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Guide to investing in the mining industry in Australia

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Australia offers significant investment opportunities for many foreign businesses and companies, particularly in the mining and resources industry.

Introduction

Australia offers significant investment opportunities for many foreign businesses and companies, particularly in the mining and resources industry. Australia is the sixth largest nation on earth by geographic area and has an abundance of natural resources, including substantial deposits of many of the world's most important minerals (bauxite, lead, zinc, uranium, nickel, copper, gold, diamonds, manganese, lithium, iron ore and coal).

The mining industry is one of Australia's most important export sectors and makes a significant economic and social contribution to the Australian economy.

Australia's wealth of resources, together with a stable social and political structure, a transparent legal system and its proximity to the key Asia Pacific and Chinese markets make it a highly attractive destination for foreign investment.

This Guide is an introduction to the key issues that an investor will need to consider when planning and structuring an investment in the Australian mining sector. For detailed advice please liaise with your usual contact at Baker McKenzie or any of the below lawyers.

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Baker McKenzie operates one of the world's largest natural resources legal teams, with mining and metals focused projects and M&A capabilities across the globe.

Australian Natural Resources Group

Global mining capability, Australian mining expertise

Baker McKenzie operates one of the world's largest natural resources legal teams, with mining and metals focused projects and M&A capabilities across the globe.

In Australia our team specializes in representing foreign companies invest in and develop projects in Australian.

How we can help

We provide commercially effective solutions at every stage of the mining life cycle.

1	**Due Diligence**	– Exploration and mining title ownership – Native title and third party interests – Contractual obligations and encumbrances – Foreign investment approvals
2	**Project Structuring**	– Joint ventures, farm-ins, farm-outs – Road, rail and port access – Co-ordination and co-use agreements, royalty agreements – Contract mining and service agreements
3	**Processing and Sales**	– Processing and toll agreements – Offtake and sales agreements – Procurement arrangements – Marketing and distribution agreements
4	**Corporate Finance**	– Primary and secondary equity raisings or issues – Placements and strategic investments – Convertible debentures, warrants and options – Trade finance, letters of credit, streaming
5	**Project Development**	– Concession and State agreements – Rail and port development – Land access and ILUAs – Project finance and security
6	**Mergers & Acquisitions**	– Takeovers and schemes of arrangement – Minority and cornerstone investments – Controlled auctions and tenders – Board control transactions

The members of our mining practice are experienced in doing business in the world's principal mining jurisdictions – Australia, North America, Latin America, Central Asia, South East Asia and Africa.

Our experience covers greenfield and brownfield investment, capital raisings, project development and joint-ventures.

Our clients include major mining companies, exploration companies, developers, investors, governments, mining contractors, minerals offtakers, commodity traders, specialist private equity and hedge funds, equipment suppliers and financial institutions involved in the mining sector.

We work closely with our clients on international structuring solutions and strategic planning advice.

We work collaboratively with our clients through all phases of a mining project, from exploration, financing, development, environmental compliance, transportation, marketing and sales and expansion, through to mine closure and remediation.

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The six States in the federation are Western Australia, South Australia, New South Wales, Victoria, Tasmania and Queensland – each with their own particular mineral wealth. In addition there are certain Territories (areas which are not within state boundaries) which are administered by the Federal government. The key mainland Territory for mining is the Northern Territory.

Australian Mining Regulatory Regime

The landscape

The six States in the federation are Western Australia, South Australia, New South Wales, Victoria, Tasmania and Queensland - each with their own particular mineral wealth. In addition there are certain Territories (areas which are not within state boundaries) which are administered by the Federal government. The key mainland Territory for mining is the Northern Territory.

Mining law and regulations

The legal framework concerning mineral rights is established, transparent and well administered. The law operates on three levels, Federal, State/Territory and local council.

1. Exploration and mining activities are primarily regulated at the State level and at the Federal level for the Territories.
2. Federal laws affect mining activities in all States, including those relating to taxation, native title rights, environmental protection and occupational health and safety.
3. Certain local council laws apply such as developmental and planning approvals.

Mining legislation governs exploration and mining activities, creating a system of mining tenure separate from land tenure. All minerals located within the State boundaries are the property of the relevant State. Ownership remains with the relevant State until such time as the mineral is first extracted. Therefore landholders, be they freehold, leasehold or native title, do not have any ownership right to minerals, although they may be entitled to compensation for the loss of the use of land due to the mining activities.

The State and Territory mining licensing regimes include at least two stages - exploration and mining. Some States and Territories also include a third intermediate stage allowing for the retention of a licence area subject to certain conditions after a mineral deposit discovery is made but before production is commercially feasible. A summary of the various types of permits across each State which can be applied for are set out in Annexure A.

Each State and Territory maintains publicly accessible title registries to facilitate confirmation of title to tenements and registration of encumbrances. Legislation also provides for circumstances where mining has priority over other land uses.

The general characteristics of a license include:

- Mining and exploration permits will generally specify minimum annual expenditure and development levels.
- Within the terms of most exploration permits, there is the right to renew the permit and/or progress to a mining lease.
- The renewal of a permit is subject to meeting certain criteria, including in some cases relinquishing parts of the original tenement.
- A transfer of a tenement or the acquisition of an interest in it typically requires the consent of the relevant Minister.
- Separate policy issues may apply to the exploration and development of uranium.

