
MINING SECTOR UPDATE

AUSTRALIA AND PAPUA NEW GUINEA

MARCH 2018



INTRODUCTION

Welcome to the first edition of Corrs Chambers Westgarth's Mining Sector Update for 2018. As commodity prices continue to recover, the year is off to a steady start with mining activities and related deal flows expected to continue their upward trend.

In this edition of MSU, we alert you to a recent decision of the WA Supreme Court which provides some guidance on the interpretation of formulas for calculating royalties in contracts. We also provide an overview of how 2017 shaped up on a comparative basis and focus in on key drivers for prosperity in 2018.

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2017 ROUND UP

- A total of 71 mid-market deals in the mining, energy and utilities sector were completed, with a total value of approximately A\$4.1 billion.¹
- Metallurgical coal exports fell by 9% (17.98 mt), with thermal coal exports falling by 1% (1.8 mt).²
- Increased demand for power and domestic supply constraints boosted thermal coal imports into China by 11%.³

RECENT ANNOUNCEMENTS

Queensland Government refuses New Acland Coal's application to expand

On 14 February 2018, the Queensland Department of Environment and Science issued its decision to refuse **New Acland Coal's** application to amend its environmental authority. Amending the environmental authority is an essential requirement for the **New Acland Coal Mine stage 3 expansion** as, without a valid environmental authority, the mining lease for the project cannot be granted.

The application had already been considered and recommended against by the Land Court. See our earlier article about that 459-page decision [here](#).

The Department's media statement noted that its "decision to refuse the application is in line with the recommendation of the Land Court which was handed down in May 2017. This followed 99 days of expert and lay witness testimony regarding the potential impacts of the project."

The Land Court's decision to recommend against the amendment of the Environmental Authority is currently subject to judicial review proceedings brought by New Acland. If the judicial review proceeding relating to the Land Court recommendation is unsuccessful, then New Acland will likely file similar judicial review proceedings against the Department's decision to refuse its application.

1. Pitcher Partners and Mergermarket, 'Dealmakers: Mid-market M&A in Australia 2018', 16 <http://www.pitcher.com.au/sites/default/files/downloads/Pitcher_Partners_Mid-Market_Report_2018.pdf>.
2. Eric Thorpe, 'Aussie met coal exports fall by 18 mt in 2017', *Australian Coal Report*, 7 February 2014, 2.
3. IHS Markit, 'China's thermal coal imports rise 11% in 2017', *Australian Coal Report*, 1 February 2014, 3.



Brent Lillywhite
Partner, Brisbane
Tel +61 7 3228 9420
Mob +61 416 198 893
brent.lillywhite@corrs.com.au



Charlotte Loos
Senior Associate, Brisbane
Tel +61 7 3228 9491
Mob +61 449 607 826
charlotte.loos@corrs.com.au



Mount Ridley Mines to acquire Prometheus Developments

ASX listed **Mount Ridley Mines** has announced its agreement to acquire Singapore company, **Prometheus Developments**, owner of the **Diwalwal Gold Project** located in the Philippines.⁴

As part of the acquisition, Mount Ridley Mines will acquire an 80% economic interest in the two mining tenements forming the Diwalwal Gold Project, which has an annual production of approximately 90,000 ounces of gold and a reported 2.7 million ounces of gold over its 30 year life.

Mount Ridley Mines stated that it has agreed to issue 1.59 billion fully paid ordinary shares in exchange for 100% of the issued capital of Prometheus Developments. The acquisition remains subject to due diligence and shareholder approval.

Aurizon pulls application for Northern Australian Infrastructure Facility funding

Aurizon CEO Andrew Harding has announced the withdrawal of Aurizon's application for A\$1 billion in Northern Australian Infrastructure Facility funding for a rail network,⁵ which would have serviced the proposed **Alpha Coal** and **Carmichael Coal Mine** projects, two of the eleven thermal coal projects proposed for the Galilee Basin.

In other news, Aurizon recently announced that it has secured new rail haulage agreements for the transport of coal from MACH Energy's Mt Pleasant mine in the Hunter Valley and QCoal's Byerwen mine in the Bowen Basin. Corrs Partner Bruce Adkins and Special Counsel Stuart Clague advised MACH Energy on the agreement with Aurizon.

Mount Ridley Mines will acquire an 80% economic interest in the two mining tenements forming the Diwalwal Gold Project

4. Mount Ridley Mines, 'MT Ridley Mines to acquire high grade Philippines Epithermal Gold Project' (Press Release, 13 February 2018) 1 <<https://www.asx.com.au/asxpdf/20180213/pdf/43rjr26wyxhn5.pdf>>.

