal Producers (2011e)

PR China	504Mt	Canada	29Mt
Australia	146Mt	Mongolia	20Mt
USA	82Mt	Ukraine	20Mt
Russia	78Mt	Kazakhstan	13Mt
India	35Mt	Poland	11Mt

Source – World Coal Association

Much of Australia's thermal coal project pipeline faces competitive challenge from a range of competing producers. Many of these competitors share our proximity to growth markets in China and India, as well as to traditional markets like Japan, Korea and Taiwan.

Only 15 per cent of Australia's projects are in the most attractive half of the global pipeline. Rising capital and operating costs have both contributed to this problem. In 2007, project capital intensity in Australia was comparable to the global average. In the five years to 2012, however, it has risen to two thirds higher than the global average.

Extensive thermal coal exploration has led to the discovery of large, high-quality resources in many locations. Indonesia, for example, has experienced a sixfold expansion in its production over the past 15 years. Colombia, too, is now positioning itself as an attractive destination for new thermal coal investment. Foreign direct investment in the Colombian mining sector increased from US$1.1 billion in 2004 to over US$4 billion in 2011.[ii] New coking coal competitors are proliferating and successfully gaining share. Mongolia, for example, has massive reserves of coking coal which are undergoing rapid development. Production is expected to reach 54 million tonnes per annum by 2020, more than four times larger than in 2010.

Similarly, Mozambique's metallurgical coal industry has developed rapidly since large resources of hard coking coal were discovered in the mid-2000s. The country exported its first metallurgical coal in 2011 and is expected to be the world's fourth largest seaborne exporter by 2020.

Australian aluminium smelting is uncompetitive on both capital and operating costs. Chinese smelters have a clear capital cost advantage.[iii] Middle Eastern smelters, although higher in capital costs, benefit from low cost power generated from cheap natural gas. Combined, these low cost producers captured 89 per cent of global growth between 2000 and 2011. Indian producers with access to competitively priced power, low labour costs, abundant raw materials and close proximity to a growing local market are also emerging as strong competitors.

Although our competitive position in processing is poor, Australia is well positioned to supply the emerging bauxite export market into China. Australia has abundant high-quality bauxite reserves and a freight advantage over African and South American competitors, but competition to secure the opportunity will be intense. A swift response has seen Indonesian production increase tenfold since 2005. By 2011, Indonesia had captured 80 per cent of Chinese import demand and was one of the top four producers globally. Guinea is also a well-established producer and holds over 30 per cent of global bauxite reserves.[iv] Brazil has steadily grown market share over the past 10 years and China is also exploring Vietnam's potential as an alternative bauxite producer.[v]

The future of Australia's copper industry is much less assured following the decision to postpone further development of Olympic Dam. Olympic Dam is among the world's largest copper and uranium deposits. Until recently, planned expansions beyond its current underground operation would have seen it become among the world's largest copper mines. Ultimately, high capital costs undermined the project's attractiveness. Beyond Olympic Dam, Australia's copper project pipeline is characterised by small, uncompetitive projects. Ranked by price needed for investment, none are in the more attractive half of copper growth projects globally.[vi]

Australia has a weak and worsening cost position in nickel. In 2012, 81 per cent of Australia's nickel production had costs above the global average, up from 63 per cent in 2006. Consequently, Australian production volumes

are stagnant. Australia's nickel production remains at 2005 levels; world production has increased 37 per cent since that time.[vii] The nickel industry has experienced the impact of new rivals through technological innovation. Widespread use of nickel pig iron (NPI) technology has allowed extraction of previously uneconomic resources. NPI now accounts for more than 30 per cent of China's nickel consumption.[viii]

Policy drivers

The Productivity Commission is seeking to undertake a study to benchmark Australia's major project development assessment and approvals process. It is potentially a very broad exercise, and the Commission will quite rightly seek to narrow the scope so that it can uncover rich and relevant evidence to help guide future policy deliberations.

The Minerals Council of Australia would urge the Commission, however, not to underestimate the interconnected effects of the broad suite of policy regulations that mining must address in seeking major development approval.

It is the suite of regulations which are the significant determining factor for both existing operations and future expansions. These are complex and increasing in number. Considering them as suite, the deficiencies, barriers and burdens are revealed. Too often the simplest questions cannot be answered when regulations are put in place, modified, or left beyond their appropriate life – do they regulations make sense, are the justified and, finally can they be implemented? This last question, or its apparent oversight by lawmakers, is of increasing concern.

More broadly for policymakers there is a fundamental question: do these measures, systems, approaches enhance or detract from productivity?

So while the terms of reference of this inquiry are aimed at major developments, the challenge is broader. The matters here go to the issue of microeconomic reform more generally. These issues are often described as "cross-cutting" because they influence economic productivity through the three critical channels of incentives, capabilities and flexibility; they affect the allocation and efficiency of resource use and the affect the incentives for work and entrepreneurship. Broader economic reform which is good for the nation is good for major developments, and mining as well.

Assessments approvals and land access

Variability in the content, administration and enforcement of project approvals and environmental protection processes carries large costs for no appreciable environmental benefits. Multiple layers of regulation also create artificial barriers to market access for water resources and land. Unnecessary costs and project delays associated with these inefficiencies creates a significant disincentive for future minerals industry investment in Australia.

Current regulatory arrangements for project approvals are inefficient

Regulations impacting on exploration, mining and mineral processing involve a multitude of controls at all three tiers of government. The variability in content, administration and enforcement of these regulatory processes between jurisdictions represents a significant constraint on the effective and efficient operation of the minerals industry. In addition, continual regulatory 'churn' (primarily at the State/Territory level) over recent years has caused considerable uncertainty for proponents. There has also been an increase in sector specific regulatory processes (e.g. independent review panels) which has led to increasing delays and costs for project proponents.

Key issues include:

- duplication and lack of integration in assessment and approvals processes creating additional regulatory burdens, delays and additional costs for proponents. This in turn removes the capacity for the Commonwealth to assume a more strategic role;
- increased regulatory 'churn' and sector specific regulatory requirements which add to assessment timeframes and create uncertainty, without a commensurate improvement in environmental outcomes; and
- decreasing industry/community confidence in existing environmental assessment processes caused by a lack of national harmonisation, inefficient processes and complexity leading to disengagement of the community.

In 2009, both the Hawke Review of the EPBC Act[ix], and a study by researchers at the Australian National University (ANU)[x], noted significant duplication and inefficiencies remaining in project approvals processes in Australia. The ANU study estimated a direct cost to all industries of up to $820 million over the life of the EPBC Act, with little demonstrable improvement in environmental outcomes. Costs from the failure to appropriately align approval processes across different levels of government are considerably higher. The Productivity Commission has also concluded that the cost of project delays due to duplication and inefficiencies in regulatory systems "could total several billion dollars each year".[xi]

Mining regulation is mounting at an alarming pace – with little evidence that outcomes have improved or that the quality of regulation is improved. Too many pieces of legislation are focussed on processes not outcomes; there is little ongoing evaluation of the cost effectiveness of statutes.

Duplication and multiplication is increasing, particularly where requirements for action and reporting differ across different Act. The integration and co-ordination in the administration of processes is lacking, not least because of a failure of the government agencies to agree on the data required to inform their regulatory decisions. High rates of churn within agencies, and across entire departments are arguably self-defeating.

In 2006, the Minerals Council of Australia conduct an audit of regulations faced by the industry – from mining, to environmental approval, land access and planning, heritage and water. This audit is now being re-examined.

The preliminary views are disturbing. Across the nation it found there are 144 pieces of primary legislation faced by the sector, compared with 94 in 2006. There are today 119 pieces of subordinate legislation or guidelines, up from 66. In the two largest mining states the regulatory landscape is particularly onerous with 23 pieces of primary legislation in Western Australia (up from 15) and 24 in Queensland (up from 12).

Concerns over duplication and delays have long been raised by both the minerals industry and the broader business community. In recognition of these concerns, in April 2012, COAG committed to implementing bilateral agreements between the Commonwealth and the States for assessment and approvals. This was to be completed under the existing provisions of the EPBC Act.

Over the course of 2012, significant effort was put into the development of the bilateral agreements. During this time a 'Framework of Standards for Accreditation under the EPBC Act' was developed to support the implementation of the bilateral agreements. Importantly, the framework provided flexibility to allow for partial accreditation of State/Territory processes supported by an assurance process to ensure compliance with the Commonwealth's standards.

At the December 2012 COAG meeting, the Commonwealth effectively walked away from progress on bilateral agreements in line with the earlier COAG commitment. The announcement was a setback to reforms which would remove duplication and streamline project assessment and approvals without compromising their integrity. Following the COAG failure, the Australian Government requested the Productivity Commission undertake a review into major project development assessment processes[xii]. While this review will be material to the issue of regulatory reform, it will be important to ensure that the current reforms process, (including the EPBC Act amendments arising from the Government's response to the Hawke review), is not delayed while awaiting the outcomes of these reviews.

Increasing sector-specific regulation/assessment

Additional layers of assessment and review of proposed resources projects have been created through the development of various bodies such as the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development[xiii] (IESC). The MCA supports good science and leveraging greater expertise in the assessment of projects. However, it will be important to ensure that the scope of these bodies (the use of which often incurs additional time for assessment), remains limited to the knowledge gap being addressed (i.e. water resource impacts) and projects referred remain relevant to the expertise of the advisory body. Further, it is important that the issues considered by independent expert bodies are not further duplication of work undertaken by proponents as part of their environmental impact statements.

Reform of the Environmental Assessment Regime

Environmental Impact Assessment (EIA) processes are important for ensuring proper consideration of environmental issues and community engagement in development proposals. However, there has been a growing lack of confidence in environmental assessment process at all levels of government. Some of the major concerns of stakeholders include:

- Business/Industry - concerns over the efficiency and cost effectiveness of the existing multi-tiered regime.
- Conservation sector - concerns that existing EIA processes are not picking up the drivers of major environmental problems.
- Community - overly large and complex processes which make review and participation difficult.

The MCA considers that greater business and community confidence in environmental assessment processes can be achieved through the application of best practice principles, many of which align with the ongoing reform process. These include:

- increased co-operation between Australian governments and greater harmonisation of environmental assessment processes;
- use of strategic assessments and other strategic approaches, as opposed to project level environmental assessment;
- environmental risks as the focus of assessments with documentation to reflect the level of risk;
- focus on clear and measurable 'outcomes', rather than process. In addition, adaptive management and environmental management systems should be recognised;
- investment in better information/data as the basis for assessment; and
- focus on follow up and review.

Implementing the COAG commitment and Hawke review recommendations supported by the Australian Government[xiv] provide a catalyst for furthering many of the above recommended reforms. However, other recommendations may require further analysis and reform of existing environmental assessment approaches.

The MCA continues to recommend that the Australian Government:

- Delivers on the 2012 COAG commitment to expand bilateral agreements (assessments and approvals) to all States and Territories to reduce compliance costs and delays in approval processes.
- Introduces amendments to Environment Protection and Biodiversity Conservation Act to improve the efficiency and effectiveness of project approvals.
- Effectively resources the COAG commitment to a comprehensive regulatory reform process, particularly focused on improving co-ordination and integration with State/Territory processes, red tape reduction and duplication associated with project approval processes and related monitoring and reporting requirements, in line with the findings of the Productivity Commission Review.
- Provides businesses with longer term certainty about areas for investment, reduces regulatory overlap and provides more consistent service delivery from the Commonwealth in biodiversity protection.
- Reviews the environmental assessment process to improve national harmonisation; increase the use of strategic approaches; re-focus assessments on those matters of significant environmental risk; and shift approvals towards outcomes, rather than process.

Land access arrangements

The MCA has long contended that access to land, and the approvals required for its effective development, are issues of national significance, warranting a coordinated and strategic response from governments. The industry is seeking to develop a holistic approach to land use assessment and planning to ensure consistency and provide certainty for all regional stakeholders. As part of a strategic planning approach, there is a need for greater alignment and simplification of the existing multi-layered jurisdictional regulatory requirements to avoid duplication and to ensure consistent land use, social and environmental values are met.

Significant failings of the current regulatory arrangements for land use decision-making include:

- the failure of governments to appropriately assess all land values in an area and to engage relevant stakeholders in the decision-making framework;
- the lack of reference to multiple and sequential land use options in land use decision making processes;
- the fractured nature of biodiversity conservation arrangements – Australia currently has at least six layers (Commonwealth, Inter-jurisdictional bodies, State government agencies, regional Nature Resource Management bodies, local governments and finally the landowner) which overlap in different ways depending on land tenure and which aspect of biodiversity is of interest; hence, the landscape is being managed, at all levels, as a conglomerate of silos; and
- inconsistency in government interpretation and application of requirements relating to key land use issues such as offsets, financial surety, lease relinquishment and rehabilitation.

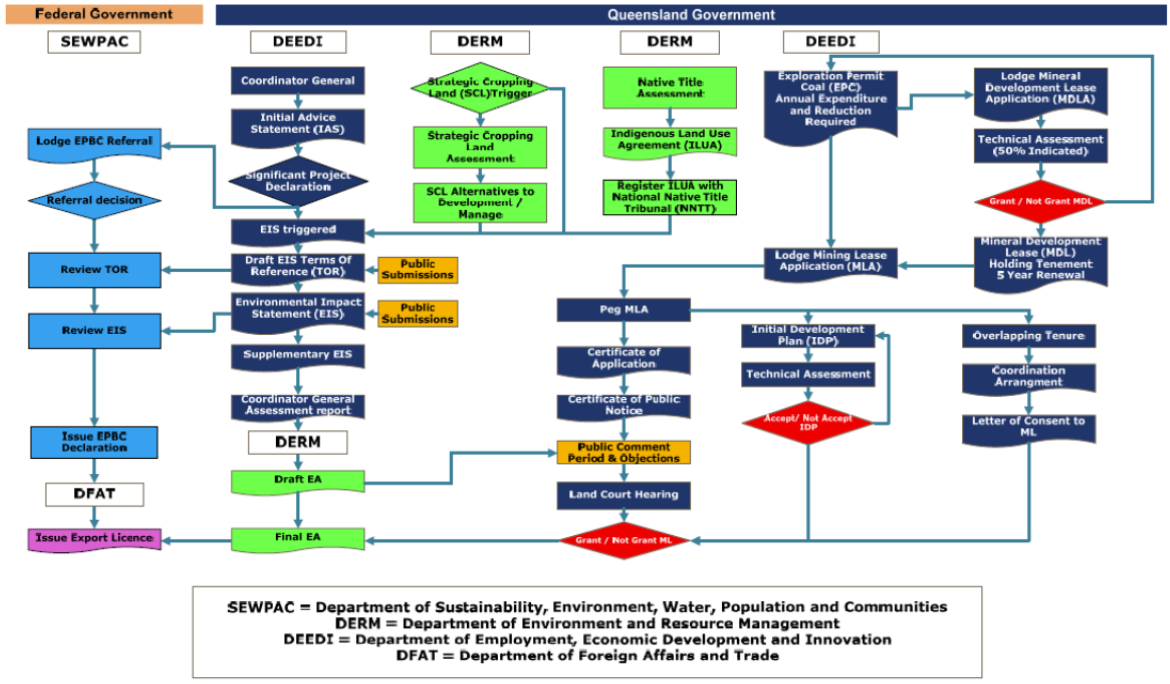
With the clear trend towards a national approach to managing land access, there is an imperative to shift from the existing state-based model of ad hoc and localised decision-making regarding land use values and their compatibility with proposed development, to a national strategic land use assessment and planning framework.

A national framework for strategic land use assessment and planning would provide:

- consistent, transparent and accountable decision-making in weighing up and determining land use compatibility;
- merit based assessment of all possible land uses, including concurrent (multiple) and sequential land uses;
- maximisation of the social, environmental and economic benefit for current and future generations;
- assessment of values at a landscape/systems level, enabling a recognition of the cumulative impacts of development;
- adoption of the precautionary principle (allowing for careful and cautious progress) in the absence of certain scientific understanding;
- flexibility to accommodate changing community expectations and technological advances, whilst providing certainty for investments; and
- the effective engagement of stakeholders who may be affected by proposed developments.