- On the grant of a mining lease, the licence holder is entitled to mine the minerals and retain the economic benefit of the minerals that have been mined, subject to payment of a royalty to the State. The amount of the royalty generally varies from 2% to 8% depending on the State and the type of mineral being mined. A summary of the various royalty rates across each State is set out in Annexure B.

Mineral reporting and classification

The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore reserves (JORC Code) is a system for classification of resource estimates prepared for the purposes of informing investors and their advisors in relation to mining and exploration companies in Australia. The JORC Code classifies mineral quantities into "mineral resources" and "ore reserves". The JORC Code requires public mineral statements or reports to be based on work undertaken by a competent person and provides extensive guidelines on the criteria to be considered when preparing reports.

The Listing Rules of the Australian Securities Exchange (ASX) expressly provides that reports prepared by mining companies or their subsidiaries with an interest in a mining lease must be prepared in accordance with the JORC Code. For further information, see the Australasian Joint Ore Reserves Committee's website at http://www.jorc.org/.

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Foreign investment in Australia is regulated by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) and government policy. Under FATA and policy, certain investments by a "foreign person" require the approval of the Australian Treasurer through the Foreign Investment Review Board (FIRB).

Foreign Investment Approvals

Foreign investment framework

Foreign investment in Australia is regulated by the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) and government policy. Under FATA and policy, certain investments by a "foreign person" require the approval of the Australian Treasurer through the Foreign Investment Review Board (FIRB). A foreign person includes a natural person not ordinarily a resident in Australia, a foreign corporation or trust, or an Australian corporation or trust in which a foreign person holds a substantial interest (20% alone or two or more foreign persons who hold a 40% interest).

FIRB approval is required for the following investment proposals:

- Acquisition of an interest of 20% or more in an Australian business valuing the aggregate target assets or shares above A$252 million or if the gross assets of the target located in Australia are valued above A$252 million; and/or
- Making an investment in a "sensitive" sector (e.g. uranium); and/or
- Acquiring an interest in "Australian land" or an "Australian land corporation".

Different thresholds apply for investments by persons from countries which have entered into a free trade agreement with Australia, and for investment in agriculture.

Regardless of whether the above dollar or ownership thresholds are met, the direct acquisition of a mining tenement will typically require FIRB approval.

If FIRB notification is required for a transaction, any agreement to acquire the relevant asset should be made conditional on FIRB's decision.

Generally speaking approvals are granted within 30 – 40 days. However FIRB reserves the right to apply for an extension of time for it to review applications, which may result in a further 90 days before approval is obtained or applicants may voluntarily agree to a 30 day extension.

Investment by foreign governments

Any direct investment by a foreign government must receive prior FIRB approval, regardless of the dollar value, with few exceptions. Investments by foreign governments are scrutinised more closely by the government, and potentially may have separate conditions or undertakings imposed as part of the approval process.

FIRB considers a "foreign government" to include companies and other legal entities in which a foreign government has more than a 20% interest, or companies and other legal entities that are otherwise controlled by the foreign government. This typically will include state owned enterprises (SOEs) and sovereign wealth funds (SWFs).

Where an entity is considered a foreign government, the following special criteria are considered by FIRB when reviewing an application:

the extent to which the investor's operations are independent of the government (i.e. to consider if there is an independent board of directors, or if the investor is listed and subject to transparent corporate governance guidelines);

whether the investor complies with law and common standards of business behaviour (i.e. are decisions made on an economic or political basis);

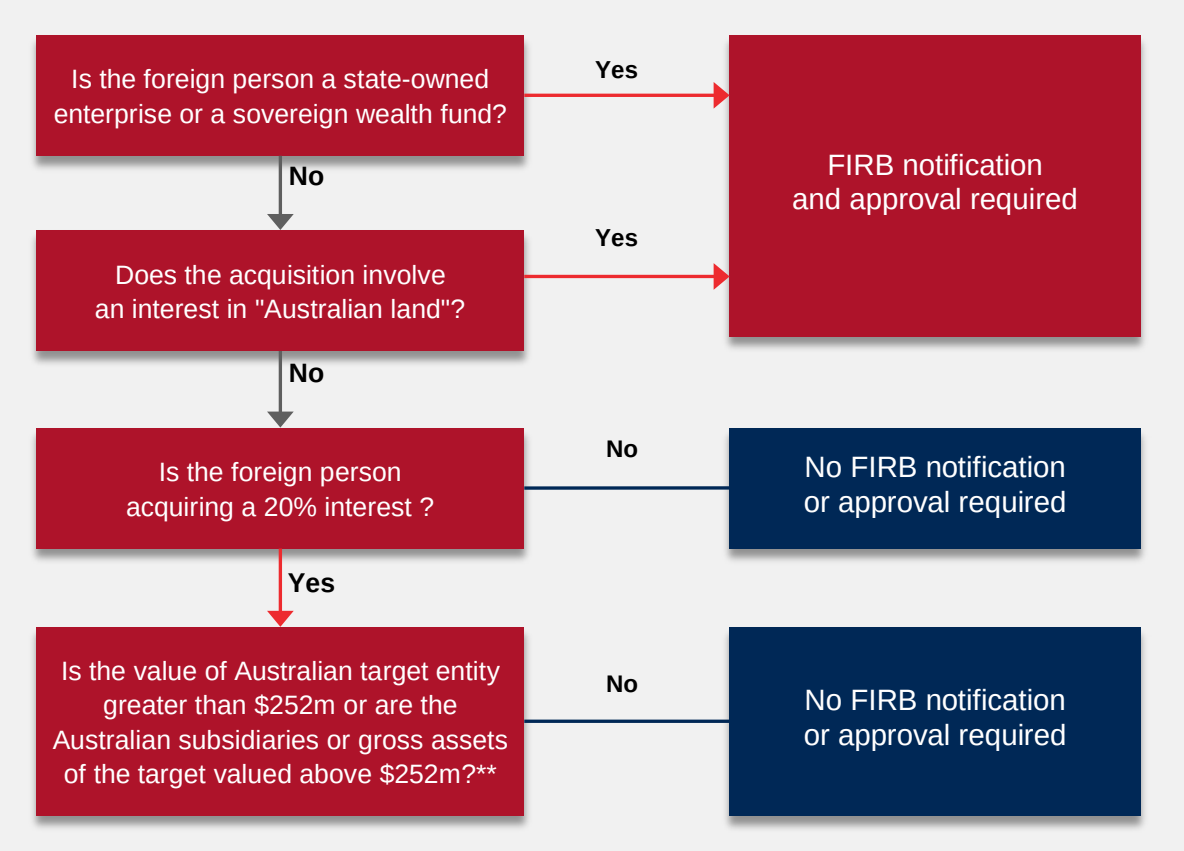
whether the proposed investment will hinder competition in Australia;