5. Eric Thorpe, 'Galilee prospects dealt a blow', *Australian Coal Report*, 14 February 2018, 2.



FEATURE CASE

Royalty formula ambiguity resolved in favour of Mineralogy

In *Mineralogy Pty Ltd v Sino Iron Ltd [No 16]*,⁶ Justice Kenneth Martin considered whether the demise of an annual benchmark pricing system widely used in the international iron ore market (**ABPS**) rendered a royalty calculation formula in two Mining Right and Site Lease Agreements (**MRSLAs**) between Clive Palmer's Mineralogy and CITIC's Sino Iron and Korean Steel dysfunctional.

In pre-contractual negotiations, the parties to the MRSLAs had considered including reference to the ABPS in the formula for calculating a component of the total royalty sum. The ABPS was ultimately not referenced in the MRSLAs, and ceased to operate in 2010.

Mineralogy argued that as there was no reference to the former ABPS being the exclusive source of market reference prices, the formula was not dysfunctional and the royalty could still be reliably calculated.

The CITIC defendants submitted that in the overall context, the formula did require this benchmark pricing system, and as it was no longer published, the relevant component of the formula was rendered dysfunctional and the royalty value could not be ascertained.

The Court found for Mineralogy, and determined that Sino Iron and Korean Steel each owed Mineralogy US\$74.7 million in respect of unpaid royalties.



Andrea Moffatt
Senior Associate, Brisbane
Tel +61 7 3228 9874
Mob +61 410 140 636
andrea.moffat@corrs.com.au



Nicholas Finlay
Graduate Lawyer, Brisbane
Tel +61 7 3228 9575
nicholas.finlay@corrs.com.au

KEY TAKEAWAYS

Parties should ensure that the terms of their agreement expressly identify any index benchmark or criterion to be used, and in anticipation that it may cease to exist, incorporate a mechanism for the determination of an alternative.

6. [2017] WASC 340. Judgment was delivered on 24 November 2017. The CITIC parties have appealed the decision – see http://asia.blob.euroland.com/press-releases-attachments/1042051/HKEX-EPS_20180129_003033370-0.PDF.

RECENTLY COMPLETED DEALS

PAPUA NEW GUINEA

Anglo American to withdraw from Star Mountains

LSE listed **Anglo American plc** has advised ASX and POMSx listed **Highlands Pacific** that it intends to withdraw from the **Star Mountains exploration joint venture** in Papua New Guinea.⁷ Anglo American will relinquish its vested 15% holding in the project, leaving Highlands with a 100% interest. The joint venture between Anglo American and Highlands was established in February 2015. Since then, Anglo American has spent a total of US\$38 million on the project, including the initial entry payment of US\$10 million to Highlands. Highlands has indicated that it will look to introduce a new partner to continue exploration efforts.

The Star Mountains exploration tenements are located appropriately 20km north of the Ok Tedi mine, in the West Sepik Province, Papua New Guinea. They lie within the highly prospective New Guinean Orogenic Belt, which hosts the Grasberg, Ok Tedi, Porgera and Hidden Valley mines.

Kingston Resources raises funds for Misima

ASX listed **Kingston Resources** has completed an oversubscribed A\$4.3m placement.⁸ Funds raised will be used predominantly to advance exploration activities at the company's **Misima Gold Project** in Papua New Guinea and the **Livingstone Gold Project** in Western Australia. Kingston Resources obtained its interest in the Misima Gold Project through its merger with **WCB Resources** last year,⁹ effected by way of a Canadian Plan of Arrangement.

Misima Island is located 625km east of Port Moresby in the Solomon Sea. Kingston Resources currently holds a 49% interest in the Misima Gold Project (with the ability to earn up to a 70% interest on satisfying certain expenditure milestones). **Pan Pacific Copper** (owned by JX Nippon Metals and Mining and Mitsui Mining and Smelting) holds the remaining interest in the Misima Gold Project.

K92 achieves commercial production at Kainantu Gold Mine

TSX-V and OTCQB listed **K92 Mining Inc.** has announced that it has achieved commercial production at its **Kainantu Gold Mine** in Papua New Guinea.¹⁰ K92 Mining said that production in January exceeded 2,700 ounces of gold equivalent (2,500 ounces of gold). The Kainantu Gold Mine is located in the Eastern Highlands province of Papua New Guinea. It was previously mined by Highlands Pacific and **Barrick Gold**.