The following graph is from 2012, but is already facing changes with new and unnecessary interventions such the Commonwealth "water trigger" in the EPBC Act.

Approvals processes – Queensland



Source: MCA member company

Heritage

Heritage listing is important to ensure the recognition and protection of Australia's unique or outstanding historical, cultural or environmental values. However, the existing process of heritage listing is not transparent and there is little opportunity for those industries which may in the future be impacted by heritage listing to have adequate input.

In particular, heritage listing over large areas requires careful consideration of all land use values (both existing and potential) as part of any assessment. This will ensure that barriers to future development are not created for activities which are compatible with the listed heritage values being protected.

Further duplication for minerals companies arises in relation to the dual sets of approvals between State/Territory and Commonwealth heritage requirements. There is a need for streamlining of heritage requirements to ensure that limited heritage resources are properly focussed and that groups seeking to delay or oppose developments are not able to 'forum shop' between jurisdictional and Commonwealth requirements.

Water reform

Progress on the national water reform framework – the National Water Initiative – remains incremental and often difficult. As a small user of water the minerals sector is often excluded from water reform processes which affect industry, yet the industry is the major target for those aspects of reform driven by political rather than policy imperatives.

Four key water reform issues

In the MCA's view, there are four critical issues that require continued attention in the next phase of water reform. Firstly, there is a need for the minerals industry to be recognised in the water planning process. Many regional water plans are being developed without consultation with the minerals industry. This is despite a key recommendation of the report by the NWC that state "extractive industries are fully integrated into NWI-consistent planning and management regimes".[xv]

Regulatory measures being developed by the Commonwealth, either through the application of the Water Act or any other legal instruments including the EPBC Act, should be equitably applied to all water users so that they do not represent an unfair barrier for minerals industry access to water markets or participation in water sharing plans. It is also critical that all water management decisions be based on sound science and that stakeholder engagement be transparent and include agreed timeframes for review.

Secondly, adequate resources must be provided to fully implement the NWI, including the development of "fit for purpose" planning and entitlement arrangements for the minerals industry where these are not adequately addressed by the existing generic water policies and practices. .[xvi]

Thirdly, the development of a national water trading market based on sound pricing principles should be a national priority. As the NWC has correctly noted, the efficient pricing or charging for water-related services underpins investment and provides signals for the efficient use of water services. Getting the price signals right by ensuring that they fully reflect the efficient costs of providing services is a key element in encouraging innovation and efficient water use.

Fourthly, risk assignment provisions agreed in the NWI should prioritise attention on high-value water users' security. Exposure to these risks is greater for high-value users in little understood systems. Therefore greater attention should be paid to securing minerals industry entitlements in these circumstances.

Water information requirements

There are increasing requirements for the minerals industry to provide water use, monitoring and management information to a variety of government agencies at different levels within government. An example of this complexity at the Commonwealth level is the EPBC reporting, ABS National Water Account, the Bureau of Meteorology (BOM) Water Accounting Standard (currently voluntary) and the emerging BOM Water Information Requirements. In addition, mining operations are required to provide information for water markets, State Environment and Water regulators, investors and the community.

Given the multitude of water reporting requirements, there is a clear case for reducing regulatory burden and streamlining water reporting. In addition, new requirements should be equitably applied to all relevant water users with recognition of data already held by other government agencies or collected through voluntary industry initiatives.

The MCA has led a landmark effort to better understand the industry's water use (and future needs) through the development of a water accounting framework. This serves as a one-stop-shop for water information for stakeholders interested in understanding a mine's water use and to integrate minerals operations into regional water planning approaches. The minerals industry is investing significant resources in aligning with the requirements of the water accounting framework.

Infrastructure

New capacity constraint pressures will emerge unless the commitment to ongoing reform is maintained. The development and management of infrastructure is predominantly a State and Territory responsibility. The minerals industry maintains this is an appropriate division of jurisdictional and legislative labour. The Commonwealth, nonetheless, has a role in promoting consistency across jurisdictions to remove barriers to development. It has a critical role in its administration of the Environmental Protection and Biodiversity Conservation Act which is key determinant in the deployment of new export infrastructure.

Export infrastructure policy

The market should be the primary means to provide and operate export infrastructure – as this provides for the best alignment of economic interest, performance, equity and the industry's contribution to sustainable development.

To do so the minerals sector requires stable, transparent and efficient regulations to ensure it can invest in the infrastructure required to produce. For example, essential to that stable environment are rules on access regimes that reduce rather than increase sovereign risk.

Regulation impacts all stages of minerals industry activities from exploration, mining, processing and closure to relinquishment of tenure. Regulation can help overcome market failure and ensure efficient operation of markets. Yet regulation can also create more problems than it solves when it is inappropriately targeted, created for the wrong reasons or left too long unchecked. Where there is this outcome, the economy is unable to achieve its full potential as businesses incur unnecessary direct and indirect costs. Regulation therefore requires careful consideration at the drafting, implementation and review stages.

Regulation should provide for an efficient price for both service providers and the user; operational issues managed by commercial contractual negotiation recognition of the investment contribution of existing users; and scope for users to invest in additional capacity where the service provider is unwilling to do so at regulated prices or unable to invest.

Significant infrastructure often involves substantial externalities – that is, the effects on third parties are not entirely reflected through the pricing system. Building new ports or materially expanding existing ports, for example, often raises environmental issues with additional obligations on the users of the services.[xvii]

The MCA considers the key principles of an efficient national access regulatory regime are:

- the primacy of the market – a presumption that the free an unhindered operation of the market will lead to efficient outcomes;
- minimum effective regulation – necessary regulation where it is demonstrably the most economically efficient way of addressing market failure and/or a specific social objective; and
- the need to prioritise private sector confidence in regulatory arrangements.

In its report, *Opportunity at risk: Regaining our competitive edge in minerals resources*, Port Jackson Partners argues the policy priority should be to align owner and users interests to optimise infrastructure investment.

There are clear advantages in single user infrastructure where the unified control of investment and operational decisions maximises productivity and cost competitiveness, such as in the Pilbara iron ore export chains. In other regions, such as the long running coal export chains of the Hunter Valley or Queensland, where historically individual users lack the scale to support dedicated rail and port facilities, infrastructure will inevitably be shared between multiple users. This has in the past led to delayed and asynchronous expansion of port and rail capacity, inefficient use of existing capacity and patchy regulation of infrastructure owners creating poor capacity utilization and missed opportunities.

Port Jackson Partners argues that optimising infrastructure requires deliberate action to improve the alignment between asset owners and users.

> *This will not be achieved without policy intervention: unlike users, asset owners are not fully incentivised to optimise infrastructure. Comparisons of the value of a lost tonne to different parties make this clear.*

Multi-owner/multiuser infrastructure rules should be defined before a decision to invest is made. Multi-owner/multi-user rules should fit within *The Minerals Council of Australia's In-Principle Strategic Framework for Sustainable Operation of Minerals Industry Multi-owner/multi-user Export Infrastructure (September 2008)*, the key elements of which are:

- the primacy of the market in the provision and operation of export infrastructure;
- where government intervention is only justified in cases of market failure and the demonstrable capacity to remedy;
- minimum effective nationally consistent regulation implemented in a timely fashion;
- whole of system coordinated planning; and
- commercial arrangements that deliver capacity and efficiency, and provide certainty of access to export infrastructure.

To this end regulators must take into account the relative costs of lost through put to the respective parties. As Port Jackson Partners note below rail operators and infrastructure funds earn a regulated rate of return on their investment, meaning a lost tonne may cost them very little or even nothing, depending upon the regulatory arrangements. By comparison, producers lose the marginal contribution (sale price less marginal production cost) on every missed tonne. Competition regulations should be examined to ensure that this misalignment is not perpetuated.

Governments should be cautious in the construction of mandated access arrangements (such as the access regimes under the Competition and Consumer Protection Act, formerly Trade Practices Act). The access regime provisions (known as the Part IIIA statutes) establish the criteria under which one business should be required by law to make its private facilities available to another business, including competitors. They were designed for specific circumstances where the privatisation of government enterprise would manifestly reduce competition.

The MCA continues to argue that the law needs to better reflect the original intention of the Hilmer Report. The Act should be amended to ensure:

- the barriers to entry, whether they be physical, commercial , and/or regulatory, are so material as to create a natural monopoly with attendant anti-competitive risks;
- that competition be substantially promoted by declaration, as opposed to the current consideration where it is sufficient if the improvement in competition is non-trivial;

- that competition be promoted in a market that is substantial and of national significance, other than the market in which the service is being provided, before the service is declared;
- that the declared service be essential to competition in the market in which competition will be promoted, where 'essential' means that the facility is indispensable to participate in that market;
- that the production process exemption prohibit or strictly limit access where doing so would disrupt a vertically integrated production process; and
- be satisfied that granting access is in the public interest, including in terms of promoting economic efficiency, and in so doing, take account of the costs and risks of regulatory error.

Social infrastructure policy

Underinvestment in social infrastructure can act as an equally critical capacity constraint on the minerals sector's development and expansion. Over time, the expectation has arisen within governments that the costs of upgrading social infrastructure in regional and remote communities can be borne by the minerals industry. This is despite the already significant contribution made by minerals operations to direct and indirect employment in these communities, to wider economic activity and to governments directly through taxes and royalties.

Governments at all levels in Australia need to reverse the steady abrogation of responsibility which has denied many citizens in regional and remote areas the infrastructure and services available to those in urban areas.

The Australian Government should pursue a strategic framework for regional development (involving all tiers of government as well as industry and local communities) to ensure that infrastructure and related-services are delivered in a coordinated way.

Workplace Health and Safety

Workplace regulation is a key component of productivity and competitiveness.

Workplace Health and Safety laws remain complex. The MCA has advocated that the minerals industry be entirely regulated within the Model WHS Act and Regulations and that no separate or additional laws be adopted in any jurisdiction. Fragmentation and duplication need to be avoided.

The Model WHS Act was finalised in 2010. The Model regime incorporates a duty of care qualified by what is reasonably practicable, based on the principles of natural justice, whereby the burden of proof of contraventions is on the prosecution and that only the regulator can bring proceedings for an act of non-compliance.

Model WHS Regulations (excluding the specific mines chapter) are now in their final form but will require amendment upon finalisation and insertion of the mines chapter. In addition, Codes of Practice detailing how compliance with the Model Act and Regulations may be achieved have also been developed and are at various stages of public comment and review. NSW, QLD, SA, NT, ACT, Tasmania and the Commonwealth commenced the Model WHS Act and Regulations on 1 January 2012 (noting that SA and Tasmania still operate under existing regimes pending passage of the Model regime legislation). The Western Australian and Victorian Governments are seeking delays.

Those jurisdictions with separate mine safety laws will continue to have these in place until the model mines regulations are finalised.

Workplace Laws

The MCA supports a comprehensive review of workplace relations laws.

Australia's economic circumstances, though generally buoyant, are vulnerable. The dangers of economic reform complacency after a sustained period of growth are manifest in deteriorating productivity, escalating operating costs structure, a structural budget deficit, and a regressive transformation in workplace relations to a past era marked by a culture of confrontation and divisiveness.

Reform of the workplace relations system, and specifically the Fair Work Act (FWA), is critical in regaining the momentum of the past thirty years of economic reform that transformed the culture of the workplace in providing for flexibility and choice and direct employee and employer relationships. This transformation gave rise to a safe and healthy, harmonious and productive workplace environment founded in a culture of individual enterprise and personal accountability, proper recognition of individual contribution and performance, a shared commitment to skills and personal development, and a culture of mutual dependency and prosperity. These factors have been critical to ensuring that the workplace is responsive to the needs and expectations of the employee and the employer to mutual benefit and to the dynamic operating environment of a mining enterprise competing for finance and human capital, technology and custom in a highly competitive, globalised industry.

The imperative is safety and competitiveness, the driver is productivity growth, the benefit is national prosperity and improving quality of life, and the opportunity cost is a deterioration in investment, growth and national welfare.

Fundamentally, productivity growth, and thus economic growth and the quality of life, is founded in the quality of the direct relationship between the employer and the employee, and the effectiveness of that direct engagement in determining to mutual benefit, the terms and conditions of employment and the functioning of the business. The legal instruments governing workplace arrangements, in whatever form, should give effect to that relationship, not compromise it.

The MCA contends that the national workplace relations system should provide for flexibility and choice in the full range of employment instruments underpinned by an effective safety net; and that system should provide for, and ensure the observance of, freedom of association – the right to belong or not to belong to an organisation or a union, and the right to choose or refuse to be represented by an external third party in any negotiations or bargaining in the workplace.

The MCA supports a national system of workplace relations that provides for:

- matters affecting the employment relationship to rest primarily with employers and employees at the enterprise or workplace – for mutually beneficial direct relationships between employers and employees;
- flexibility and choice in the full range of employment instruments that allow employers and employees to choose the most appropriate form of agreement for their particular circumstances:
    - agreements codify employee entitlements and employer reciprocal responsibilities, they are part of the broader workplace relationship focused on productivity, not the sole or exclusive means for that goal,
    - a range of agreements instruments should be available with no exclusion of one type or another;
- an economically and socially sustainable safety net through:
    - minimum conditions – applicable to all types of agreements that are enshrined in legislation,
    - a robust and fair individual agreement option, available to all employees with statutory guidance on form and content,
    - a global "better off overall test",
    - an independent, professional, consistent and efficient body to protect minimum and Award classification wages and promote flexibility and choice;
- freedom of association, i.e. the right to belong or not to belong to a organisation or association, and the right to choose to refuse to be represented in any negotiations:
    - representation must be by deliberate direction of an individual;
- the freedom to determine whether to, or not to, collectively bargain and the freedom to determine, by mutual agreement, the nature of the terms and conditions of employment;
- a prohibition on industrial action during the life of an agreement and appropriate sanctions to deal with illegitimate and unprotected industrial action;
- bargaining focussed on the employment arrangement with extraneous matters out of scope, rules must not encourage protracted negotiations;
- flexible mechanisms for the voluntary settlement of disputes;
- a simplified agreement making and lodgement process;
- unfair dismissal and adverse action laws that discourage vexatious claims, and prevent and eliminate unlawful discrimination;
- the intent of actions must be taken into account when assessing lawfulness;
- recognition of the legal standing of independent contractors and the right of employers to use contractors;
- reduced prescription and complexity in Awards;

- promotion of Australia's obligations in relation to international labour standards; and
- outlawing of secondary boycotts through the Competition and Consumer Act (formerly the Trade Practice Act).

Mining's regulatory burden

In January 2006, URS Australia Pty Ltd (URS) prepared a report for the MCA entitled *National Audit of regulations influencing mining exploration and project approval processes*. The audit involved the application of the best regulation principles of the Council of Australian Governments (COAG) with respect to both the design and operation of the relevant regulations that formed part of the approval processes then in operation for each jurisdiction. It also covered the major project facilitation initiatives of the States and Territories, as well as National Agreements and Arrangements affecting the mining sector.

The audit prepared by URS was used to inform a companion exercise which involved the preparation of a national assessment (or scorecard) of the relative performance of the regulatory approval processes for mining activities of Australian jurisdictions. The relative assessment was prepared as a separate report (May 2006) and was informed by a panel consisting of representatives from five consultancy firms (which included URS) who held direct experience in the regulatory approval processes for the mining sector that covered all Australian jurisdictions (except the Australian Capital Territory).

The timing of this work by URS coincided with the then Prime Minister's Taskforce on Regulation chaired by Mr Gary Banks, Chairman of the Productivity Commission. An outcome following the report of the Taskforce was the agreement of COAG that all Australian governments will ensure that regulatory processes in their jurisdiction are consistent with the Principles of Best Practice Regulation endorsed by COAG. (Box 1)

Project Purpose

The MCA engaged URS in May 2012 to review and update the *National Audit* of regulations influencing mining exploration and project approval processes which it prepared for the Council in 2006. New Zealand was included in the update of this audit, through the New Zealand counterpart of the Council, Straterra.[xviii] In addition, URS undertook a new national comparative assessment of the performance of the regulatory approval processes for all Australian jurisdictions (except the Australian Capital Territory).