is the proposed investment structure designed to circumvent other Australian government policies (i.e. is the investor making any claim for sovereign immunity from taxes or are there transfer pricing concerns);

are there any national security issues (i.e. is the target in a sensitive sector or geographic area); and

does the proposed investment adversely impact on the Australian economy and the community (i.e. any intention to lay off workers or reduce local community support).

Foreign investment approval flowchart



*** If certain thresholds are met**

**** Separate thresholds apply to agreement country investors**

The key to successfully dealing with FIRB is to engage early, before a deal is finalised or announced, and to retain flexibility in order to address any material concerns raised by FIRB.

Baker McKenzie's team of cross-border specialists have the requisite experience in dealing with FIRB to be an effective and value-adding advisor for foreign investors.

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Investments in Australian resource projects may be made at any time in the mine lifecycle.

Investment Structures

Manner of investment

Investments in Australian resource projects may be made at any time in the mine lifecycle.

In early stage exploration, investments are commonly at the project level, and parties often adopt a joint venture structure allowing contribution of financial and technical expertise by different parties with the common aim of discovering a resource. In Australia, joint ventures may be incorporated or unincorporated.

For more mature operations, or where an investor desires a more passive role, investments may be way of the acquisition of a minority or majority shareholding of a private or listed public company.

The stage of the project and the means of entry all have different legal implications for the investor.

Unincorporated joint venture

An unincorporated joint venture (UJV) usually comprises an association of persons who by contract engage in a particular venture (e.g. exploration and prospecting for minerals in a specified area). It is not a separate legal entity and the relationship between the participants is both contractual (as set out in the joint venture agreement) and proprietary (property which is the subject of the venture is held by the participants as tenants in common).

The UJV participants generally appoint an operator to manage the exploration or production assets and enter into contracts with third parties. The operator is responsible for meeting budgets and delivering the completed product to each participant (or its agent). Key decisions concerning exploration and development activities will be made by a management committee, appointed by the parties.

The table below sets out the main features and advantages (as well as the disadvantages and risks) of a UJV.

Main features and advantages of a UJV

- Each participant is only entitled to a share of product rather than profits, enabling each participant to sell its share of product as and when it sees fit and thereby separately generate its profits.
- The liability of each participant to contribute to expenditures and to discharge liabilities of the venture can be clearly defined and limited.
- Each participant may be free to make its own financing arrangements and to give security over its interest in the joint venture
- Each participant includes its joint venture interest as part of its consolidated accounts and has the flexibility to treat its available expenditures and tax deductions (including depreciation) as it sees fit.

Risks and disadvantages of a UJV

- A UJV requires documentation of the entire relationship (i.e. it is not subject to separate regulation in the same way as companies under the Corporations Act or even partnerships under the Partnership Acts of each State). Thus to the extent an issue arises that is not provided for in the contractual documentation, there may be uncertainty as to how this is resolved.
- If the UJV participants commence acting jointly, receive income jointly and share their profits, then notwithstanding the express terms of the documents there is a risk they may be found to be a common law partnership, with the liabilities that attach to that.

Main features and advantages of a UJV

- The relationship between the participants can be clearly defined and limited by contract, and can be tailored to suit the particular circumstances required.
- There are no statutory reporting or accounting requirements for a UJV. However the operator normally keeps detailed accounts for the parties regarding the expenditures of the venture.
- Subject to the terms of the joint-venture agreement, each participant can choose to withdraw from the venture or assign its interest therein. The interests of the parties can thus be readily transferable, subject to pre-emption rights, if desirable.
- Subject to FIRB approval, there is no requirement for there to be an Australian partner or for a minimum level of Australian ownership.