K92 Mining said that production in January exceeded 2,700 ounces of gold equivalent (2,500 ounces of gold)

7. Highlands Pacific, 'Highlands regains 100% of Star Mountains Tenements' (ASX announcement, 8 February 2018) <<http://www.highlandspacific.com/asx-announcements>>.
8. Kingston Resources Limited, '\$4.3m Institutional Placement and \$1m Share Purchase Plan' (ASX Announcement, 6 February 2018), <<http://www.kingstonresources.com.au/news-and-announcements/>>.
9. Hayden Black, 'Kingston raises \$5M for Misima focus', *PNG Industry News* (online), 7 February 2018.
10. K92 Mining Inc., 'K92 achieves commercial production at the Kainantu Gold Mine', *K92 Mining Inc.*, 7 February 2018, <<http://www.k92mining.com/2018/02/k92-achieves-commercial-production-at-kainantu-gold-mine/>>.

MARKET OPPORTUNITIES

The AFR suggested that ASX listed Newcrest Mining might seek to capitalise on the recent decline in value to acquire a further stake in the company

Price drop on SolGold creates opportunity for investors

CEO of Brisbane-based TSX and LSE listed copper and gold company, **SolGold**, confirmed that despite the decline in share price, he would not allow the company to be taken cheaply.¹¹

The AFR suggested that ASX listed **Newcrest Mining** might seek to capitalise on the recent decline in value to acquire a further stake in the company, with current share prices almost on par with Solgold's when Newcrest successfully outbid BHP to secure its initial 10% investment in October 2016, and approximately 20% lower than when Newcrest secured its second stake in June 2017.

SolGold is the owner of 85% of **Cascabel**, a copper and gold project located in Ecuador.¹²

11. Peter Ker, 'Should Newcrest buy rock star explorer? Mining There are mixed views on the value of Solgold', *Australian Financial Review* (online), 14 February 2018.

12. Peter Ker, 'One of the past decade's best copper discoveries fizzles', *Australian Financial Review* (online), 9 January 2018.



REGULATORY UPDATES

COMMONWEALTH

Minerals Council of Australia releases pre-budget submission – calls for budget reform to ‘drive growth’

The **Minerals Council of Australia (MCA)** has released its comprehensive pre-budget submission,¹³ calling for widespread reform across a number of industry sectors to spark productivity and ensure competitiveness. The MCA submissions canvass proposed changes to taxation and royalty frameworks whilst also addressing workplace legislation and environmental and climate policy. The MCA says that reform is desperately needed to avoid a productivity decline, which would increase downward pressure on wages growth.¹⁴

The MCA’s key recommendations include:¹⁵

- Reducing Australia’s corporate tax rate to 25%.
- Enactment of legislation streamlining the process for environmental approvals between jurisdictions so as to avoid unnecessary duplication.
- Amendment of the nuclear trigger under the Environment Protection and Biodiversity Conservation Act 1999 (Cth), to remove uranium mining.
- Reform of the industrial relations legislative landscape by:¹⁶
 - limiting content in enterprise agreements to employment matters;
 - restricting adverse action provisions to discourage unreasonable claims;
 - amending provisions regarding right-of-entry for unions;
 - reforming greenfields agreements to encourage investment in new projects; and
 - permitting high income individuals to enter into discrete agreements.
- A commitment to deregulation and competition policy, including the promotion of free trade and an open economy to advance Australia’s competitiveness in the mining and energy sectors.¹⁷
- Market-based energy and climate policies with a strategic importance on the generation of new baseload energy.
- Clean Energy Finance Corporation (CEFC) financing be made available to all low emissions technologies including high efficiency, low emissions coal technologies and carbon capture and storage.

Further, the MCA has shown support for the Productivity Commission’s recommendations to enable better skilled worker training and support for programs which allow rural and regional areas access to the best employment resources.¹⁸

The MCA’s pre-budget submission provides a comprehensive review and analysis of industry challenges emphasising the importance of key reforms across a number of industry sectors that will be required if Australia is to remain competitive in the global mining and energy sector and continue to deliver benefits based on our country’s natural resources.

The MCA says that reform is desperately needed to avoid a productivity decline, which would increase downward pressure on wages growth

13. Minerals Council of Australia, *Pre-budget Submission 2018-19*, Submission, December 2017.

14. Ibid 1.

15. Ibid 3.

16. Ibid 4-5.

17. Ibid 5.

18. Ibid 11.

REGULATORY UPDATES

QUEENSLAND

Update: New progressive rehabilitation requirements for mining activities reintroduced to Queensland Parliament

After lapsing due to the Queensland State election, last year's proposed amendments to the *Environmental Protection Act 1994 (Qld)* (EPA) have been reintroduced. The changes would require a progressive rehabilitation and closure plan to accompany a site-specific application for a mining activity relating to a mining lease.