In commissioning URS to update the 2006 reports, the overarching objective of MCA was to identify leading practice regulation across the States, Territories and the Commonwealth, as well as New Zealand. As such, the review of regulatory practices is seen as means of providing a constructive basis for the minerals industry and governments to engage in the development and implementation of regulatory changes designed to optimise the long-term economic, social and environmental benefits to the wider community from the mineral endowments of Australia and New Zealand. In essence, to develop the most cost-effective regulatory framework that is possible, including its ongoing administration.

Box 1: Principles of Best Practice Regulation

COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
   a. the benefits of the restrictions to the community as a whole outweigh the costs, and
   b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

Source: Council of Australian Governments, Best Practice Regulation: A guide for Ministerial Councils and National Standard Setting Bodies, p.4, October 2007

Findings

URS conducted interviews with 90 stakeholders, including government administrators, on the scope and application of laws that affect the minerals sector across Australia and New Zealand. A select group of large consultancy firms, with experience across *all* jurisdictions, were surveyed to ascertain their expert opinions on the operation of laws that affect mining approvals.

Across the nation it found there are 144 pieces of primary legislation faced by the sector, compared with 94 in 2006. There are today 119 pieces of subordinate legislation or guidelines, up from 66. In the two largest mining states the regulatory landscape is particularly onerous with 23 pieces of primary legislation in Western Australia (up from 15) and 24 in Queensland (up from 12).

Even where changes were of a technical nature, the persistent “churn” of legislation means that multiple Acts need to be consulted by project proponents and operators seeking to undertake exploration and mining in Australia. Overall the pieces of primary legislation have increased by 53 per cent and the pieces of subsidiary legislation by 80 per cent.

Within this churn of legislation, the "problem" requiring legislative redress and the "intent" of the resultant legislation were often not defined; monitoring or enforcement regimes were either impractical or unduly focussed on dictating process rather than outcomes; and the relentless creep of duplication was a continuing burden for industry and good policy making.

The results, which are appended to this submission (Appendix 1), show a deterioration in the legislative and administrative environment across Australian States. Scores have deteriorated in every State except Queensland, where the results were, on average, the same as 2006. The Commonwealth scored an improvement overall but remains equal bottom (with Tasmania) on the average score across all criteria, particularly on clarity, certainty, efficiency of the measure and stakeholder appeals.

As part of the consultations undertaken, additional meetings were sought with Offices of Best-Practice Regulation, or the equivalent section within the Central Government Agency responsible for oversighting the application of the COAG Principles. Based on these meetings, the general conclusion is drawn that such offices tend to become involved too late to have a significant influence on the development of policy initiatives and associated regulatory measures.

Their involvement in facilitating the ongoing cost-effective management of regulatory systems, from the perspective of all affected parties, also appears limited. This would appear to be the result of the focus of the offices on the type of, and justification for, intervention in the development of the regulations rather than how those regulations would need to be implemented, and the associated governance arrangements required, in order to be successfully implemented.

The consultations undertaken with representatives from mining sector companies were used to gain a different perspective of the application of the COAG Principles. The general conclusions that may be drawn from this process are:

- the need for regulation is widely accepted provided it makes sense and is justified;
- there is a perception that the COAG Principles were not in the forefront of the minds of government officials in pursuing regulatory change but were in the "background";
- monitoring and enforcement are critical to "making the case" for new regulatory arrangements and compliance requirements;
    - a common view expressed was "what is purpose of regulatory required if compliance is not monitored and enforced?"; and
- compliance with regulatory requirements is seen as essential to the industry securing a "social licence to operate", especially from the perspective of local communities.

As part of the meeting with company representatives, they were asked: "If you could, what is the one thing that you would change that would have the greatest impact on improving the regulatory environment from the perspective of your company?"

Rather than draw attention to particular regulatory requirements, their responses focused instead on a number of regulatory design and implementation aspects. When combined, these aspects define a set of best-practice principles similar to the COAG Principles. If applied, regulatory arrangements would:

- have clearly specified outcomes with measures of success determined and enunciated;

- be non-prescriptive;
- be risk-based and applied on a case-by-case basis;
- not be applied retrospectivity;
- remain stable;
- be predictable;
- provide certainty;
- possess clarity of purpose and obligations;
- be consistent;
- be open and transparent;
- clearly assign responsibilities;
- be cost-effective;
- achieve procedural fairness;
- be simple and practical to implement such as through the use of lead government agencies, a single approval process (from the perspective of the applicant) and the issuing of a single approval authority; and
- be monitored and enforced with the ongoing need reviewed periodically.

Regulatory arrangements that exhibited these characteristics were seen as leading to regulations that were being applied in the spirit of "good faith" that, in turn, would lead to mutual trust and respect between all parties involved in the approval process. Such mutual trust and respect was seen as essential for increasing commercial and community confidence associated with investments in the mining sector.

There were specific concerns about duplication of regulatory effort between the Commonwealth and States.

This was in respect of two main aspects, namely:

- unnecessary delays in the regulatory approval processes;
    - such delays were viewed as adding to costs and could also lead to lost market opportunities and forgone income both to mining companies and Australia; and
- unnecessary duplication in the regulatory approval processes under the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth and the counterpart legislation of the States and Territories.

Causes of delays that were of greatest concern were those arising from the need to:

- undertake further studies to demonstrate compliance with specified conditions which, had a different decision been made, could have been included with the first set of studies: and/or
- the need to undertake studies that were not pertinent to the regulatory decision that needed to be made.

Appendix 1 Scorecard Tables

DRAFT SURVEY RESULTS

Table 1 Average Scores for each jurisdiction across all criteria

Jurisdiction	Average Score Design Criteria		Average Score Administration Criteria		Average Score	
	2006	2012	2006	2012	2006	2012
NSW	3.9	3.7	3.4	3.2	3.6	3.4
Vic	4.0	3.8	3.4	3.1	3.6	3.4
Qld	3.9	3.7	3.1	3.1	3.4	3.4
WA	3.9	3.6	3.2	3.1	3.5	3.3
SA	4.0	3.8	3.8	3.6	3.9	3.7
Tas	3.9	2.9	3.6	2.9	3.7	2.9
NT	3.6	3.1	3.3	3.1	3.4	3.0
Commonwealth	2.9	3.1	2.6	2.8	2.7	2.9
New Zealand	NA	4.1	NA	2.9	NA	3.4
Average	3.8	3.5	3.5	3.1	3.5	3.3

Table 2 Average score for criteria across all jurisdictions

Criteria	Range (2012)		Average		Jurisdiction (2012)	
	Lowest	Highest	2006	2012	Lowest	Highest
Assessing the design of policies and regulations						
Institutional Framework	3.0	4.4	4.2	3.7	Tas	NZ
Clarity of Processes	2.9	4.2	4.0	3.6	Tas	NZ
Stakeholder Input and Appeals	2.9	4.2	3.4	3.4	Tas/Cth	NZ
Efficiency of Chosen Measure	2.9	3.6	3.6	3.4	Tas/Cth	Vic
Governance	2.9	3.8	NA	3.4	Tas/NT	NSW/Qld
Assessing Administration and Compliance						
Clarity of process	2.9	3.7	3.7	3.3	Tas/Cth/ NZ	SA
Timeliness	2.6	3.5	3.4	2.9	NZ	SA
Compliance cost	2.4	3.4	3.3	3.0	NZ	SA
Government Agency Capability	2.7	3.5	3.0	3.0	Cth	SA
Predictability and Certainty	2.5	3.6	3.2	3.0	Cth	SA
Effectiveness	2.8	3.5	3.2	3.2	Tas	SA
Governance	2.6	3.8	NA	3.3	NT	NSW

Table 3 Average Score for each criterion across all jurisdictions

Overall Performance Ranking		Issue	Average Score (out of 5)	
2006	2012		2006	2012
1	1	Exploration tenure	4.5	3.9
2	2	Mining tenure	4.1	3.7
3	3	Mine operating conditions	3.8	3.6
4	4	Planning approval	3.8	3.6
7	5	Water Access	3.6	3.6
5	6	Cultural heritage	3.8	3.5
6	7	Noise pollution	3.7	3.5
12	8	Water management	3.4	3.4
9	9	Private land access	3.5	3.3
11	10	Air pollution	3.5	3.3
13	11	Fauna management	3.3	3.3
8	12	Crown land access	3.5	3.2
14	13	Native Title	3.2	3.1
16	14	Native vegetation management	3.1	3.1
15	15	Environmental Impact Assessment	3.2	3.0
9	16	Land access – pastoral leases	3.5	2.9
17	17	Indigenous land access	3.1	2.6
Additional Issues				
NA	Equal 9th	Governance	NA	3.3
NA	Equal 12th	Relinquishment/Mine Closure	NA	3.2
NA	Equal 17th	Native vegetation/biodiversity offsets	NA	2.7

Table 4 Assessment scores by issue across all jurisdictions

Issue	Range (2012)		Average		Jurisdiction (2012)	
	Lowest	Highest	2006	2012	Lowest	Highest
Environmental	2.7	3.6	3.3	3.4	Tas/Cth	SA
Environmental impact assessment	2.7	3.4	3.2	3.0	Cth	SA
Native vegetation management	2.7	3.4	3.1	3.1	Tas	SA
Native vegetation/biodiversity offsets	2.1	3.5	NA	2.7	Tas/Cth	SA
Environmental standards – air pollution	2.7	3.7	3.5	3.3	Tas	NSW
Environmental standards – noise pollution	2.8	4.0	3.7	3.5	Tas	SA
Fauna management	2.8	3.7	3.3	3.3	NT	SA
Mining specific	3.2	3.9	4.2	3.6	NT	SA
Exploration tenure (Not NZ)	3.5	4.1	4.5	3.9	NT	WA
Mining tenure (Not NZ)	3.0	4.0	4.1	3.7	NT	SA
Mine operating conditions (Not NZ)	3.1	4.2	3.8	3.6	NT	SA
Relinquishment/Mine Closure (Includes NZ)	2.6	3.5	NA	3.2	WA	Qld/SA
Land access						
Crown land access (Not NT)	2.5	3.5	3.5	3.2	Tas	SA
Private land access (Not NT)	2.5	3.6	3.5	3.3	Cth	Vic
Land access – pastoral leases (Not Vic, NT and NZ)	2.0	2.5	3.5	2.9	Tas	SA
Indigenous land access (Not NT and NZ)	1	3.5	3.1	2.6	Tas	SA
Native title (Not Vic, Tas and NZ)	2.7	3.7	3.2	3.1	WA	SA
Other	3.0	3.7	3.6	3.5	NT	WA
Planning approval (Not NZ)	3.2	4.0	3.8	3.6	Tas	WA
Water access	3.3	3.8	3.6	3.6	Tas	WA
Water management	2.8	3.7	3.4	3.4	Tas	NZ
Cultural heritage	2.7	4.3	3.8	3.5	Tas/Cth	NZ

Table 5 Amalgamated scores by criteria for each jurisdiction

	Assessing the design of policies and regulations				Assessing administration and compliance							
	Instituitional Framework	Clarity of policy objectives	Stakeholder Input & Appeals	Efficiency of chosen regulatory measure	Clarity of Process	Timeliness	Compliance cost	Government Agency Capacity	Predictability and certainty	Effectiveness	Governance	**Average Score across all criteria**
NSW	3.9	3.7	3.5	3.5	3.2	2.9	3.1	3.2	3.2	3.3	3.8	3.4
Vic	3.9	3.9	4.0	3.6	3.6	2.8	3.0	2.8	3.2	3.3	3.2	3.4
Qld	3.9	3.9	3.5	3.5	3.4	3.1	3.1	2.9	3.1	3.3	3.6	3.4
WA	3.9	3.8	3.5	3.4	3.4	2.9	3.1	2.9	3.1	3.2	3.3	3.3
SA	3.9	4.0	3.6	3.6	3.7	3.5	3.4	3.5	3.6	3.5	3.3	3.6
Tas	3.0	2.9	2.9	2.9	2.9	2.9	3.1	2.8	2.8	2.8	2.9	2.9
NT	3.2	3.1	3.0	3.1	2.9	2.8	3.0	3.1	2.7	3.1	2.6	3.0
Common'th	3.3	3.2	2.9	2.9	2.9	2.8	2.8	2.7	2.5	2.9	3.3	2.9
New Zealand	4.4	4.2	4.2	3.5	3.6	2.6	2.4	2.8	2.8	3.1	3.5	3.4
Average all jurisdications	**3.7**	**3.6**	**3.4**	**3.4**	**3.3**	**2.9**	**3.0**	**3.0**	**3.0**	**3.2**	**3.3**	**3.3**

Appendix 2 Legislation Audit

New South Wales

Table 6 New South Wales: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (NSW)	2012 Audit (NSW)	Major changes (to September 2012)
Mining industry legislation (Administered by the Department of Trade and Investment, Regional Infrastructure and Services, Division of Resources and Energy)		
Primary legislation		
Mining Act 1992	*Mining Act 1992* *Mining Amendment Act 2008*	Amendments enacted changes to: title holdings exploration reporting incorporate the principles of ecological sustainable development environmental management — broader definition of the environment to identify all potential impacts enforcement and penalties (Most commenced 15 November 2010)
	Mining and Petroleum Legislation Amendment (Land Access) Act 2010	Enacted requirement for land access agreements to be in writing (Commenced 8 June 2010)
Coal Mines Regulation Act 1982	*Coal Mines Regulation Act 1982*	No significant changes identified
Subordinate legislation (including codes of practices)		
Mining Regulation 2003	Mining Regulation 2010	Replaced the 2003 regulations on which the new regulations are based made to support amendments to Mining Act 1992 including introduction of administrative and title fees
Environmental protection legislation (Administered by the Office of Environment and Heritage and the Environment Protection Authority, Department of Premier and Cabinet)		
Primary legislation		
Protection of Environment Operations Act 1997 (regulates pollution and waste from mines)	*Protection of Environment Operations Act 1997* *Protection of Environment Operations Amendment (Environmental Monitoring) Act 2010*	Amendments enacted changes to: Pollution incident notification requirements Licensees that cause a pollution incident are now required to report the incident "immediately", instead of "as soon as practicable", to all relevant agencies. introduce a new requirement to prepare and implement pollution incident response management plans All licensees are now required to prepare Pollution Incident Response Management Plans (PIRMPs) for each of their licensed activities. Introduce a new requirement on licensees to

2006 Audit (NSW)	2012 Audit (NSW)	Major changes (to September 2012)
		publish monitoring results Licensees need to publish monitoring data collected as a result of a new licence condition. Amendments commenced 1 December 2010
Subordinate legislation (including codes of practices)		
Protection of the Environment Operations (General) Regulation 1998	Protection of the Environment Operations (General) Regulation 2008, 2009, 2011 and 2012 Protection of Environment Operations Amendment (Noise Control) Regulation 2010	Various regulatory amendments made largely to enable the implementation of the above legislative changes Amendments commenced 26 February 2010
Planning legislation (Administered by the Department of Planning and Infrastructure)		
Primary legislation		
Environmental Planning and Assessment Act 1979	*Environmental Planning and Assessment Act 1979* (as amended)	Repeal of Part 3A in June 2011 after its introduction in 2005 Part 3A allowed for the approval of major projects (including mining) outside the normal provisions of the EP&A Act. Major projects are now determined under Part 4, Division 4.1 as State Significant Development. This is largely consistent with Part 3A, with the major change for mining being that there is no modification power equivalent to section 75W of Part 3A. Part 5 amended to require the preparation of more detailed environmental impact statements
Subordinate legislation (including codes of practices)		
Environmental Planning and Assessment Regulation 2000	Environmental Planning and Assessment Regulation 2000 (as amended) State Environmental Planning Policy (State and Regional Development) State Environmental Planning Policy (Mining)	Various regulatory amendments to implements above legislative changes Amends the SEPP (Major Development 2005) to remove Part 3A and identifies classes of state significant development Proposed amendments to introduce a "gateway" assessment step at the initial stages of proposed mining developments to assess the potential impact on land classified as "Strategic Agricultural Land" The assessments would be undertaken by an Independent Panel of Experts appointed by the Minister for Planning — the panel will be required to take into account the advice of the Minister for Primaries Industries with respect to aquifers and the Commonwealth Independent Expert Scientific Committee on Coal Seam Gas and Large Ming Development.[xix]