Risks and disadvantages of a UJV

- Venturers are each severally liable for financing and marketing. If one venturer is unable to meet its obligations to finance the joint venture, this may jeopardise the entire venture. In practice, these risks are often minimised by provisions in the joint venture documents dealing with defaulting ventures, e.g. allowing the other participants to fund the required expenditure and dilute the participating interest of the non-contributing participant.
- Notwithstanding that each participant is liable to contribute to its proportion of expenditures and liabilities of the venture, in practice there are exceptions to this. As the manager is generally liable to third parties for the trading debts of the joint venture, the manager will then require an indemnity from participants for obligations incurred by the manager.

Incorporated joint venture

An incorporated joint venture is typically a special purpose company in which the joint venture participants are shareholders. The joint venture company has its own separate legal identity. Australian company laws will apply to many aspects of the participants' relationship (see section 7 for further details).

It is common for a shareholders agreement to be entered into by the participants which sets out further aspects of their relationship. As ownership interests are held by way of shares in the joint venture company, the shareholders agreement will regulate the participants' rights regarding transfer of ownership.

In an incorporated joint venture the liability of shareholders is usually limited to the amount of their capital contribution in the company and profits may be accumulated and re-invested by the company. Profits may be distributed by way of dividends which will be distributed after the joint venture company has itself paid tax. However, any losses of the joint venture company cannot be offset against the participants' own income.

Farm-in arrangements

To acquire a stake in an unincorporated joint venture, an investor usually agrees to enter into a "farm-in" arrangement - that is to spend an agreed amount of money and/or undertake an agreed work program in order to "earn" an agreed stake in the project. One of the key considerations of a farm-in is whether the investor will earn its interest immediately on entering the agreement or after performance of the agreed work program.

Up front vesting of the interest has its disadvantages for the tenement holder, especially as it requires divestiture of the interest if the relevant farm-in conditions are not met, and the subsequent rectification of the public tenement register.

An investor's ability to negotiate the up-front vesting of a farm-in interest is strengthened if it acquires a majority interest in the project and/or it will be the operator.

A farm-in agreement would generally contain the following obligations:

- Fulfil agreed expenditure/work program within set time frames;
- Carry out exploration and development activities according to good industry practice;
- Provide regular updates on performance and results of the work program; and
- Entry into a joint-venture agreement at an agreed stage.

Share vs Asset Acquisition

Another form of investment is for a foreign entity to acquire a company with a mining interest, or its underlying mining assets directly. The choice of structure is subject to many considerations, including those set out below.

Share Acquisition

Advantages

- A sale of shares is often simpler than a sale of assets. In an asset sale, it is necessary to separately deal with each category of asset and assumed liability. For example, mining permits will need to be transferred in accordance with legislative requirements and existing third-party contracts (such as leases, contracts with suppliers and customers, licenses and permits, intellectual property and employees) can only be transferred by mutual agreement.
- Stamp duty payable by the buyer on a share acquisition is significantly less (and may be nil depending on the place of incorporation of the target company) than on an asset sale, provided that the target company does not hold a significant proportion of land assets.

Disadvantages

- The sale of the shares of the target company involves the sale of the target company, together with all liabilities (including contingent or undisclosed liabilities such as undisclosed tax liabilities, breaches of legislation affecting the business or claims by suppliers or employees) that may have an impact on the value of the shares to be sold. Under a sale of assets, the seller retains all liabilities not specifically assumed by the buyer.

Asset Acquisition

Advantages

- The seller may more easily select which assets it wishes to divest and may find it desirable to retain the corporate entity in order to utilise tax losses.
- The buyer can be more selective when deciding which assets to purchase and more precise about the extent of liabilities being assumed and is therefore less exposed to contingent or undisclosed liabilities. This is particularly important where there is concern relating to contingent or undisclosed liabilities of the company for which adequate provision cannot be made at the time of purchase.
- Due diligence enquiries relating to the acquisition of assets would generally be less extensive than compared to a sale of shares. This usually results in less warranties and indemnities in the sale agreement.

Disadvantages

- A sale of assets is often more logistically complex than a sale of shares as it is necessary to separately deal with each category of asset and assumed liability.
- It is necessary to obtain third-party consents for formal assignments or novations of contracts, leases, licenses and permits, this may include obtaining ministerial consent to a transfer of a mining permit (see Annexure A for details).

Share Acquisition

- As the buyer would acquire the target company together with all liabilities (including contingent or undisclosed liabilities), due diligence enquiries relating to the acquisition of shares would generally be more extensive. Further, more extensive warranties and indemnities in the sale agreement may be required to deal with these risks. This particularly applies in relation to taxation aspects.

Asset Acquisition

- Stamp duty of around 5.5% (depending on the State or Territory in which the particular asset is located) is payable by the buyer on the transfer or assignment of certain assets (see section 11 for further information on taxation issues).
- Goods and Services Tax (GST) may be payable with respect to a sale of assets (see section 10 for further information on taxation issues).

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Acquiring a strategic investment in a listed Australian company or planning a takeover of an Australian listed company, are highly regulated areas in Australia. The acquisition must comply with the *Corporations Act 2001* (Cth) as well as taking into consideration applicable ASX listing rules, ASIC regulatory guides and policy statements, and potentially the guidance notes issued by the Takeovers Panel (the main forum for resolving takeover disputes).