The new progressive rehabilitation requirements were first proposed in Queensland late last year, in the *Mineral and Energy Resources (Financial Provisioning) Bill 2017*, which lapsed when the Parliament was dissolved before the Queensland State election.

This proposal has now been reintroduced in the *Mineral and Energy Resources (Financial Provisioning) Bill 2018 (Bill)*, with provisions that are substantially similar to those in the lapsed bill.

Under the proposed amendments, a site-specific application for a mining activity relating to a mining lease would need to be accompanied by a proposed Progressive Rehabilitation and Closure Plan (PRC Plan).¹⁹

The purpose of the PRC Plan will be to ensure that authority holders have planned for carrying out environmentally relevant activities in a way that maximises the progressive rehabilitation of the land, and provides for the condition to which the land must be rehabilitated before an authority can be surrendered.²⁰

The PRC Plan will have to include, among other things:²¹

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

The PRC Plan will be subject to the same information request, public notification and decision-making process that applies to applications for an environmental authority under Chapter 5, Parts 3 – 5 of the EPA.

The PRCP Schedule will be attached to an environmental authority when approved,²² and may be subject to conditions, which would apply even if the environmental authority was suspended. The Bill proposes to include various offences for contravention of the PRCP Schedule.

The Bill was referred to the Economics and Governance Committee on 15 February 2018 for consideration. No information about reporting deadlines has been published to date.



Brent Lillywhite

Partner, Brisbane

Tel +61 7 3228 9420

Mob +61 416 198 893

brent.lillywhite@corrs.com.au



Eva Coggins

Lawyer, Brisbane

Tel +61 7 3228 9473

eva.coggins@corrs.com.au

19. s 103 (s 125).

20. s 104 (s 126B).

21. s 104 (ss 126C and 126D).

22. s 119 (s 181(2)(b)(iii)).

New Financial Provisioning Scheme

The *Mineral and Energy Resources (Financial Provisioning) Bill 2018* (**Bill**), also proposes to replace the existing financial assurance regime, which requires all environmental authority holders to provide a financial assurance (typically in the form of a bank guarantee) to the State, with a new regime which establishes a “financial provisioning scheme” (to be administered by a scheme manager) under which:

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

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

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

Corrs is currently compiling a comprehensive report which critically analyses the key elements of the new financial assurance regime. The report will be made available via our website.



Bruce Adkins

Partner, Brisbane

Tel +61 7 3228 9431

Mob +61 418 874 241

bruce.adkins@corrs.com.au



Stuart Clague

Special Counsel, Brisbane

Tel +61 7 3228 9784

Mob +61 419 642 249

stuart.clague@corrs.com.au



REGULATORY UPDATES

NEW SOUTH WALES

Discussion paper foreshadows changes to regulation of mine rehabilitation in NSW

The NSW Department of Planning and Environment (DPE) published *Improving mine rehabilitation in NSW* (Discussion Paper),²³ on 1 December 2017 as part of its Rehabilitation Reform Project. The Discussion Paper follows a performance audit by the NSW Auditor-General which found that security deposits collected during the development application approval process and held by DPE are insufficient to cover the full cost of each mine's rehabilitation in the event of a default by the mine operator.²⁴

The Discussion Paper seeks public feedback on several proposed changes to the rehabilitation regulatory framework for State significant mining projects. The key changes proposed include:

- the introduction of requirements for more detailed information on rehabilitation in the early stages of mine planning as part of the development application for a proposed mining project;
- new policies and principles for assessing rehabilitation including in relation to final voids;
- increased monitoring of a mining operation's rehabilitation performance; and
- greater public access to information to ensure transparency, accountability and consistency of rehabilitation actions and outcomes with development consents and management plans.

The Discussion Paper is intended to inform the development of NSW Government policy and regulatory improvements for mine rehabilitation. If adopted, the changes would have significant and costly impacts for mining operators at all stages of the mine life cycle, but particularly at the early mine planning stage and in relation to the treatment of final voids.

Many of the issues identified in the Discussion Paper were also raised by the Queensland Government in its discussion paper entitled *Better Mine Rehabilitation for Queensland*,²⁵ published in April 2017. The results of stakeholder consultation on that paper,²⁶ highlight issues which may influence the development and finalisation of the NSW reforms.

More information on the NSW Rehabilitation Reform Project can be found [here](#).