Land Rights and Native Title legislation (Administered by the Office of Aboriginal Affairs, Department of Education and Communities (*Aboriginal and Land Rights Act 1983*) and the Department of Attorney General and Justice (*Native Title Act 1994*)		
Primary legislation		
Aboriginal Land Rights Act 1983	*Aboriginal Land Rights Act 1983*	No changes since 2006
Native Title Act 1994	*Native Title Act 1994*	No changes since 2006
Subordinate legislation (including codes of practices)		
Aboriginal Land Rights Regulation 2002	Aboriginal Land Rights Regulation 2002	No changes since 2006
Aboriginal Heritage legislation (Administered by the Office of Environment and Heritage, Department of Premier and Cabinet)		
Primary legislation		
National Parks And Wildlife Act 1974 (contains provisions for the protection and preservation of Aboriginal objects)	*National Parks And Wildlife Act 1974* *National Parks And Wildlife Amendment Act 2010*	Amendments introduced: a strict liability offence (a knowing offence) for harm to Aboriginal objects, necessitating due diligence prior to many surface disturbing activities an extended definition of 'harm' and increased penalties Amendments commenced 1 October 2010. A review of all legislation affecting Aboriginal Culture and Heritage is proposed with the aim of introducing stand-alone legislation.
Subordinate legislation (including codes of practices)		
National Parks And Wildlife Regulation 2002	National Parks And Wildlife Regulation 2009 Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales	Replacement regulation containing minor amendments Commenced 1 September 2009 Adopted under the 2009 Regulations to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects. Released September 2010
Native Vegetation legislation (Administered by the Office of Environment and Heritage, Department of Premier and Cabinet)		
Primary legislation		
Native Vegetation Act 2003	Not included as the act does not apply to mining	
	Threatened Species Conservation Act 1995 *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*	Amendment allowed for the introduction of a NSW BioBanking Scheme Provides a voluntary market mechanism for valuing biodiversity on impact and offset sites and trading credits. Although voluntary, the Office of Environment and Heritage use the tools of the scheme to assess the impacts of, and offsets required for, mining projects.
Subordinate legislation (including codes of practices)		
Native Vegetation Regulations 2005	Not included as the regulations do not apply to mining.	Development of a Bilateral Agreement for addressing native vegetation requirements under New South Wales legislation and the *Environment Protection and Biodiversity*

		Conservation Act 1999 (Cth) through an integrated way in meeting the requirements of various Acts.
Water legislation (Administered by the Office of Water, Department of Primary Industries)		
Primary legislation		
Water Management Act 2000 *Protection of Environment Operations Act 1997*	*Water Act 1912 (Progressively being phased out by the next Act)* *Water Management Act 2000* *Water Management Amendment Acts 2008 and 2010* *Protection of Environment Operations Act 1997* (See Environmental Legislation above for discussion of changes)	The amendments to the *Water Management Act 2000* have been largely to give effect to National Water Initiative (2004). The 2008 amendments were to strengthen compliance and enforcement powers for water theft. The 2010 amendments made minor changes to the requirements of Private Irrigation Districts and Private Water Trusts to enable compliance with Commonwealth Market Rules under the *Water Act 2007* (Cwlth).
Subordinate legislation (including codes of practices)		
Water Management (General) Regulation 2004	Water Management (General) Regulation 2011 (Regulatory Impact Statement prepared)	An Aquifer Interference Regulation, effective from 30 June 2011, amended the Water Management (General) Regulation 2004 to required mining exploration and petroleum (including coal seam gas) exploration activities taking more than three megalitres of water to hold a water access licence. The Water Management (General) Regulation 2011 superseded the Water Management (General) Regulation 2004 (and Water Management (Water Supply Authorities) Regulation 2004) on 1 September 2011 The requirement for mining and petroleum companies to hold an access licence remains and forms part of the 2011 regulations.
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of New South Wales under the initiative and reforms

Queensland

Table 8 Queensland: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
Mining industry legislation (Administered by the by the Department of Natural Resources and Mines)		
Primary legislation		
Mineral Resources Act 1989 (amended by the *Natural Resources and Other Legislation Amendment Act 2003*)	*Mineral Resources Act 1989* (as further amended) *Natural Resources and Other Legislation Amendment Act 2003*	New Land Access provisions Land access with respect to exploration permits and mineral exploration licences (Commenced late 2010 and reviewed after twelve months operation) Proposed technical amendments relating to: Entitlements under exploration permit

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
		Obligations and entitlements under mineral development licence Mining lease over surface of reserve or land near a dwelling house Restrictions on mining leases where land is freed from exploration The settlement of before grant or renewal of mining lease The use that may be made under a mining lease of incidental coal seam gas
	Mines Legislation (streamlining) Amendment Act 2012	Allowed for a number of amendments to streamline and harmonise approvals processes with respect to resource interests including those associated with exploration permits, authorities to prospect, mineral development licences, and mining leases.
Subordinate legislation (including codes of practices)		
Mineral Resources Regulation 2003 Guidelines for preparing initial and later development plans under the Mineral Resources Act 1989	Mineral Resources Regulation 2003 (as amended)	Minor amendments to reflect legislative changes
Environmental protection legislation (Administered by the Department of Environment and Heritage Protection)		
Primary legislation		
Environmental Protection Act 1994	*Environmental Protection Act 1994* (as amended)	Changes to the Act to provide for the annual fee for level 2 environmental authorities to reflect the lower risk of the associated activities to cause environmental harm) — commenced 2 December 2011
	Environment Protection (Greentape Reduction) and other Legislation Amendment Act 2012	The Amendment Act was enacted in order to achieve an integrated approval process for all environmentally relevant activities such as mining. The approval process is risk based and consists of a number of modular stages, all of which may not apply depending on the situation. The stages are Application, Information, Notification, Decision and Post Decision: The Amendment Act represents a key component of the Greentape Reduction Project of the Queensland Government Enacted August 2012 for commencement in March 2013..
Subordinate legislation (including codes of practices)		
Environmental Protection Regulations 1998	Environmental Protection Regulations 2008	Various regulatory amendments to enable implementation of amendments to the *Environmental Protection Act 1994* including to the annual fees for environmental authorities to reflect risk.

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
		Repealed the 1998 regulations
Planning legislation (Administered by the Department of State Development, Infrastructure and Planning (*Sustainable Planning Act 2009*) and Department of Natural Resources and Mines *(Strategic Cropping Land Act 2011)*		
Primary legislation		
Integrated Planning Act 1997	*Sustainable Planning Act 2009* Repealed the *Integrated Planning Act 1997*	Mineral exploration and mining projects are exempt
Not included	*State Development and Public Works Organisation Act 1971*	Provides for projects (including mining) to be declared as significant and establishes processes for their subsequent assessment and approval Provides ability for the Coordinator General to determine terms of reference for Environmental Impact Statements and to coordinate the obtainment of approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) Does not apply mineral exploration projects No material changes since 2006
	Strategic Cropping Land Act 2011	The objectives of the Act are to: Protect land that is highly suitable for cropping Manage the impacts of development on that land Preserve the productive capacity of that land for future generations These objectives are to be pursued through a number of measures including the assessment of potential strategic cropping land, the categorisation of such land into protection and management areas, imposing conditions on development in such areas, preventing permanent damage to strategic cropping land in protected areas unless exceptional circumstances apply, and imposing mitigation measures on "allowed" development in management areas and under exceptional circumstance. The Act commenced on 30 January 2012 Although the act has the potential to impact on mining projects, such impacts could not be assessed given the time that the act has been in force and the situation specific nature of assessments.
Subordinate legislation (including codes of practices)		
Integrated Planning Regulation 1998	Sustainable Planning Regulation 2009 Replaced the Integrated Planning Act Regulation on 18 December 2009	Mineral exploration and mining projects are exempt
	State Development and Public Works	No material changes since 2006

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
	Organisation (State Development Areas) Regulation 2009 State Development and Public Works Organisation Regulation 2010	
	Strategic Cropping Land Regulation 2011 Supported by State Planning Policy 1/12, Protection of Queensland strategic cropping land established under the *Sustainable Planning Act 2009*	Enacted to facilitate the implementation of the *Strategic Cropping Land Act 2011*.
Land Rights and Native Title legislation (Administered by the Department of Natural Resources and Mines)		
Primary legislation		
(Not included)	Native Title (Queensland) Act 1993 (as amended)	No material changes since 2006
Native Title Act 1993 (Cwlth)	*Native Title Act 1993* (Cwlth)	No material changes since 2006
Aboriginal Land Act 1991	*Aboriginal Land Act 1991*	No material changes since 2006
Torres Strait Islander Land Act 1991	*Torres Strait Islander Land Act 1991*	No material changes since 2006
Aborigines and Torres Strait Islanders (Land Holding) Act 1985	*Aborigines and Torres Strait Islanders (Land Holding) Act 1985*	Repeal proposed through Aboriginal and Torres Strait Islander Land Holding Bill 2012 The Bill follows a review of the 1985 Act undertaken in 2010 and introduces a number measures to resolve interface issues between various pieces of legislation — the 2011 version of this bill lapsed.
Local Government (Aboriginal Lands) Act 1978	*Local Government (Aboriginal Lands) Act 1978*	No material changes since 2006
Subordinate legislation (including codes of practices)		
Native Title (Queensland) Regulation 1996	Native Title (Queensland) Regulation 1996	No material changes since 2006
Aboriginal Heritage legislation (Administered by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs)		
Primary legislation		
Aboriginal Cultural Heritage Act 2003	*Aboriginal Cultural Heritage Act 2003*	No material changes since 2006 This act and the *Torres Strait Islander Cultural Heritage Act 2003* were reviewed in 2009 and resulted in a number of amendments being proposed, which formed part of the Aboriginal and Torres Strait Islander Land Holding Bill 2011 that later lapsed. A separate stand-alone amendment Bill is now proposed

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
Torres Strait Islander Cultural Heritage Act 2003	*Torres Strait Islander Cultural Heritage Act 2003*	No material changes since 2006 As just outlined with respect to the Aboriginal Cultural Heritage Act 2003, a separate stand-alone amendment Bill is now proposed following the 2009 review.
Subordinate legislation (including codes of practices)		
	Duty of Care Guidelines Established under the *Aboriginal Cultural Heritage Act 2003 (Gazetted 16 April 2004)*	No material changes since 2006
Cultural Heritage Management Plan Guidelines	Cultural Heritage Management Plan Guidelines Established under the *Aboriginal Cultural Heritage Act 2003* (Gazetted 22 April 2005)	No material changes since 2006 Developed to enable parties to meet their duty-of-care obligations under the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003.*
Native Vegetation legislation (Administered by the Department of Environment and Heritage Protection)		
Primary legislation		
Vegetation Management [and other legislation amendment] Act 2004	*Vegetation Management Act 1999* *Vegetation Management and other legislation amendment Act 2004* *Vegetation Management and other Amendment Act 2009*	No material changes since 2006 The act does not apply to mining projects.
Subordinate legislation (including codes of practices)		
Vegetation Management Regulation 2000	Vegetation Management Regulation 2012	The 2012 regulation replace the 2000 regulation and included the removal of redundant provisions and the provisions of the most up-to-date information to ensure the regulatory framework operated efficiently
		Development of a Bilateral Agreement for addressing native vegetation requirements under Queensland legislation and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) through an integrated way in meeting the requirements of various Acts.
Water legislation (Administered by the Department of Natural Resources and Mines (*Water Act 2000{in part}*, the Department of Environment and Heritage Protection, (*Water Act 2000 {Chapter 3)* and *Wild Rivers Act 2005*), and the Department of Energy and Water Supply (*Water Act 2000 {parts of Chapters 2,4, and 9}* and the *Water Supply (Safety and Reliability) Act 2008)*		
Primary legislation		
Water Act 2000	*Water Act 2000* *Water and Other Legislation Amendment Act 2010*	The amendment act provided for the simultaneous development of Water Resource Plans (strategic level planning instrument) and Resource Operations Plans (operational level planning instrument) in order to streamline Queensland water resource planning processes

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
		No other changes were made to the scope and nature of the water planning instruments With respect to the *Wild Rivers and Other Legislation Amendment Act 2006* (below), the 2010 amendment act: clarified that roads, pipelines and other specified works associated with mining activities are not prohibited in a High Preservation Area or a Special Floodplain Management Area removed the mandatory Level 1 (higher risk) classification of mining activities outside of a High Preservation Area or a Special Floodplain Management Area. Provided that exploration activities within a High Preservation Area can only be undertaken on an exploration permit lease, a mineral development lease, or a mining lease in order for mining tenements to be treated consistently through the stages of exploration, mineral development and mining.
	Wild Rivers Act 2005	Provides for a statutory declaration of an area as a Wild River Area A wild river is a river that is in near natural condition and has all, or almost all, of its natural values intact. A wild river declaration covers the entire catchment and outlines the requirements, on a management area basis, for new developments which will preserve the river's natural values. The management areas include: High Preservation Areas (within a kilometre on either side of a river) Preservation Area (remaining area within a catchment) Floodplain Management Area (may overlap the other two areas) Sub-artesian Management Area (may overlap other areas) Designated Urban Area Special Floodplain Management Area (relating to channel country within the Lake Eyre Basin)
	Wild Rivers and Other Legislation Amendment Act 2006	Allowed for low-impact exploration in High Preservation Areas subject to assessment Remove the automatic category of exploration activities as a Level 1 (higher risk) project so that they can be considered as a Level 2 (lower risk) activity based on expected impact Allowed for mining in High Preservation Areas subject to assessment

2006 Audit (Qld)	2012 Audit (Qld)	Major changes (to September 2012)
	Water Supply *(Safety and Reliability)* Act 2008	The object of the new act is to further strengthen the safety and reliability of Queensland's water supplies and to introduce new requirements relating to recycled water and drinking water These aspects were previously part of the *Water Act 2000* Not likely to have a material impact on the mining sector.
Subordinate legislation (including codes of practices)		
Water Regulations 2002	Water Resource Plans and Resource Operations Plans	Water resource plans establish a framework to share water between human consumptive needs and environmental values. 22 Water Resource Plans have been finalised covering over 90 per cent of Queensland — a plan for the Wet Tropics catchments is currently in development. Finalised water resource plans are put into effect through Resource Operations Plans which are developed in parallel.
	Various Wild River Area Declarations Statutory Instruments	The following Wild River Declarations have been declared: Cooper Creek Basin Wild River Declaration 2011 Georgina and Diamantina Basins Wild River Declaration (2011) Wenlock Basin Wild River Declaration (2010) Archer Wild River Declaration (2009) Stewart Wild River Declaration 2009) Lockhart Wild River Declaration (2009) Fraser Wild River Declaration (2007) Gregory Wild River Declaration (2007) Hinchinbrook Wild River Declaration (2007) Morning Inlet Wild River Declaration (2007) Settlement Wild River Declaration (2007) Staaten Wild River Declaration (2007)
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of Queensland under the initiative and reforms

Western Australia

Table 9 Western Australia: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
Mining industry legislation	(Administered by the Department of Mines and Petroleum (*Mining Act 1978*, *Mining Amendment Act 2004, Mining Amendment Act 2012, Approvals and Related Reforms (Mining) Act 2010, Mining on Private Property Act 1898*) and the Department of State	

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
Development (various mining related State Agreement Acts)		
Primary legislation		
Mining Act 1978	*Mining Act 1978* (as amended by the *Mining Amendment Act 2004* and subsequent *amendments*)	Various amendments including the 2010 amendments to give effect to a single approval process for environmental approvals under Part IV (Ministerial condition including for mining) and, to a lesser extent, Part V (Licencing and works including for mining), of the *Environmental Protection Act 1986* Current version effective from 30 January 2012
	Mining Amendment Act 2012	The amendment act was implemented to make a number of administrative refinements with respect to both the *Mining Act 1978* the *Mining Amendment Act 2004* including about: The surrender requirements for exploration licences directed at increasing the transfer of leases and preventing "land banking" The definition of mining operations The inclusion of Commonwealth land under the *Mining Act 1978* Increased penalties for breaches of the *Mining Act 1978*
	Approvals and Related Reforms (No. 2) (Mining) Act 2010	The 2010 Act was enacted (in part) to: Require all mines to prepare a mine closure plan (effective from 1 July 2011) Take other measures to minimise damage to land Provide for alternative means for lodging documents
	Mining Rehabilitation Fund Act 2012 Assent: 5 November 2012	Enacted to reduce the unfunded liability of the State of Western Australian with respect to abandoned mines sites by providing for: The establishment of a Mining Rehabilitation Fund the declaration of abandoned mine sites a levy to be paid in respect of mining authorisations; and other related matters
Mining on Private Property Act 1898	*Mining on Private Property Act 1898*	No material changes since 2006
	Various mining project specific State Agreement Acts (made under the *Government Agreements Act 1979*) to foster resource development such as minerals, related downstream processing projects and infrastructure investments. Examples	Such State Agreement Acts are resource/project specific and, in essence, are contracts between the Government proponents of large projects that are ratified by parliament. They specify "the rights, obligations, terms and conditions for development of the project and establish a framework for ongoing relations and cooperation between the State and the project proponent".