Public Company Transactions

Investments in public companies

Acquiring a strategic investment in a listed Australian company or planning a takeover of an Australian listed company, are highly regulated areas in Australia. The acquisition must comply with the *Corporations Act 2001* (Cth) as well as taking into consideration applicable ASX listing rules, ASIC regulatory guides and policy statements, and potentially the guidance notes issued by the Takeovers Panel (the main forum for resolving takeover disputes).

Different percentage ownership levels in a listed company will have different implications for an investor and the structuring of the opportunity.

5%	The acquirer must publicly disclose level of shareholdings of it and its associates and any movements in shareholdings in excess of 1%.
> 10%	The acquirer can effectively block a rival bidder from compulsorily acquiring all the shares in the target company.
15%	The maximum share allocation that can be issued by the board for a normal listed company under Listing Rule 7.1.
20%	Acquisitions exceeding 20% are prohibited unless the acquisition is conducted in compliance with takeover laws or under the permitted exceptions (such as with shareholder approval, through a rights issue or under the 3% "creep" rule – allowing acquisitions beyond 20% to "creep" by 3% every six months).
25%	The maximum share allocation that can be issued by the board of a qualifying entity under Listing Rule 7.1A.
50%	The acquirer can unilaterally pass ordinary shareholder resolutions, including the resolutions to remove directors.
75%	The acquirer can unilaterally pass special resolutions, including resolutions to change the company's constitution or change the company's capital structure.
80%	In the case of scrip bids, capital gains tax rollover relief may be available to the selling shareholders if the acquirer obtains 80% or more of the voting shares in the target.
90%	An offeror that has received acceptance for 90% or more of the shares following a takeover bid may acquire the remaining shares compulsorily.
100%	A wholly owned Australian resident company can be tax consolidated within a corporate group to operate as a single entity for income tax purposes.

Strategic or cornerstone investments

Each investment must be considered in light of the above table. It is common for a foreign investor to acquire a 10%, 15% or 19.9% interest in a listed mining company by way of private placement. This provides a stake sufficient to effectively block a hostile takeover and one that will not require a public takeover under Australian regulations.

If negotiating a cornerstone investment, investors may consider requesting strategic ancillary rights, such as an ongoing right to appoint a director to the board of the target, anti-dilution protection against future share placements and potentially an agreed offtake right. Each of these ancillary rights have certain regulatory ramifications that must be assessed.

Size of investment

An ASX-listed company cannot issue a new placement of more than 15% of its total issued securities in any 12 month period without first obtaining shareholder approval (Listing Rule 7.1) or more than 25% if it has a market capitalisation of less than $300 million and it has approval under Listing Rule 7.1A. An investor will need to confirm the existing placement capacity of the target before entering into a placement agreement.

Director nominee

If an investor wishes to entrench a nominee on the board of an ASX-listed company, it will need to negotiate this right in the placement agreement. A director's appointment will need shareholder approval at the next annual general meeting, and also need shareholder approval at least every three years (Listing Rule 14.4). The target company will need to consider its corporate governance obligations and statements when considering any such arrangement.

Dilution protection

If an investor wishes to obtain ongoing dilution protection for its investment, it may seek in the placement agreement a right to participate in future capital raisings of the target by way of "top-up". This, however, may require a waiver from Listing Rule 6.18, which prevents an option being exercisable over a percentage of a listed company's capital

Offtake rights

In a mining-related investment, an investor may also seek an offtake agreement as part of the investment proposal. The board of the target must consider the proposed terms of the offtake agreement, having regard to market prices, and other commercial considerations.

Takeover vs Scheme of Arrangement

Under Australian law, there are two main methods for obtaining control of a listed company – a takeover bid or a scheme of arrangement. The table below sets out the main characteristics of a takeover and a scheme:

Issue	Takeover	Scheme
What does it involve	A takeover bid involves a potential acquirer making an offer to all shareholders of a target company to acquire their shares in the target company on the same terms. The bid can be off market (where written offers are made to all shareholders) or on market (where the bidder's broker stands in the market for a minimum period of one month and offers to buy all securities offered at the bid price). On market bids are relatively rare, because they must be for cash and unconditional. Most takeover bids in Australia are conducted as off-market bids.	A scheme of arrangement is a court approved arrangement between the target company and its shareholders for the transfer or cancellation of their shares in exchange for cash and/or share from the acquirer. The arrangement must be approved at a meeting of target shareholders.
Control of process	The bidder has, and retains, the initiative at all stages.	The target controls the process subject to the terms of an Implementation Agreement (which has been entered into between the bidder and the target).
Target co-operation	Not essential. A takeover can be hostile.	Essential.
Certainty of outcome	Depends on level of acceptances, which can increase gradually over time.	All or nothing, dependent on shareholder approval which is determined as at the date of Scheme Meeting.
Shareholder thresholds	Depends on the minimum acceptance condition. If the Bidder only requires control of the target, a 50% acceptance condition may be set. If the Bidder desires 100% of the target company, it will need to obtain a relevant interest in 90% of the target to effect compulsory acquisition of the remaining shares in the target.	Lower threshold to acquire 100% of the target. Shareholder approval passed by a majority in number of shareholders present and voting, holding 75% of the votes cast will ensure the bidder acquires 100% of the target.
Court approval	Not required.	Required.