Christine Covington

Partner, Sydney

Tel +61 2 9210 6428

Mob +61 419 607 812

christine.covington@corrs.com.au



Louise Lee

Senior Associate, Sydney

Tel +61 2 9210 6121

louise.lee@corrs.com.au



Max Newman

Graduate Lawyer, Sydney

Tel +61 2 9210 6862

eva.coggins@corrs.com.au

23. New South Wales Department of Planning and Environment, *Improving mine rehabilitation in NSW*, Discussion Paper, November 2017. Available here: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Mine-Rehabilitation-Discussion-Paper>.

24. Audit Office of NSW, *Mining Rehabilitation Security Deposits*, Performance Audit, 11 May 2017. Available here: <https://www.audit.nsw.gov.au/publications/latest-reports/mining-rehabilitation-security-deposits>.

25. Department of Natural Resources and Mines, *Better Mine Rehabilitation for Queensland*, Discussion Paper, April 2017, <<https://s3.treasury.qld.gov.au/files/better-mine-rehabilitation-in-qlld-discussion-paper.pdf>>.

26. State of Queensland, *Better Mine Rehabilitation for Queensland*, Queensland Government Consultation Report, 2017, <https://s3.treasury.qld.gov.au/files/17-103_DNRM-Better-Mine-Rehabilitation-Discussion-Paper-DRAFT-6.pdf>.

OTHER NEWS

Labor promises Gladstone Port Access Road

As part of the Australian Labor Party's Plan for Real Jobs in Queensland, Labor has promised to allocate \$100 million to the next stage of the **Gladstone Port Access Road project**. In a media release on 9 February 2018,²⁷ Labor acknowledged that the upgrade was critical to ensure the Port of Gladstone, which currently supports the export of more than 100 million tonnes of commodities per year, can continue to expand capacity.

Queensland State Government invests \$28 million in West Moreton Rail Network

The Palaszczuk Government has announced a \$28 million investment to upgrade the **West Moreton rail network** linking Ipswich and Chinchilla.²⁸ The Minister for Transport and Main Roads, Mark Bailey, stated that this network "is a major artery to the Darling Downs, which is predominantly used to transport thermal coal and grains". The West Moreton rail network supports coal carrying train services from the Cameby Downs and New Acland mines.²⁹

Queensland Resources Council reports coal remains key to economic health

The **Queensland Resources Council** has reiterated the importance that coal and LNG exports play in supporting the state's economy.³⁰ In 2017 alone, 210.8 million tonnes of coal was exported from Queensland, 5% lower than previous the year due to Cyclone Debbie.

WESTERN AUSTRALIA

Pilbara Minerals plans to double annual capacity for Pilgangoora lithium project

Pilbara Minerals has delivered its stage two pre-feasibility study which proposes an increase in the throughput at its **Pilgangoora Lithium Project** to 5 million tonnes per annum.³¹ The stage 2 expansion is estimated to cost \$207 million, with construction to commence following the launch of production from stage 1 of the project in mid-2018.³²

27. Labor, 'Labor will build the Gladstone Port Access Road' (Media Release, 9 February 2018).

28. Queensland Government – Minister for Transport and Main Roads the Honourable Mark Bailey, '\$28 million to keep West Moreton rail network on track' (Media Release, 9 February 2018).

29. Queensland Rail, *West Moreton System* <<https://www.queenslandrail.com.au/forbusiness/the-regional-network/west-moreton-system>>.

30. Ian McFarlane, 'LNG exports break new records, coal delivered to the world' [Statement, 12 January 2018] <<https://www.qrc.org.au/media-releases/lng-exports-break-new-records-coal-delivered-world/>>.

31. Kristie Batten, 'Pilbara makes case for expansion', *Mining News*, 13 February 2018.

32. Ben Creagh, 'Pilbara Minerals plans Pilgangoora lithium expansion in 2018', *Australian Mining*, 13 February 2018 <<https://www.australianmining.com.au/news/pilbara-minerals-launch-pilgangoora-expansion-project-2018/>>.



SYDNEY

8 Chifley
8-12 Chifley Square
Sydney NSW 2000
Tel +61 2 9210 6500
Fax +61 2 9210 6611

MELBOURNE

567 Collins Street
Melbourne VIC 3000
Tel +61 3 9672 3000
Fax +61 3 9672 3010

BRISBANE

ONE ONE ONE Eagle Street
111 Eagle Street
Brisbane QLD 4000
Tel +61 7 3228 9333
Fax +61 7 3228 9444

PERTH

Brookfield Place Tower 2
123 St Georges Terrace
Perth WA 6000
Tel +61 8 9460 1666
Fax +61 8 9460 1667

PORT MORESBY

Level 2, MRDC Haus
Port Moresby
National Capital District 111
Papua New Guinea
Tel +675 303 9800
Fax +675 321 3780

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