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
	include: *Iron Ore (FMG Chichester Pty Ltd) Agreement Act 2006* *Nickel (Agnew) Agreement Act 1974*	
Subordinate legislation (including codes of practices)		
Mining Regulations 1981	Mining Regulations 1981	Various consequential amendments following legislative amendments
	Mining Rehabilitation Fund Regulations 2013 Exposure Draft only	Being developed to effect the practical operation of the Mining Rehabilitation Act including with respect to: the calculation of the new levy reporting and assessment requirements; the functions and membership of the new Mining Rehabilitation Advisory Panel
	Guidelines for Preparing Mine Closure Plans Administrative	Developed jointly by the Department of Mines and Petroleum and the Environment Protection Authority in order to streamline mine closure requirements and to reduce regulatory overlap
Environmental protection legislation (Administered by the Environment Protection Authority within the Portfolio of the Department of Environment and Conservation (*Environment Protection Act 1986*), Department of Environment and Conservation (*Environment Protection Act 1986, Approvals and Related Reforms (Environment) Act 2010, Conservation and Land Management Act 1984 and the Wildlife Conservation Act 1950*) and the Commission for Soil and Land Conservation within the Portfolio of the Department of Agriculture and Food (*Soil and Land Conservation Act 1945*))		
Primary legislation		
Environmental Protection Act 1986	*Environmental Protection Act 1986* (as amended)	Various amendments including the 2010 amendments to give effect to a single approval process for environmental approvals under Part IV (Ministerial condition including for mining) and, to a lesser extent, Part V (Licencing and works including for mining), of the *Environmental Protection Act 1986.* Schedule relating to Prescribed Premises was also amended which resulted in the removal of some 700 small –medium sized business from the schedule — no material impact on the mining sector. Current version effective from 21 May 2012
	Approvals and Related Reforms (No. 1) ((Environment) Act 2010	Enacted to amend the processes of the Environment Protection Authority in making decisions regarding minor works and the appeal processes for third parties: The removal of appeal rights for third parties for proposals that are not assessed The provision for third parties to advise on the level of assessment before a decision is made by the Authority. The removal from third parties of the ability to

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
		appeal the decisions of the Authority on the level of assessment required.
Conservation and Land Management Act 1984	*Conservation and Land Management Act 1984* (as amended)	Amendment enacted in 2011 to allow joint management of the conservation estate with Indigenous people Could facilitate the establishment of joint management agreements in areas where mining and mineral processing occurs. Another amendment provided for the joint management of land outside the conservation estate by the Department of Environment and Conservation and the land holders May assist securing offset requirements for mining projects
Subordinate legislation (including codes of practices)		
Environmental Protection Regulations 1987	Environmental Protection Regulations 1987 (as amended) Preparation of various "Environment Assessment Guideline" to clarify policy and assist proponents	Various consequential amendments Current version effective from 28 November 2012
	Environmental Impact Assessment (Part IV, Divisions 1 and 2) Administrative Procedures 2012 Part IV provides for the Ministerial Conditions to be placed on mining projects Gazetted 7 December 2012 (replaced 2010 Procedures)	The procedures establish principles and practices in relation to— the referral of a significant proposal or strategic proposal; the setting of the level of assessment of a significant proposal or strategic proposal; environmental review requirements and consultation; and Environmental Impact Assessments for significant proposal or strategic proposal. The procedures were used to reduce several levels of assessment to two, namely: the preparation of an Assessment of Proponent Information and of Public Environmental Report Proponents are still required to submit a Scoping Document to enable the Office of the Environmental Protection Authority to determine the level of assessment required. The Office is currently working on an Environmental Assessment Guideline (see above) for Scoping Documents. In situations where Ministerial conditions are prepared, the latest procedures also provide the opportunity for proponents to appeal draft conditions. Changes to simplify the administration of licences/works approvals for mobile facilities Could have a small beneficial impact for some mining companies

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
	Conservation and Land Management Regulations 2002	Various consequential amendments Current version effective from 1 October 2011
	Wildlife Conservation Regulations 1970 Wildlife Conservation (Reptile and Amphibians) Regulations 2002	Two amendments to both made in 2010 No material changes since 2006 Current version effective from 11 September 2010
	Soil and Land Conservation Regulations 1992	No changes since 2006 Current version effective from 11 March 2005
Licensing regulations for operations discharging waste to the environment	Such licensing regulations would be expected to be part of the Environmental Protection Regulations 1987	In addition to changes to the subordinate legislation, the Department of Mines and Petroleum and the Environment Protection Authority entered into a Memorandum of Understanding in relation to the referral of Mineral and Petroleum (Onshore and Offshore) and Geothermal Proposals pursuant to Part IV of the *Environment Protection Act 1986* in order to establish an efficient and transparent administrative process between the two government agencies Signed 26 June 2009
Guidelines to help you get Environmental Approval for Mining Projects in Western Australia	Guidelines for Mining Proposals in Western Australia, Department of Mines and Petroleum, February 2006 (as amended September 2012)	Approved under the *Mining Amendment Act 2004* by the Director General, Department of Mines and Petroleum, to assist the mining industry produce proposals to facilitate the assess of the environmental impacts of a proposed mining operations
	Draft Guidelines for Environmentally Responsible Mineral Exploration & Prospecting in Western Australia, March 2012	Being developed to provide guidance for the mining industry on environmental management and rehabilitation practices in seeking mineral exploration and prospecting approvals in a timely manner consistent with the environmental requirements and expectations of the Western Australian Government
Requirements for holding a Pastoral Lease	The requirements with respect to the holding of pastoral leases for proponents seeking mineral exploration and mining project approvals would be expected to be covered by Conservation and Land Management Regulations 2002 and enabling legislation.	No material changes since 2006
Planning legislation	(Administered by the Department of Planning (*Planning and Development Act 2005*, *Approvals and Related Reforms (No. 4) (Planning) Act 2010),*the Department of Regional Development and Lands (*Land Administration Act 1997* and the *Approvals and related Reforms (No. 3) (Crown Land) Act 2010*), and the Department of Local Government (*Local Government Act 1995)*	

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
Primary legislation		
	Planning and Development Act 2005	Introduced to improve the planning system in Western Australia Assented 12 December 2005 Provides for Planning Schemes to be established by each local government Various subsequent amendments Current version effective from 21 May 2012
	Approvals and Related Reforms (No. 4) (Planning) Act 2010	Introduced (as with other 2010 Approvals and Related Reforms Acts) to effect the Western Australian Government's commitment to streamlining and improving the planning approvals process in Western Australia Provided for the establishment of Development Assessment Panels to make certain development decisions in place of the relevant Decision Making Authority such a Local Government or the Planning Commission The Act also contains a number of consequential amendments for other legislation affecting the mining sector including the *Mining Act 1978, Environmental Protection Act 1986, and the Land Administration Act 1997.*
Western Australian Planning Commission Act 1985	Repealed by the *Planning and Development Act 2005* (6 April 2006). Functions of the now provided for under the *Planning and Development Act 2005* and are supported by Department of Planning	Repealed
Land Administration Act 1997	*Land Administration Act 1997*	Various amendments Current version effective from 21 May 2012
	Approvals and related Reforms (No. 3) (Crown Land) Act 2010	Enacted to amend various other Acts, including the *Mining Act 1978*, the *Environmental Protection Act 1986*, the *Land Administration Act 1997, the Planning and Development Act 2005, and the Aboriginal Heritage Act 1972,* with the aim of providing "efficiencies in the processes for giving notices, applying for approvals and doing various other things under those Acts which relate to the use and development of, or dealings with, Crown land and freehold land held in the name of the State.
Local Government Act 1995	*Local Government Act 1995*	Various amendments Current version effective from 1 July 2011 No material changes since 2006
Subordinate legislation (including codes of practices)		

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
	Planning and Development Regulations 2009	Various consequential amendments following legislative amendments Current version effective from 1 July 2011
	Planning and Development (Development Assessment Panels) Regulations 2011	Provide guidance on the authority and decision making functions of the Development Assessment Panels Current version effective from 25 March 2011— no amendments
Statements of Planning Policy for Environment and Natural Resources; Water Resources	State Planning Policies covering a range of issues Guidance documents prepared by the Western Australian Planning Commission	The *Approvals and Related Reforms (No. 4) (Planning) Act 2010* seeks to increase the standing State Planning Policies by requiring local government to have "due regard" to the policies in preparing their planning schemes which are given legal effect through the *Planning and Development Act 2005.*
	Land Administration Regulations 2006	Various consequential amendments following legislative amendments Current version effective from 7 July 2012
	Land Administration (Land Management) Regulations 2006	No material changes since 2006 Current version effective from 11 August 2007 (one change)
Provision for local planning by-laws	Provision for local planning by-laws As enable by the determined by the *Local Government Act 1995* and the *Planning and Development Act 20*	No material changes since 2006 specific to the mining sector
Land Rights and Native Title legislation (Administered by the Department of the Attorney General)		
Primary legislation		
Titles (Validation) and Native Title (Effects of Past Acts) Act 1995	*Titles (Validation) and Native Title (Effects of Past Acts) Act 1995*	No changes since 2006 Current version effective from 11 March 2005
Native Title (State Provisions) Act 1999	*Native Title (State Provisions) Act 1999*	No material changes since 2006 Current version effective from 1 February 2007 — one amendment
Native Title Act 1993 (Cwlth)	*Native Title Act 1993* (Cwlth)	No material changes since 2006
Subordinate legislation (including codes of practices)		
Native Title (State Provisions) Regulations 2000	Native Title (State Provisions) Regulations 2000	No changes since 2006 Current version effective from 1 July 2000
Aboriginal Heritage legislation (Administered by Department of Indigenous Affairs)		
Primary legislation		
Aboriginal Heritage Act 1972	*Aboriginal Heritage Act 1972*	Various amendments No material changes since 2006 Current version effective from 18 September 2010

2006 Audit (WA)	2012 Audit (WA)	Major changes (to December 2012)
		A review of the Act has recently been completed and amendments foreshadowed by the Western Australian Government An Exposure Draft of the proposed amendments is still to be released
Subordinate legislation (including codes of practices)		
Aboriginal Heritage Regulations 1974	Aboriginal Heritage Regulations 1974	No changes since 2006 Current version effective from 9 January 2004
	Standard Cultural Heritage Management Plan Template Administrative — Developed by the Department of Premier and Cabinet	Designed to help proponent meet increase the quality of their submissions in demonstrating compliance with legislative requirements (namely Section 18 relating to Heritage Clearance)
	Standard Indigenous Land Use Agreement Administrative — Developed by the Department of Premier and Cabinet	Designed to help proponent address land access and Native Title issues

Native Vegetation legislation (Administered primarily by the Office Environment Protection Authority (within the Department of Environment and Conservation)		
Primary legislation		
Amendments to the Environment Protection Act 1986 clearance permits (since 2004)	*Environmental Protection Act 1986* (as amended)	See above for amendments to the *Environment Protection Act 1986*
Subordinate legislation (including codes of practices)		
Environmental Protection (Clearing of Native Vegetation) Regulations 2004 Native vegetation controls – offset/net gain requirements	Environmental Protection (Clearing of Native Vegetation) Regulations 2004	Various amendments Current version effective from 17 April 2009
	Western Australia Environmental Offsets Policy Released September 2011 May also be applied through the *Planning and Development Act 2005* and the *Mining Act 1978*	Clarifies the policy of the Western Australian Government to the use of offsets and to the integration of assessments of the Commonwealth for matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 1999*
		Development of a Bilateral Agreement for addressing native vegetation requirements under Western Australian legislation and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) through an integrated way in meeting the requirements of various Acts.
Water legislation (Administered by the Department of Water)		
Primary legislation		
	Water Resources Legislation Amendment Act 2007	Enacted to amend water and water resource related Acts and to incorporate machinery of government changes introduced into Parliament in 2003 (including the newly established Department of Water) Considered to be the first phase of a comprehensive reform of water management and regulation in Western Australia Assented 21 December 2007 Current version effective from 4 July 2008 — two amendments
Water and Rivers Commission Act 1995	Repealed by the *Water Resources Legislation Amendment Act 2007* (above)	Repealed
Water Supply Sewerage and Drainage Act 1912	Repealed by the *Water Resources Legislation Amendment Act 2007* (above)	Repealed

Waterways Conservation Act 1976	*Waterways Conservation Act 1976*	Various amendments including by the *Water Resources Legislation Amendment Act 2007* (above) Current version effective from 22 November 2010 No material changes since 2006 Water reform discussion Paper issued in November 2009 — any consequential legislative changes are still to be made
Rights in Water and Irrigation Act 1914	*Rights in Water and Irrigation Act 1914*	Various amendments including by the *Water Resources Legislation Amendment Act 2007* (above) Minor change with respect to obtaining beds and banks approval which is no longer required Current version effective from 26 October 2011
Subordinate legislation (including codes of practices)		
Licensing regulations for operations discharging waste to the environment	Such licensing regulations would be expected to be part of the Environmental Protection Regulations 1987	No material changes since 2006
Licenses to abstract water for mining operations Issued under the *Rights in Water and Irrigation Act 1914*	Rights in Water and Irrigation Regulations 2000	No material changes since 2006 Current version effective from 21 December 2011 — various amendments Preparation of a water in mining guideline to provide advice on water management issues that need to be considered and the type of information required as part of the licence assess process Draft released June 2012
	Waterways Conservation Regulations 1981	No material changes since 2006 Current version effective from 28 January 2011
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of Western Australia under the initiative and reforms

South Australia

Table 10 South Australia: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
Mining industry legislation	**(**Administered by the Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE and previously the Department of Primary Industries and Resources) — acts a lead government agency for regulatory approvals processes)	
Primary legislation		
Mining Act 1971	*Mining Act 1971* *Mining (Miscellaneous)*	Amendment act enacted to make the legislative provisions less prescriptive and to stream

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
	Amendment Act 2010	line the regulatory approval process, as well as make various definitional, process and requirement changes including with respect to: Tenement applications Exempt land Notice of entry (access to land) Environment compliance framework Environment Protection and Rehabilitation Framework Compliance Reporting Amendments effective on 1 July 2011
	Roxby Downs (Indenture Ratification) Act 1982 Governs the operations of the Olympic Dam copper/uranium mine by BHP Billiton Specifies the obligations of BHP Billiton with respect to State Legislation such as the *Aboriginal Heritage Act 1988*, the *Environmental Protection Act 1993*, the *Natural Resources Act 2004*, the *Development Act 1993* and *the Mining Act 1971*	Roxby Downs (Indenture Ratification) Amendment of Indenture) Amendment Bill 2011 Awaiting ratification — essentially on hold given BHP Billiton's decision in October 2012 to defer the expansion of its mining operations at Olympic Dam
<u>Subordinate legislation</u> (including codes of practices)		
Mining Regulations 1998	Mining Regulations 2011	Repealed Mining Regulations 1998 and incorporated consequential amendments arising from amendments to the *Mining Act 1971* Commenced 1 July 2011.
	Woomera Prohibited Area Declared under Part VII of the Defence Force Regulations 1952 for use in "the testing of war material" Covers an area of 127,000 square kilometres approximately 450 km NNW of Adelaide	Establishment in 2011 of a Joint Australian Government and Australian Government Woomera Prohibited Area Coordination Office to administer non-Defence use of the area Included the development of new management framework arrangements that support co-existence between Defence and non-Defence users (such as mining) within the area Sites of significance to indigenous people within the area are protected under the *Aboriginal Heritage Act 1988*
	Roxby Downs (Local Government Arrangements) Regulations 2012	Developed to facilitate the ongoing implementation of the *Roxby Downs (Indenture Ratification) Act 1982* Previous regulations 1997 regulations have ceased
Environmental protection legislation (Administered by the Environment Protection Authority (*Environment*		