Issue	Takeover	Scheme
Flexibility	Flexibility to increase offer price and waive conditions during the bid period.	Structuring of the transaction is flexible and can include reduction/return of capital, demerger, and asset acquisitions. However once the process has been commenced it can be difficult to change terms quickly without first obtaining court approval.
Timing	Similar, but dictated by how quickly acceptances are taken up and possibly if there are any rival bidders.	Similar, but dictated by the court process and timetable.

Insider trading

Under the *Corporations Act 2001* (Cth), subject to a number of defences, a person commits the offence of insider trading if that person is in possession of material non-public, price-sensitive information in relation to the price or value of listed securities and that person either trades in, agrees to trade in, or procures another person to trade in the relevant securities. Potential acquirers should be aware of this provision in circumstances where they are provided confidential information as part of due diligence. Persons convicted of insider trading can face imprisonment, among other penalties.

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Foreign investors may choose to conduct their investment in Australia through a wholly owned Australian incorporated subsidiary, or by registering as a foreign company with the Australian Securities and Investment Commission (ASIC).

The use of an Australian Company

Incorporating an Australian subsidiary vs Registering a foreign company branch

Foreign investors may choose to conduct their investment in Australia through a wholly owned Australian incorporated subsidiary, or by registering as a foreign company with the Australian Securities and Investment Commission (ASIC).

From a legal perspective, if a foreign company decides to incorporate an Australian subsidiary, the subsidiary will be a legal entity separate from its foreign parent. As a result, liabilities of the subsidiary will remain at the subsidiary level and generally there will be no recourse to the foreign parent.

If a foreign company decides to invest in Australia by registering as a foreign company, there will be no separate legal entity established and the foreign company will be responsible for any liabilities associated with the proposed investment.

Public company vs Private company

There are several types of company structures in Australia with the most common being the proprietary company limited by shares (effectively a private company) and the public company limited by shares. The key differences between these two types of companies are summarised below.

Proprietary Limited Company (Pty Ltd)	Public Company
May not have more than 50 non-employee shareholders.	Can have more than 50 shareholders. Often is listed on the Australia Stock Exchange (ASX) and subject to the ASX Listing Rules.
Must have at least one director who is ordinarily resident in Australia.	Must have at least three directors, two of whom must be ordinarily resident in Australia.
Does not need to have a company secretary, but if one is appointed, one secretary must be ordinarily resident in Australia.	Must have one company secretary who is ordinarily resident in Australia.
Shareholders can agree to permanent board appointment rights in a shareholders agreement.	If the entity is listed, notwithstanding any agreements for a major shareholder to nominate a certain number of board seats, all directors other than the managing director are required to retire by rotation (typically every three years) and be subject to re- election at the annual general meeting. New directors appointed by the board also are subject to retirement and re- election at the next annual general meeting.
Cannot raise funds through the public by using a prospectus.	Has available to it various ways of raising capital through the public or through existing shareholders.

Proprietary Limited Company (Pty Ltd)	Public Company
Shareholders can agree to non-dilutionary measures, such as pre-emptive rights to new share issues and proposed share transfers.	Given the number of shareholders in a public company, pre-emptive rights are generally not feasible. The ASX Listing Rules provides that a company may not issue more than 15% of its share capital within a 12 month period subject to certain adjustments and exceptions.
Large proprietary companies and small proprietary companies controlled by a foreign entity are required to prepare audited financial reports and directors reports, and lodge them with ASIC. Small proprietary companies controlled by foreign entities may apply for relief to ASIC. A small proprietary company is one that satisfies at least two of the following: – The consolidated revenue of the company and its controlled entities for the financial year is less than $25 million. – The total value of its consolidated gross assets at the end of the financial year is less than $12.5 million. – It has fewer than 50 employees at the end of the financial year.	Must prepare audited financial reports and directors reports as well as half yearly audit reviewed accounts and lodge these with ASIC and (if listed) with ASX.
No requirement to hold annual general meeting. If there are a small number of shareholders, resolutions can often be passed by all shareholders signing a circular resolution.	Annual general meeting must be held each year to consider the financial report and any other relevant matters.
No continuous disclosure requirements.	If a public company has more than 100 members, the entity must disclose, on a continuous basis, information that a reasonable person would expect to have a material effect on the price or value of the entity's securities. There are limited carve-outs available (e.g. for information that is incomplete and remains confidential or is a trade secret).

Duties of an Australian director

Investors should be aware of the obligations of directors in Australia. Under the Corporations Act, the directors must exercise their powers and duties by:

- using the care, diligence and skill and acting in good faith in the best interests of the company and for a proper purpose;
- not acting improperly either to gain an advantage for themselves or someone else or cause detriment to the company, and not improperly using information obtained from their position as a director either to gain an advantage for themselves or someone else;
- preventing the company from trading while it is unable to pay its debts.

The duty of care, diligence and skill requires the directors to acquaint themselves with, and take responsibility for, the running of the company. A director may not be able to argue a lack of formal training or knowledge of financial statements to avoid his or her duties, nor can directors rely unquestionably on management to satisfy their duties. A breach of the duty of care and diligence will only give rise to civil sanctions and will not provide a basis for a criminal offence.

Under the *Corporations Act 2001* (Cth), directors have a positive duty to prevent their company from trading while insolvent and civil liability (and in some cases criminal liability) may attach to the directors as a result of a breach of this requirement. If the company is insolvent when a debt is incurred or becomes insolvent by incurring the debt, then the directors risk personal liability for the debt.