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
	Protection Act 1993), Department of Environment, Water and Natural Resources (*Wilderness Protection Act 1992, National Parks and Wildlife Act 1972 and Natural Resources Management Act 2004)*	
Primary legislation		
Environment Protection Act 1993	*Environment Protection Act 1993*	No material changes since 2006 Limited direct application to environmental impacts of extractive mining activities, which are dealt with largely under the *Mining Act 1971* (by DMITRE which has the technical expertise)
	Radiation Protection and Control Act 1982	No material changes since 2006 Various amendments including with respect to fees and charges and to better align with the provisions of the *Mining Act 1971* When applicable, can have a larger impact on mining activities than the *Environmental Protection Act 1993*
Wilderness Protection Act 1992	*Wilderness Protection Act 1992*	No material changes since 2006
National Parks and Wildlife Act 1972	*National Parks and Wildlife Act 1972*	No material changes since 2006 National Parks and Wildlife (Park and Reserve Categories and Other Matters) Amendment Bill 2012 to: introduce new reserve categories (Heritage Park and Nature Reserve) establish new reserve system and management processes clarify access for mining purposes Draft bill released for public comment in September 2012 Comments closed 21 December 2012
	Natural Resources Management Act 2004	Enacted to establish and promote the integrated management of South Australia's natural resources See Water legislation below
	Marine Parks Act 2007	Provides for the protection and conservation of marine biological diversity and marine habitats by decaling and providing for the management of a comprehensive, adequate and representative system of marine parks Applies to areas within and adjacent to a marine park Requires the development of marine park management plans Under the *Mining Act 1971*, the Minister for Mining must take into account the objects of the *Marine Parks Act 2007* Actions undertaken in administering the *Environment Protection Act 1993* within and adjacent to a marine park must also seek to further the objects of the *Marine Parks Act 2007* and the provision of marine park management plans

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
	Arkaroola Protection Act 2012	The Act was enacted to formalise and strengthened the protection afforded to the Arkaroola area in the northern Flinders Ranges which is widely recognised for its natural values including biodiversity, conservation, landscape and geological. Specifically the Act: establishes the Arkaroola Protection Area provides for the proper management and care of the area prohibits mining activities in the area provides the area with the same legal status as for a National Park under the *National Parks and Wildlife Act 1972* The act commenced 26 April 2012
Subordinate legislation (including codes of practices)		
Environment Protection Regulations 1994	Environment Protection Regulations 2009	No material changes since 2006 Updated and consolidated the previous regulations Commenced 1 September 2009
	Radiation Protection and Control (Ionising Radiation) Regulations 2000 Radiation Protection and Control (Transport of Radioactive Substances) Regulations 2003 Radiation Protection and Control (Non-ionising Radiation) Regulations 2008	No material changes since 2006
	National Parks and Wildlife Act 1972 Regulations	No material changes since 2006
	Wilderness Protection Regulations 2006	No material changes since 2006
	Marine Parks Regulations 2008	Developed to facilitate the implementation of the *Marine Parks Act 2007*
Planning legislation (Administered by the Department of planning, Transport and Infrastructure)		
Primary legislation		
Development Act 1993	*Development Act 1993*	The act does not apply to mining projects May affect the provision of infrastructure, such as port development, to support the development of mining projects No material changes since 2006
Subordinate legislation (including codes of practices)		
Development Regulations 1993	Development Regulations 2008	Repealed the 1993 Regulations No material changes since 2006
Land Rights and Native Title legislation (Administered by the Attorney's General Department (*Native Title Act 1994)* and the Department of Premier and Cabinet , Aboriginal Affairs and Reconciliation Division (all other Acts listed)		

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
Primary legislation		
Native Title Act 1994	Native Title Act 1994	No material changes since 2006
Native *Title Act 1993* (Cwlth)	*Native Title Act 1993* (Cwlth)	No material changes since 2006
Land *Acquisition (Native Title) Amendment Act 2001*	Land Acquisition Act 1969 *Land Acquisition (Native Title) Amendment Act 2001* Amendment to the Land Acquisition Act 1969 with respect to native title}	No material changes since 2006
Aboriginal Lands Trust Act 1966	*Aboriginal Lands Trust Act 1966*	No material changes since 2006 A review of this Act was announced in November 2008 Consultation Paper issued November 2010 Drafting instructions issued for bill to amend 1966 Act (regarded as "old" legislation
Aboriginal Lands Parliamentary Standing Committee Act 2003	*Aboriginal Lands Parliamentary Standing Committee Act 2003*	No material changes since 2006
[Anangu, Yankunytjatjara,] Pitjantjatjara Land Rights Act 1981	*Anangu, Yankunytjatjara, Pitjantjatjara Land Rights Act 1981*	No material changes since 2006
Maralinga Tjaruta Land Rights Act 1984	*Maralinga Tjaruta Land Rights Act 1984*	No material changes since 2006
Subordinate legislation (including codes of practices)		
Native Title Regulations 2001	Native Title Regulations 2001	No changes since 2006
Aboriginal Heritage legislation (Administered by the Department of Premier and Cabinet , Aboriginal Affairs and Reconciliation Division)		
Primary legislation		
Aboriginal Heritage Act 1988	*Aboriginal Heritage Act 1988*	A review of this Act was announced in November 2008 and Scoping Paper issued December 2008 Better integration with Native Title legislation Drafting instructions have been prepared with exposure draft of amendment bill expected in first half of 2013
National Parks and Wildlife Act 1972	*National Parks and Wildlife Act 1972* Covers traditional hunting practices and prohibits the taking of artefacts.	No material changes since 2006 See above under environmental legislation for details about the proposed amendment bill for Act Exposure draft released September 2012
Subordinate legislation (including codes of practices)		
Aboriginal heritage issues are integrated in the pre-negotiated exploration [Indigenous Land Use Agreements} ILUAs Aboriginal Site Avoidance Guidelines	Aboriginal heritage issues are integrated in the pre-negotiated exploration [Indigenous Land Use Agreements} ILUAs Aboriginal Site Avoidance Guidelines (M29, April 2002	No material changes since 2006

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
	Administrative — endorsed by the Division of State Aboriginal Affairs, Department of Transport, Urban Planning and the Arts	
Native Vegetation legislation (Administered by the Native Vegetation Council within the Portfolio of the Department of Environment, Water and Natural Resources)		
Primary legislation		
Native Vegetation Act 1991	*Native Vegetation Act 1991* Mining activities are except	No material changes since 2006 The *Native Vegetation Act 1991*seeks to guard against duplication with the *Environment Protection and biodiversity Conservation Act 1999* Native Vegetation (Miscellaneous) Amendment Bill 2011 developed To provide for a new third party offsets scheme and that offsets have to be provided within the same Natural Resource Management Area
Subordinate legislation (including codes of practices)		
Native Vegetation Regulation 2003	Native Vegetation Regulation 2003	No material changes since 2006
Draft Guidelines for a Native Vegetation Significant Environmental Benefit Policy for the clearance of native vegetation associated with the minerals and petroleum industry	Guidelines for a Native Vegetation Significant Environmental Benefit Policy for the clearance of native vegetation associated with the minerals and petroleum industry (September 2005). Endorsed for adoption and implementation by the Native Vegetation Council under the *Native Vegetation Act 1991* (Section 25)	No changes since 2006 Development of a Bilateral Agreement for addressing native vegetation requirements under South Australian legislation and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) through an integrated way in meeting the requirements of various Acts.
Water legislation (Administered by the Department of Environment, Water and Natural Resources)		
Primary legislation		
Water Resources Act 1997	*Natural Resources Management Act 2004*	Repealed the *Water Resources Act 1997* effective from 1 July 2005 Provided for transitional arrangements for provisions of the repealed act Requires the preparation of Natural Resource Management Plans for each associated management area by the relevant natural resources management board Requires that a water allocation plan be prepared by the relevant natural resources management board in prescribed water management areas.
	Water Industry Act 2012	Replaces *Waterworks Act 1932*, *Water Conservation Act 1936* and *Sewerage Act*

2006 Audit (SA)	2012 Audit (SA)	Major changes (to October 2012)
		1929 Seeks to achieve an integrated approach to the supply and distribution of water potable water and the treatment of Sewerage Commenced 5 April 2012. Limited direct impact on mining activities
Subordinate legislation (including codes of practices)		
Water Resources Regulations 1997	Natural Resource Management (General) Regulations 2005	Replaced the 1997 regulations Separate regulations for each designated water management area.
Environment Protection (Water Quality) Policy	Environment Protection (Water Quality) Policy (Note: this is a policy under the *Environment Protection Act 1993*)	No material changes since 2006
	Water for Good Policy initiative released in June 2009 Administrative	Sets out the overall objectives of the South Australian Government with respect to managing the water resources of South Australia and the policy initiatives of the Government to achieve those objectives.
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of South Australian under the initiative and reforms

Tasmania

Table 11 Tasmania: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
Mining industry legislation (Administered by the Mineral Resources Tasmania, Department of Infrastructure, Energy, and Resources)		
Primary legislation		
Mineral Resources Development Act 1995	*Mineral Resources Development Act 1995* Forms part of Tasmania's Resource Management and Planning System introduced in 1993	No material changes since 2006
	Mining (Strategic Prospectivity Zones) Act 1993 Establishes seven strategic prospecting zones within which the status of Crown land cannot be changed without consideration of minerals Prospectivity Compensation may be payable for exploration expenditure incurred in	No material changes since 2006

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
	the zones if stopped prematurely because of a change in status.	
Subordinate legislation (including codes of practices)		
Mineral Resources Regulations 1996	Mineral Resources Regulations 1996	No material changes since 2006 except for 2011 amendments
	Minerals Resources Amendment Regulations 2011	Amended Mining Regulations 2006 with respect to royalties, prescribed minerals and rent Minor technical and procedural changes Minimal impact — deemed unnecessary to undertake a RIS Commenced on 17 August 2011
	Mineral Resources Development (Application of Act) Order 2006	Declares that the *Mineral Resources Development Act 1995* is to apply to certain forest reserves.
Mineral Exploration Code of Practice	Mineral Exploration Code of Practice Fifth edition released on 5 April 2012 approved Code under Section 204 of the *Mineral Resources Development Act 1995*. Compliance with the code is a standard licence condition with which explorers must comply	Update of previous codes
Quarry Code of Practice 1999	Quarry Code of Practice 1999 Administrative — guidance document	No changes since 2006
Environmental protection legislation (Administered by the Environment Protection Authority (*Environment Protection Act 1993*), Department of Primary Industries, Parks Water and Environment (*Environment Protection Act 1993*, *Threatened Species Protection Act 1995, Nature Conservation Act 2002* and the *National Parks and Reserves Management Act 2002*), the Department of Premier and Cabinet (*State Policies and Projects Act 1993*), and the Department of Infrastructure, Energy and Resources (*Forestry Act 1920* and *Regional Forest Agreement (Land Classification) Act 1998*).		
Primary legislation		
Environmental Management and Pollution Control Act 1994	*Environmental Management and Pollution Control Act 1994* Forms an integral part of Tasmania's Resource Management and Planning System introduced in 1994 — see *State Policies and Projects Act 1993* below	Amended in 2008 to enable the establishment of the Environment Protection Authority as an independent statutory authority for administering and enforcing the provisions of its enabling legislation. The EPA commenced operations on 1 July 2008 Its functions include undertaking environmental impact assessment of development proposals including mining Acts as lead agency for higher risk Level 2 and Level 3 activities and may call in level 1 activities which are normally managed by

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
		Local Councils through the planning system
National Parks and Wildlife Act 1970 Repealed and replaced by the two acts (adjacent) enacted in 2002	*Nature Conservation Act 2002*	No material changes since 2006
	National Parks and Reserves Management Act 2002	No material changes since 2006
	Threatened species Protection Act 1995 Enacted to enhance the protection of native flora and fauna Referral required for projects of State Significance	No material changes since 2006
	State Policies and Projects Act 1993 The Act is one seven pieces of legislation that combine to form Tasmania's Resource Management and Planning System established in 1994 to achieve sustainable outcomes from the use and development of Tasmania's natural and physical resources As such, the Act also forms part of the legislation for other categories such as planning and water	Provides for Projects of State Significance to be subject to a "one-stop-shop" integrated approvals process including under the *Environment Protection and Biosdiversity Conservation Act 1999* (Cwlth) through the bilateral agreement between the Commonwealth and Tasmania The redevelopment of the copper mines at Mount Lyell was the first Projects of State Significance No material changes since 2006
Forestry Act 1920	*Forestry Act 1920*	No material changes since 2006 No direct influence on mining activities
Regional Forest Agreement (Land Classification) Act 1998	*Regional Forest Agreement (Land Classification) Act 1998*	No material changes since 2006 No direct influence on mining activities
<u>Subordinate legislation</u> (including codes of practices)		
Environmental Management and Pollution Control Regulations (various)	Environmental Management and Pollution Control Regulations (various)	As updated and developed by the Environment Protection Authority Not mining specific
	Draft Guidelines for the preparation of a Development Proposal and Environment Management Plan for Venture Minerals Limited for the Riley's Creek Hematite DSO Mine	Prepared by the Environment Protection Authority to facilitate compliance under the *Environmental Management and Pollution Control Act 1994 and the Environment Protection and biodiversity Conservation Act 1999 (Cwlth)* Released September 2012
	Environment Protection Policy (Air Quality) 2004	Made under the *Environmental Management and Pollution Control Act 1994* Subject to review in 2015

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
	Environment Protection Policy (Noise) 2009	Made under the *Environmental Management and Pollution Control Act 1994* Extensive consultation prior to release
	State Policy on Water Quality Management 1997	Made under the *State Policies and Projects Act 1993* No material changes since 2006 Currently being reviewed for development as an environmental policy under the *Environmental Management and Pollution Control Act 1994*
Mineral Exploration Code of Practice	Mineral Exploration Code of Practice	See above under Mining Industry Legislation
Quarry Code of Practice	Quarry Code of Practice	See above under Mining Industry Legislation
Planning legislation (Administered by the Tasmanian Planning Commission within the Portfolio of Department of Justice (*Land Use Planning and Approvals Act 1993)* and the Department of Premier and Cabinet (*State Policies and Projects Act 1993*)		
Primary legislation		
Land Use Planning and Approvals Act 1993	*Land Use Planning and Approvals Act 1993* Forms an integral part of Tasmania's Resource Management and Planning System introduced in 1994 Exploration is exempt from Planning Scheme controls — see Mineral Exploration Code of Practice above	The Act was amended in 2009 to allow the introduction of Projects of Regional Significance Provides a one-stop-approval process that integrates environmental (including under the EPBC Act) and planning assessments by independent panel appointed by the Planning Commission with no third party appeal rights Designed to facilitate the making of approval decisions based on project merit and to limit the politicisation of the process by local communities and councils The Act was also amended to provide for the development of State and Regional strategies. could assist with identifying areas of mineral resources and influencing zoning in local planning schemes in order to minimise potential land-use conflicts
	State Policies and Projects Act 1993	See above under Environmental Legislation
Subordinate legislation (including codes of practices)		
Land Use Planning and Approvals Regulations 2004	Land Use Planning and Approvals Regulations 2004	No material changes since 2006
	Planning Directive PD1	Prescribes a common template for all new planning schemes setting out standard use classifications and exemptions and zones Should help achieve the consistent treatment of the extractive industry across the Tasmania
	Draft Code (Attenuation Distances)	Being developed to provide standard separation distances for scheduled premises including quarries

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
		Design to avoid current situation of different obligatory requirements within planning schemes
	State Policy on the Protection of Agricultural Land 2009 Made under the *State Policies and Projects Act 1993*	Replaces the policy released in 2000 Now provide the ability for extractive activities to occur on prime agricultural land having regard to criteria such as: minimising the amount of land alienated; minimising negative impacts on the surrounding environment; and ensuring the particular location is reasonably required for operational efficiency
Land Rights and Native Title legislation (Administered by the Department of Premier and Cabinet and the Department of Primary Industries, Parks Water and Environment (*Nature Conservation Act 2002)*		
Primary legislation		
Native Title (Tasmania) Act 1994	*Native Title (Tasmania) Act 1994*	No material changes since 2006
Native Title Act 1993 (Cwlth)	*Native Title Act 1993* (Cwlth)	No material changes since 2006
Aboriginal Lands Act 1995	*Aboriginal Lands Act 1995*	No material changes since 2006
Nature Conservation Act 2002	*Nature Conservation Act 2002*	No material changes since 2006 See above under environmental legislation
Subordinate legislation (including codes of practices)		
None identified	None identified	None identified
Aboriginal Heritage legislation (Administered by the Department of Primary Industries, Parks Water and Environment (Aboriginal Heritage Tasmania (*Aboriginal Relics Act 1975* and Heritage Tasmania, *Historic Cultural Heritage Act 1995)*		
Primary legislation		
Aboriginal Relics Act 1975	*Aboriginal Relics Act 1975*	The Act has been reviewed and an exposure draft bill for its replacement, entitled Aboriginal Heritage Protection Bill 2012, was released for public comment in November 2012 and which closed on 14 December 2012. The aims of the Bill include: To provide more effective protection and management of Aboriginal Heritage Increase the involvement of the Aboriginal community in decision-making process Integrate the protection and management of Aboriginal heritage with planning and land development process Not mining specific
	Historic Cultural Heritage Act 1995	The act has been subject to a review that resulted in two bills being introduced to, and passed by, the House of Assembly in September 2012. The bills were Historic Cultural Heritage Amendment Bill 2012 Land Use Planning and Approvals (Historic Cultural Heritage) Bill 2012

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
		The bills have been developed to integrate the consideration of heritage issues with the planning permit process Forms an integral part of Tasmania's Resource Management and Planning System introduced in 1994 and the assessment of Projects of State Significance Not mining specific
Subordinate legislation (including codes of practices)		
None identified	None identified	None identified
Native Vegetation legislation (Administered by the Department of Primary Industries, Parks Water and Environment)		
Primary legislation		
N/A	*Threatened Species Protection Act 1995* See above under environmental protection legislation	Provides for the protection of native habitats No material changes since 2006
Subordinate legislation (including codes of practices)		
N/A	Threatened Species Protection Regulations 1996	No material changes since 2006 Development of a Bilateral Agreement for addressing native vegetation requirements under Tasmania legislation and the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) through an integrated way in meeting the requirements of various Acts.
Water legislation (Administered by the Department of Primary Industries, Parks Water and Environment)		
Primary legislation		
Water Management Act 1999	*Water Management Act 1999*	A major review of the Act was undertaken in 2005 Found that the objectives of the Enabling Act were still valid and that the provisions of the Act remained relevant for achieving those objectives Two amending Acts (presented immediately below) were implemented
	Water Legislation Amendment Act (2008)	Implemented to secure the more efficient operation of the *Water Management Act 1999* and to support the implementation of the National Water Initiative and other COAG water reforms
	Dam Works Legislation (Miscellaneous Amendments) Act 2007	As for the *Water Legislation Amendment Act (2008)* but included the additional requirement that the *Water Management Act 1999* be reviewed five years after this amendment Act commenced (16 July 2007) The review was competed in October 2012 and two amendment Bills are proposed Water Legislation Amendment Bill No. 1 — to provide clear and concise framework for the administration and management of

2006 Audit (Tas)	2012 Audit (Tas)	Major changes (to October 2012)
		water districts and the provision of contemporary entitlement system to management water in irrigation districts Water Legislation Amendment Bill No. 2 — to address a range of water management issues and to support the implementation by Tasmania of the National Framework on Water Compliance and Enforcement
Subordinate legislation (including codes of practices)		
Water Management Regulations 1999	Water Management Amendment Regulations 2009	Set limits on the taking of water for specific uses and set fees for water licences Repealed the 1999 regulations Commenced 11 February 2009.
	State Policy on Water Quality Management 1997 Made under the *State Policies and Projects Act 1993*	No material changes since 2006 See also Environmental Protection Legislation above
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of Tasmania under the initiative and reforms

Northern Territory

Table 12 Northern Territory: Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
Mining industry legislation (Administered by the Department of Mines and Energy)		
Primary legislation		
Mining Act 1980	*Mineral Titles Act 2010*	*The Mineral Titles Act 2010* repealed the *Mining Act 1980* Enacted following a review of the Mining Act 1980 by the Department of Primary Industry, Fisheries and Mines in March 2008 Current version effective from 27 January 2012 (assented 9 September 2010) The new act seeks to establish a framework for granting and regulating mineral titles that authorise exploration for, and extraction and processing of, minerals and extractive minerals for facilitating the commercialisation of activities conducted under mineral titles by authorising the creation and transfer of interests in the titles
Mining Management Act	*Mining Management Act*	*The Mining Management Amendment Act 2011*

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
2001	*2001* *Mining Management Amendment Act 2011*	was enacted to make a range of amendments to improve the enforcement and accountability of the environmental regulation of mining including: the compulsory reporting of all environmental incidents; and the requirement for operators on a mining lease to report their environmental performance annually. Effective from 1 July 2012
Subordinate legislation (including codes of practices)		
Mining Regulations 1981	Mineral Titles Regulations 2011	The Mineral Titles Regulations 2011 repealed and replaced the Mining Regulations 1981 and were made to facilitate the implementation of the *Mineral Titles Act 2010* Effective from 7 November 2011
Mining Management Regulations 2001	Mining Management Regulations 2012	The Mining Management Regulations 2012 repealed and replaced the Mining Management Regulations 2001 and were made to facilitate the implementation of the *Mining Management Amendment Act 2011* Effective from 1 July 2012
Environmental protection legislation (Administered by the Department of Lands, Planning and the Environment (*Environmental Assessment Act 1994)* and the Parks and Wildlife Commission of the Northern Territory *(Territory Parks and Wildlife Conservation Act 1980)*		
Primary legislation		
Environmental Assessment Act 1994	*Environmental Assessment Act 1994*	No amendments Current version effective from 30 December 1994
Waste Management and Pollution Control Act 1998	*Waste Management and Pollution Control Act 1998*	Amendments in 2007 and 2010 Not mining specific Expected impact minor Current version effective from 21 November 2011 No material changes since 2006 identified
Territory Parks and Wildlife Conservation Act 2001	*Territory Parks and Wildlife Conservation Act 1980* (as amended including in 2001)	Various amendments in 2006, 2007, 2009 and 2010 Not mining specific Expected impact minor Current version effective from 6 December 2010 No material changes since 2006 identified
	Atomic Energy Act 1953 (Cth) Administered by the Department of Resources, Energy and Tourism (Cth) Enacted in part to manage the mining of uranium at the Ranger	No material changes since 2006 One minor amendment in 2008 Used as "model" legislation by, for example, Western Australian to manage the potential commercial development of uranium deposits

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
	Mine near Kakadu National Park Directly cross references the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) — see Land Rights and Native Title legislation below	
Subordinate legislation (including codes of practices)		
Environmental Assessment Administrative Procedures 2003	Environmental Assessment Administrative Procedures 2003	No changes identified Current version effective from 19 March 2003
Waste Management and Pollution Control (Administration) Regulations 1998	Waste Management and Pollution Control (Administration) Regulations 1998	Two sets of amendments identified: In 2009 with respect to Fees and Charges In 2011 with respect to National Uniform Legislation for Health and Safety Not mining specific No material changes since 2006 identified Current version effective from 1 January 2012
Territory Wildlife Regulations 2001	Territory Parks and Wildlife Conservation Regulations (as amended)	Two sets of amendments identified: In 2007 with respect to Infringement Notices In 2009 With respect to fees and charges Not mining specific No material changes since 2006 identified Current version effective from 6 December 2010
Planning legislation (Administered by the Department of Lands, Planning and the Environment)		
Primary legislation		
Planning Act 1999	*Planning Act 1999*	Various amendments in 2007, 2008, 2009 and 2011 Not mining specific Expected impact minor May also be used for the management of native vegetation Current version effective from 1 October 2012
Subordinate legislation (including codes of practices)		
Planning Regulations 2000	Planning Regulations 2000	Various amendments made — in 2007 (Third Party Access), 2008 (Development Applications), 2009 (Unit titles), and 2011 (Exempt subdivisions) Not mining specific Expected impact minor Current version effective from 20 December 2011
Land Rights and Native Title legislation (Administered by the Department of the Chief Minister, *Validation (Native Title) Act 1994)* and the Department of Lands, Planning and the Environment (*Aboriginal Land Act 1978)*		
Primary legislation		
Validation (Native Title) Act	*Validation (Native Title) Act*	No changes

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
1994	*1994*	Current version effective from 18 June 1999
Aboriginal Land Act 1978	*Aboriginal Land Act 1978*	One amendment made in 2010 Current version effective from 13 October 2010 Expected impact minor
Native Title Act 1993 (Cth)	*Native Title Act 1993* (Cth)	No material changes since 2006
	Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) Administered by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs *Aboriginal Land Rights (Northern Territory) Amendment Act 2006 Cth* RIS prepared	Following several reviews, the 2006 Amendment Act through Part IV sought to make changes to expedite and make more certain the processes relating to exploration and mining activities on Aboriginal Land Assented 6 September 2006 The Amendment Act also required the responsible Commonwealth Minister to undertake a review made of the changes to Part IV on the fifth anniversary of commence of the amendment The review commenced in September 2012 Submissions closed on 15 February 2013 and the Final Report is to be provided to the Minister by 29 March 2013
Subordinate legislation (including codes of practices)		
	Aboriginal Land Rights (Northern Territory) Regulations 2007 (as amended)	Repealed the Aboriginal Land Rights (Northern Territory) Regulations Current version effective from August 2011 No material changes since 2006 Expected impact minor
Aboriginal Heritage legislation (Administered by Department of Regional Development and Indigenous Affairs and the Aboriginal Areas Protection Authority (*Northern Territory Aboriginal Sacred Sites Act 1989*), and the Department of Lands, Planning and the Environment (*Heritage Act 2011*)		
Primary legislation		
Northern Territory Aboriginal Sacred Sites Act 1989	*Northern Territory Aboriginal Sacred Sites Act 1989*	Two consequential amendments arising from the *Minerals Titles Act 2010* and *Public Sector Employment and Management Act 2011* Expected impact minor Current version effective from 1 January 2012
		The Aboriginal Areas Protection Authority (AAPA) is an independent statutory organisation established under the *Northern Territory Aboriginal Sacred Sites Act*, and is responsible for overseeing the protection of Aboriginal sacred sites on land and sea across the whole of Australia's Northern Territory.
Heritage Conservation Act 1991	*Heritage Act 2011*	The *Heritage Act 2011* repealed the *Heritage Conservation Act 1991* and *Heritage Conservation Amendment Act 1998* Expected impact minor Current version effective from 2 October

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
		2012
Subordinate legislation (including codes of practices)		
Northern Territory Aboriginal Sacred Sites Regulations 2004	Northern Territory Aboriginal Sacred Sites Regulations (as amended) Fees and Charges Amendment Regulations 2009 Northern Territory Aboriginal Sacred Sites Amendment Regulations 2011	No material changes since 2006 Mainly concerned with fees and charges Expected impact minor Current version effective from 3 August 2011
Heritage Conservation Regulations 1999	Heritage Regulations	Enacted to facilitate the implementation of the *Heritage Act 2011* Expected impact minor Current version effective from 1 October 2012
Native Vegetation legislation (Administered by the Department of Land Resource Management)		
Primary legislation		
Pastoral Land Act 1992	*Pastoral Land Act 1992* (as amended)	Amendments made in 2007 and 2010 Expected impact minor Current version effective from 7 November 2011 Native Vegetation Management Bill developed in 2010 to enact new laws with respect to the management of native vegetation Designed to avoid the potential duplication of the management of native vegetation under the developed after the Pastoral Land Act 1992 and the Planning Act 1999.
Soil Conservation and Land Utilisation Act 1995	*Soil Conservation and Land Utilisation Act 1995* (as amended)	Amendments made in 2008 and 2009 Expected impact minor Current version effective from 16 September 2009
Subordinate legislation (including codes of practices)		
Pastoral Land Regulations 1992	Pastoral Land Regulations 1992 Pastoral Land Amendment Regulations 2011	The amendments were not mining or native vegetation specific Expected impact minor Current version effective from 31 August 2011
	Land Clearing Guidelines — Northern Territory Planning Scheme	Initially prepared in 2002 to facilitate minimising the impact of land clearing on the natural resources of the northern Territory Revised 2006 and 2010
Water legislation (Administered by the Department of Land Resource Management)		
Primary legislation		
Water Act 1992	*Water Act 1992* exemptions for mining and petroleum activities *Water Amendment Act 2007*.	Various amendments in 2007, 2008, 2009 and 2010 The 2007 amendment act was concerned mainly with extraction licences

2006 Audit (NT)	2012 Audit (NT)	Major changes (to February 2013)
		Expected impact minor Current version effective from 7 November 2011
Subordinate legislation (including codes of practices)		
Water Regulations 1992	Water Regulations Water Amendment Regulations 2008	The 2008 amendment regulations amend the Water Regulations and were made under the *Water Amendment Act 2007* Expected impact minor
	National Water Initiative and other water reforms of COAG	Ongoing implementation in accordance with obligations of the Northern Territory under the initiative and reforms

Commonwealth

Table 13 Australia (Commonwealth): Changes to relevant acts and key regulations and codes of practices since January 2006

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
Mining industry legislation		
Primary legislation — General Corporations Laws administered by the Australian Securities and Investment Commission (specific mining legislation)		
	Corporations Act 2001 (as amended)	Various amendments Not mining specific
	Australian Securities and Investments Commission Act 2001	Various amendments Not mining specific
Subordinate legislation (including codes of practices)		
	Corporate Regulations 2001 (as amended)	Various amendments Not mining specific
Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2004 edition)	Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 edition) Sets out minimum standards, recommend-ations and guidelines for public reporting of explor-ation results, mineral resources and ore reserves Referenced in the Listing Rules of the Australian Stock Exchange (ASX)	Supersedes the 2004 edition and all previous editions The provisions in the 2012 edition of the code will be made mandatory by the ASX in December 2013 Activities of the AXA (and other publicly listed companies), hence application of the Code and other requirements under the *Corporations Act 2001*, are subject to oversight by the Australian Securities and Investment Commission.
Environmental protection legislation (Administered by the Department of Sustainability, Environment, Water, Population and Communities (*Environment Protection and Biodiversity Conservation Act 1999*)		
International Conventions : The obligations of Australia under International Environmental Conventions it has ratified provides the Constitutional basis for environmental legislation enacted by the Commonwealth. Major		