Directors must avoid any actual or potential conflicts between personal interests and their duties to the company. Generally, directors have a duty to notify the Board of any "material personal interest" in a matter when conflict arises. Even if the director does not profit from a particular transaction in which they have an interest, the director may be in breach of this duty. A conflict may also arise where the director has a personal interest in a contract made by the company or when a director is a director of two or more companies which are parties to a contract. Subject to certain exceptions in the Corporations Act, a director may not take advantage of a commercial opportunity that may have been available to the company unless full disclosure to, and consent from, the company's members is obtained.

Return of funds

Under the *Corporations Act 2001* (Cth), there are various regulatory provisions relating to the return of funds to a company's shareholders.

A company may only declare and distribute dividends if the company is solvent (its assets exceed its liabilities), the dividend is fair and reasonable to the company's shareholders as a whole, and the dividend does not materially prejudice the company's ability to pay its creditors.

The return of funds by way of share buy-back or capital return can only occur if the transaction does not materially prejudice the company's ability to pay its creditors. Depending on the specific circumstances, shareholder approval may also need to be obtained either by ordinary resolution (50%) or special resolution (75%).

8

In Australia, mining exploration and production operations are subject to significant Federal and State environmental laws and regulations governing environmental protection.

Environment, Planning, Native Title and Co-use

Environmental and planning considerations

In Australia, mining exploration and production operations are subject to significant Federal and State environmental laws and regulations governing environmental protection. Governmental authorities have the power to enforce compliance with their laws, regulations and permits, and violations may result in the issuance of injunctions limiting or prohibiting operations, as well as administrative, civil and even criminal penalties. The effects of these laws and regulations, as well as the assessment of other laws or regulations that are adopted in the future, could have a material adverse impact on exploration and mining activities.

The relevant laws and regulations may:

- restrict the types, quantities and concentrations of various substances that can be released into the air, land and water as a result of drilling, production and processing activities;
- regulate the manner in which certain substances including waste is transported;
- suspend, limit or prohibit construction, drilling and other activities in certain lands lying within wilderness, wetlands and other protected areas;
- require remedial measures to mitigate pollution from historical and on-going operations such as the use of pits and plugging of abandoned wells; and
- restrict injection of liquids into subsurface strata that may contaminate groundwater.

Generally speaking, exploration and mining projects in each State or Territory require land use planning approval from the State or local government, an environmental approval from the State and Federal Government as well as approvals from the relevant State mining authority. Legislation in most jurisdictions provides for the integrated assessment of these issues.

At the Federal level, the Environment Protection and Biodiversity Conservation Act 1999 establishes a regime for protecting matters of national environmental significance. Matters of national environmental significance include threatened species, world heritage sites, certain internationally protected wetlands, designated marine areas, cetaceans, places of national heritage, nuclear actions, and water resources in relation to coal seam gas and large coal mining developments. It requires any person taking an action which could have a significant impact on matters of national environmental or heritage significance to refer the project to the Federal Minister for the Environment for consideration and potential assessment. This assessment will be subject to a public referral process, and the results of that process are considered by the Minister to determine whether the project is a "controlled action" and should be assessed under the EPBC Act. Penalties exist for non-compliance with the EPBC Act and with the approval, if one is in place.

The Commonwealth government has endeavoured to reduce the duplication between Commonwealth and State environmental impact assessment processes. There are now bilateral agreements in place between the Commonwealth and each State and Territory government to provide a single assessment process for projects that involve controlled actions. The bilateral agreements accredit the environmental assessment approaches adopted by the State or Territory governments but still require the assessment reports to be referred to the Commonwealth Minister for final approval.

Native Title considerations

Native Title is the term used to describe certain rights held by indigenous Australians in respect of traditional land and water. Native Title can only exist in relation to land or waters where the claimant group has and maintains a traditional connection with the land, and as such, Native Title is most likely to affect investments in vacant land or mining interests.

Native Title rights may include the right to possess, occupy, use and enjoy an area; have access to an area; visit and protect important places; hunt, fish and gather food and bush medicines; take water, wood, stone and other traditional resources and; conduct social, religious and cultural activities and ceremonies. There are no Native Title rights to minerals. However if Native Title rights exist over a proposed mining tenement they must be taken into account and certain procedures set out below must be complied with. In some cases compensation may be payable.

The Native Title Act 1993 and State legislation implement a national scheme, governing the validity of land dealings affecting Native Title and establishing a process for Native Title claims. A register of Native Title interests is kept. Searches may be obtained from relevant courts and the National Native Title Tribunal (an independent Federal entity established to act as an expert body) to establish whether a parcel of land is subject to a Native Title claim or interest.

An investor should investigate whether a mining tenement which it proposes to invest in is affected by Native Title. If the mining tenement has been granted, it should investigate if the correct procedures have been complied with under the Native Title Act and details of any agreements entered into.