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
conventions that were significant to the enactment of the *Environment Protection and Biodiversity Conservation Act 1999* are listed only (see Appendix D for full list of International Conventions).		
	World Heritage Convention	Ratified by Australian in 1974
	Ramsar Convention	Ratified in 1975
	United Nations Convention on Biological Diversity	Ratified in 1993 Significant influence on the need to develop the EPBC Act
	United Nations Convention on Climate Change	Ratified in 1993 Led to the subsequent development in 1997 of the Kyoto Protocol
Inter-government Agreements: Developed to facilitate the meeting of Australia's international obligations through laws which are enacted in accordance with the powers of the States and Territories under the Australian Constitution.		
	1992 Intergovernmental Agreement on the Environment Commenced 1 May 1992 Incorporated Principles of Ecological Sustainable Develop	Foundation document governing the meeting of Australia's international obligations under international conventions and treaties Recognises that ultimate responsibility for meeting these obligations rests with the Commonwealth and that the Commonwealth can rely on the laws, policies, procedures and standards of the States and Territories in the meeting of those obligations provided the Commonwealth is satisfied that they are adequate to do so These aspects are recognised in the EPBC Act and reflected in subsequent changes in environmental laws of the States and Territories
	1997 COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment.	Complements the provisions of the 1992 Intergovernmental Agreement on the Environment
National Strategies: Developed to facilitate the meeting of Australia's international obligations through the providing guidance to the development of policies and required legislative changes by the States and Territories in order to secure desired environmental outcomes		
	National Strategy for Ecological Sustainable Development	Endorsed by COAG on 7 December 1992 Principles subsequently incorporated in amendments to environmental law of the State and Territories Principles also underpin Enduring Value, The Australian Minerals Industry Framework for Sustainable Development
	Australia's Biodiversity Conservation Strategy 2010 – 2030 Endorsed and released on 27 October 2010 by the Natural Resource Management Council (now incorporated into the COAG Standing Council	Developed as a Guiding Framework for conserving Australia's national biodiversity over the coming decades Developed as an "umbrella" for the development of more specific frameworks such as *Australia's Native Vegetation Framework* (December 2012) discussed below under Native Vegetation Legislation

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
	on Environment and Water) Released to coincide with the United Nations International Year of Biodiversity	Replaces *National Strategy for the Conservation of Australia's Biological Diversity* released in 1996 and which also influenced the development of the EPBC Act. (In turn this strategy stemmed from the *World Conservation Strategy* (1980) and the *National Conservation Strategy for Australia* (1983))
Primary legislation		
Environment Protection and Biodiversity Act 1999	*Environment Protection and Biodiversity Conservation Act 1999* (as amended) Australia's principal piece of national environmental legislation. Translates Australia's international obligations, such as protecting World Heritage properties, wetlands of international importance, and listed threatened species and ecological communities into Australian Law. Also provides for the protection for Australia's national heritage places Provides for bilateral agreements between the Commonwealth and the States Full RIS undertaken	Various amendments covering a range of matters. The amendments most likely to affect mining are detailed below Legislation is not mining specific Refer Appendix D for more details about objects of the Act Note Independent review (Hawke) of the *Environment Protection and Biodiversity Conservation Act 1999* and the National environmental law reform initiative of the Commonwealth in response Components of this response are outlined below
	Environment and Heritage Legislation Amendment Act (NO. 1) 2006 Impact analysis of the costs and benefits of the proposed amendments undertaken A full RIS for the amendments was not done given previous RIS undertaken for the Act	Enacted mainly to amend the *Environment Protection and Biodiversity Conservation Act 1999* after six years of operation and to make technical and consequential amendments and corrections to 6 other Acts Amendments designed to make the Act "more efficient and effective, allow for the use of more strategic approaches and to provide greater certainty in decision-making" Assented 12 December 2006
	Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012 No regulatory impacts were required	The amendment was made to enable the Minister to establish an Independent Expert Scientific Committee on Coal Seam Gas and Large Mining Development requires the Minister to seek the advice of the committee before making a decision under the Act with respect to Coal Seam Gas and Large Coal Mining Development. Assented 24 October 2012 The inaugural committee was established on 27 November 2012.
	Environment Protection and	Introduced to amend the *Environment*

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
	Biodiversity Conservation Amendment Bill 2013 Exemption granted by the Prime Minister from the need to prepare a RIS	*Protection and Biodiversity Conservation Act 1999* to new matter of national environmental significance with respect to significant impacts or likely significant impacts of coal seam gas development and large coal mining development on a water resource Introduced to the House of Representatives on 13 March 2013
	Proposed amendment bill for the implementation of cost-recovery arrangements for environmental assessments under the *Environment Protection and Biodiversity Conservation Act 1999*	Part of the National environmental law reform initiative of the Commonwealth noted above Consultation paper on cost recovery released for public comment by the Department of Sustainability, Environment, Water, Population and Communities in September 2011 Draft Cost Recovery Impact Statement released for public comment on 10 May 2012 Comments closed on 21 June 2012
Subordinate legislation (including codes of practices)		
	Environment Protection and Biodiversity Conservation Regulations 1999 (as amended)	Amended as required to implement legislative changes to the *Environment Protection and Biodiversity Conservation Act 1999*
	Matters of National Environmental Significance : Significant impact guidelines 1.1 Released October 2009 — Replacement for Guidelines issued in May 2006	Developed to assist any person to determine whether they should refer an action for decision by the Australian Government Environment Minister on whether assessment and approval is required under the *Environment Protection and Biodiversity Conservation Act 1999* an action will require approval if the action has, will have, or is likely to have, a significant impact on a matter of national environmental significance as defined by the Act
National Environment Law Reform (announced on 24 August 2011 in response to independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Hawke Review)		
	Environment Protection and Biodiversity Conservation Act 1999 — Environment Offsets Policy (3 October 2012) Integral part of the Australian Government's National Environment Law Reform Agenda	Developed to facilitate the application of best practice offset principles and the achievement of better environmental outcomes by providing upfront guidance on the role of offsets in environmental impact assessments and how DSEWPaC would consider the suitability of a proposed offset Released 3 October 2012 — replaces draft policy on the *Use of environmental offsets under the EPBC Act*, October 2007 The policy replaces the draft policy, entitled Use of Environmental Offsets under the EPBC Act, 2007
	Prescriptions Specify the requirements to be met consistent with the protection of Matters	Various Prescriptions developed and approved for Listed Ecological Communities and National Listed Species under the EPBC Act These Listed Communities and Species are

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
	of National Environmental Significance	presented in the document referenced below, entitled Statement of Environmental and Assurance Outcomes (May 2012)
Bilateral agreements signed with Queensland, Western Australia, Tasmania, and the Northern Territory Draft agreements with New South Wales, Victoria, South Australia and the ACT. In the absence of signed agreement, the could accredited a state based EIS/EES procedure on a case-by-case basis	Bilateral Agreements relating to environmental impact assessments signed by the Commonwealth under the provisions of the EPBC Act with all jurisdictions: New South Wales (Signed 18 January 2007) Victoria (20 June 2009) Queensland (14 June 2012 — replacement for Agreements signed 13 August 2004) Western Australia (21 March 2012) South Australia (2 July 2008) Tasmania (3 May 2011) Northern Territory (31 May 2002) ACT (4 June 2009)	Continued development of bilateral agreements to reduce duplication of environmental assessment and regulation between the Commonwealth and states/territories. The agreements allow the Commonwealth to '"accredit" particular state/territory assessment processes and, in some cases, state/territory approval decisions for the purposes of meeting the Commonwealth's responsibilities for conducting environmental assessments under the EPBC Act. The agreements also provide the ability, in some circumstances, to delegate the responsibility for granting environmental approvals under the Act. Other matters may also be dealt with under the agreements such as management plans for World Heritage properties and cooperation on monitoring and enforcement
COAG Environmental Regulation Reform Agenda"		
	Accreditation of State Assessment and Approval Processes under the *Environment Protection and Biodiversity Act 1999* Work program announced by COAG 13 April 2012	The COAG Environmental Regulation Reform Agenda is directed at further reducing duplication and double-handling of assessment and approval processes without compromising the achievement of better environmental outcomes Represents a further tranche (announced 19 August 2011) of regulation and competition reforms under the National Partnership Agreement of COAG to deliver a Seamless National Economy with respect to "environmental assessment and approvals bilaterals" (26 March 2008)
	Milestone 1 — Statement of Environmental and Assurance Outcomes (May 2012)	Prepared as a foundation document for meeting the commitments of COAG with respect to Environmental Regulation Reform, especially regarding how the responsibilities of the Commonwealth under the EPBC Act and, through these, how Australia will meet its international environmental obligations The objects of the EPBC Act and Australia's International Environmental Obligations are presented in Appendix D
	Draft *Framework of Standards for the Accreditation of Environmental approvals* (Released publicly on 2 November 2012 and to	Prepared as the second foundation document for meeting the commitments of COAG with respect to Environmental Regulation Reform with respect to the Accreditation by the States and Territories to make Environmental Approval decisions on behalf

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
	jurisdictions in July 2012)	of the Commonwealth under the provisions of the EPBC Act. Seeks to provide details of the requirements that must be satisfied for the Commonwealth to accredit State and Territory systems through bilateral agreements and about haw each State and Territory could address those requirements. Overall the framework is designed to support risk- and outcomes -based regulation Bilateral agreements proposed to be finalised by March 2013
Planning legislation (Administered by the State and Territories — No overarching Commonwealth legislation		
Primary legislation		
NA	NA	NA
Subordinate legislation (including codes of practices)		
NA	NA	NA
Land Rights and Native Title legislation (Administered by the Attorney-General's Department)		
Primary legislation		
Native Title Act 1993 (Cth)	*Native Title Act 1993* (Cth) (as amended in 1998, 2007, 2009, and 2010)	Various amendments directed at making the clarifying representation, the making of technical amendments and to improve the efficiency within which the Act is administered No material changes since 2006 Not mining specific
	Native Title Amendment Act 2007 (Cth)	Introduced a new regime for representative Aboriginal and Torres Strait Islander Bodies, increased the powers and functions of the National Native Title Tribunal (as recommended by an Independent Review) and improved measures design to improve communications between this Tribunal and the Federal Court Assented 15 April 2007
	*Native Title Amendment (Technical) Act 2007 (*Cth)	Introduced a series of technical amendments associated the processes for native title litigation and negation, representative Aboriginal and Torres Strait Islander Bodies and the operation of prescribed bodies corporate Assented 20 July 2007
	*Native Title Amendment Act 2009 (*Cth)	Enacted to enable the Federal Court to determine whether the court, National Native Title Tribunal or another body should mediate native title claims, specify the manner in which mediations are conducted and other aspects regarding how native title proceedings should be undertaken

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
		Assented 17 September 2009
	*Native Title Amendment Act 2010 (*Cth)	Enacted to provide that representative Aboriginal and Torres Strait Islander Bodies and certain native title claimants may comment on request to be consulted about proposed housing and other services for indigenous communities Assented 15 December 2010
	Native Title Amendment Bill 2012	Series of proposed amendments regarding historical extinguishment of native title in certain areas set aside, the conduct expected of parties in future act negotiations, the time period before a party may seek determination from an arbitral body, the processes and scope of voluntary indigenous land-use agreements, and technical amendments Second Reading Speech, 28 November 20012
	Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) Administered by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs *Aboriginal Land Rights (Northern Territory) Amendment Act 2006 Cth* RIS prepared	See the table above for the Northern Territory for details of changes to this Act since 2006
Subordinate legislation (including codes of practices)		
	Native Title (Prescribed Bodies Corporate) Regulations 1999	As amended consistent with the above legislative changes
Aboriginal Heritage legislation (Administered by Department of Department of Sustainability, Environment, Water, Population and Communities		
Primary legislation		
Environment Protection and Biodiversity Conservation Act 1999 Replaced the Australian Heritage Commission Act 1975 Provides for the protection of heritage issues as a Matter of National Environmental Significance	*Environment Protection and Biodiversity Conservation Act 1999* (As amended)	See comments under Environmental Protection Legislation above Not mining specific
Aboriginal and Torres Strait Islander Heritage Protection Act 1984	*Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (as amended in 1987)	No material changes identified

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
Subordinate legislation (including codes of practices)		
	NA	NA
Native Vegetation legislation (Administered by the by the Department of Sustainability, Environment, Water, Population and Communities)		
Primary legislation		
Environment Protection and Biodiversity Conservation Act 1999	*Environment Protection and Biodiversity Conservation Act 1999* (as amended)	See Environmental Legislation above Not native vegetation or mining specific
Subordinate legislation (including codes of practices)		
	Environment Protection and Biodiversity Conservation Regulations 1999 (as amended)	See Environmental Legislation above Not native vegetation or mining specific
	Australia's Native Vegetation Framework (December 2012) Endorsed for public release by the COAG Standing Council on Environment and Water on 19 December 2012 In-principal support only from Victoria pending the completion of a current review of its native vegetation regulations	Developed to guide the actions of governments with respect to the management of native vegetation across Australia as well as to encourage and support the active involvement of the community and private sector Updates the National Framework for the Management and Monitoring of Australia's Native Vegetation, released in 2001by the Natural Resource Management Ministerial Council
Water legislation (Administered by the Department of by the Department of Sustainability, Environment, Water, Population and Communities)		
Primary legislation		
	Water Act 2007	Enacted to establish the Murray Darling Basin Authority and to require the Authority to prepare a Basin Plan the Commonwealth Environmental Holder to require the Australian Competition and Consumer Commission to monitor and enforce water charges and market rules in the Basin increase the functions of the Bureau of Meteorology with respect to information on water resources Assented 3 September 2007
	Water Amendment Act 2008	Enacted to give effect to the Intergovernmental Agreement on the Murray-Darling Basin Reform between New South Wales, Victoria, Queensland, South Australia, and the Australian Capital Territory and to transfer the powers and functions of the Murray-Darling Basin Commission to the Murray-Darling Basin
	Water Amendment (Long-	Enacted to enable the Murray-Darling Basin

2006 Audit (Cth)	2012 Audit (Cth)	Major changes (to March 2013)
	term Average Sustainable Diversion Limit Adjustment) Act 2012	Authority to make adjustments to the long-term average sustainable diversion limit set by the Basin Plan and associated matters Assented 21 November 2007
	Water Amendment (Water for the Environment Special Account) Act 2012 RIS not required	The Act amends the Water Act 2007 to: establish the Water for the Environment Special Account for a 10-year period from the 2014-15 financial year to acquire additional environmental water entitlement and to remove constraints on the efficient use of environmental water for the Murray-Darling Basin Plan; and provide for two independent reviews to be conducted in 2019 and 2021 Assented 15 February 2013 Complements the Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Act 2012
Subordinate legislation (including codes of practices)		
	National Water Initiative and other water reforms of COAG	Ongoing implementation in cooperation with the States and Territories under the COAG Standing Council on Environment and Water

Endnotes

[i] Statistics Canada, Table 029-007: Capital and repair expenditures, industry sector 21, mining and oil and gas extraction. 2012 figure reflects intentions. Excludes oil and gas extraction.

[ii] Central Bank of Colombia, Flow of FDI in Colombia, According to the Economic Activity – Balance of Payments.

[iii] The Long Term Outlook for Aluminium, CRU, 2011.

[iv] Guinea, Wharton Financial Institutions Centre.

[v] Project conflict between China and Vietnam, Asia Economic Institute, (asiaecon.org, undated).

[vi] Brook Hunt, 2012.

[vii] Morgan Stanley Research, 1 February 2012.

[viii] Hatch, 3rd Euronickel Conference, 2012.

[ix] A. Hawke, The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999. Commonwealth of Australia, Canberra, 2009.

[x] A. Macintosh, *The EPBC Survey Project: Preliminary Data Report*. Australian National University, Australian Centre for Environmental Law, Canberra, 2009.

[xi] Productivity Commission, Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector. Productivity Commission, Canberra, 2009.

[xii] http://www.pc.gov.au/projects/study/major-projects

[xiii] http://www.environment.gov.au/coal-seam-gas-mining/index.html

[xiv] Australian Government Response to the Report of the Independent Review of the *Environmental Protection and Biodiversity Conservation Act 1999.*

[xv] National Water Commission, *Securing Australia's water future, 2011 Assessment: Headline Recommendations, September 2011*.

[xvi] Of continued importance to the minerals industry is the need for full consideration of the role of Clause 34 in the NWI in addressing the full range of impediments to integrate the minerals industry in water planning and entitlement regimes. Clause 34 of the Intergovernmental Agreement on the National Water Initiative recognises that there may be special circumstances facing the minerals and petroleum sectors that will require specific management arrangements (policies and measures) outside of the NWI Agreement.

[xvii] This point was made by the 2005 Prime Minister's Export and Infrastructure Taskforce.

[xviii] Constituted in 2008, Straterra, Natural Resources of New Zealand, provides a collective voice for the New Zealand minerals and mining sector.

[xix] Established by amendment (October 2012) to the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth). The amendment requires the Minister to establish such a committee and to seek the advice of the committee before making a decision under the Act with respect to Coal Seam Gas and Large Coal Mining Development. The inaugural committee was established on 27 November 2012.