If the proposed grant of a mining tenement is affected by Native Title rights, there are two basic ways to deal with this:

1. An Indigenous Land Use Agreement (ILUA) can be negotiated and entered into. The advantage of the ILUA is that the Agreement can be tailored to provide benefits to the Native Title claimants such as employment, compensation and recognition of their Native Title rights whilst providing certainty to the proposed mining investor in the form of protocols and agreements for future development. Other than the need to register the ILUA, this process is generally independent of the courts and the Native Title Tribunal.
2. The relevant parties must comply with the "right to negotiate" process set out in the Native Title Act and negotiate in good faith regarding the conditions of the grant of the mining tenement. Agreements arising out of the negotiations may include payment of compensation, rights to employment, training and education, heritage protection, establishment of liaison committees and dispute resolution mechanisms. Some States provide an expedited mechanism where the proposed activities involve minimal disturbance to the water and land.

National parks

Generally mining activities are not permitted in protected areas, such as areas designated as national parks without special approval. At the state level, the ministers have the power under the relevant mining laws to classify forests or wilderness areas as protected areas, with restrictions or prohibitions on mining activities. At the federal level, the *Protection and Biodiversity Conservation Act 1999* (Cth) restricts mining activities in both (a) the Territories over which the Federal government has direct control and (b) other land which the Commonwealth has jurisdiction over under the Constitution, such as land designated as national heritage or world heritage under international treaties.

Woomera Prohibited Area

A substantial part of South Australia has been classified as the Woomera Prohibited Area or WPA, which is administered by the Federal Department of Defence. Mining and exploration access to the WPA is restricted, and is divided into two regions being:

1. the "core area of operation" where mining is not permitted; and
2. the "non-core area" where exploration and mining may be permitted, subject to possible restrictions.

Projects located in this areas must apply to the Federal government for an access agreement, in consultation with the South Australian State government. In determining whether to grant an application for access in the 'non-core area', the Federal government will take into account safety, national security issues, and compatibility of the proposed mining activities with the activities of the Department of Defence. An access application can take up to 120 days for approval.

Where FIRB approval is required, the application to the Department of Defence is to be made before the FIRB application.

Strategic land

During 2012 Queensland, New South Wales and Western Australia have introduced legislation with a view to protect areas of land that are classified as being "of regional interest", strategic cropping land or prime agricultural land from the environmental impacts of mineral, gas and petroleum exploration and mining activities.

The legislation typically provides that operators wishing to conduct exploration or mining activities in an area that is determined to be strategic cropping land will not be granted an environmental authority for a project until the relevant department has assessed the impact of the project against certain criteria. If the proposed activities are high impact the project may be prohibited or restrictive conditions imposed in the environmental authority.

Co-use and royalty considerations

Mining tenements may not always grant exclusive access to a site. It is possible that a mining tenement may overlap with another use of land right or tenure (i.e. a petroleum or coal seam gas tenement or pipeline and other infrastructure rights). A potential investor should investigate all competing uses of land and consents may need to be obtained before the project can proceed. This may affect the structure chosen in making the investment.

Investors should also investigate the contractual history of a tenement. For example royalty payment obligations may attach to a mining tenement. This arises if there is a transfer of a tenement where the consideration is nominal but subject to the transferor receiving a royalty on sale of any product from the tenement should a project proceed to production.

Climate change

Australia has pledged to reduce its greenhouse gas (GHG) emissions by 5% below 2000 levels by 2020 and then further reduce its emissions by 26-28% below 2000 levels by 2030. All facilities and corporate groups that undertake activities which exceed certain emissions thresholds are required to report on their GHG emissions, energy consumption and energy production. In addition, facilities that emit more than 100,000 tonnes of carbon dioxide equivalent must ensure that their emissions stay within a pre-determined baseline. If that baseline is exceeded, the facility operator must surrender carbon units or pay a penalty. It is expected that national climate change policies will be further strengthened in coming years to address the more ambitious 2030 target.

9

Australian employment laws are derived from a number of sources including contracts of employment, awards, collective workplace agreements, Australian Workplace Agreements and State and Federal legislation, common law and decisions of Federal and State tribunals, and as such employment law can be complex.

Employment

Labour

Australian employment laws are derived from a number of sources including contracts of employment, awards, collective workplace agreements, Australian Workplace Agreements and State and Federal legislation, common law and decisions of Federal and State tribunals, and as such employment law can be complex. Notwithstanding these various sources, there are a number of minimum standards that employers need to comply with including minimum rates of pay, providing 20 days annual leave and 10 days sick/carer's leave per year and parental leave for full time employees, providing minimum levels of superannuation contributions for employees and certain minimum notice periods for termination.

Employees in the mining industry may be members of a trade union (e.g. the Construction Forestry Mining Energy Union). State and Federal industrial relations legislation regulates the internal operations of trade unions and provides for a system of registration of unions. Each trade union also has its own detailed set of rules which, among other things, specifies the eligibility requirements for employees to become members. These rules are regulated by statute. Industrial disputes are also heavily regulated by Federal and State legislation. The Federal legislation in particular sets out a framework for taking protected industrial action in the course of workplace bargaining, and recourse for employers in circumstances where industrial action is not protected.

In late 2011 the Federal government approved the Enterprise Migration Agreement Act which provides a framework for the application for visas for the import of a workforce for mega projects under the terms of a negotiated Enterprise Migration Agreement or "EMA". An EMA is available for resource projects with capital expenditure of more than $2 billion and a peak workforce of more than 1,500 workers. An EMA is negotiated bi-laterally between the project sponsor and the Federal government. To be granted an EMA, a project needs to set-out a comprehensive training plan, demonstrating how the project will invest in the up-skilling of Australians to meet future skill needs in the resources sector. If an EMA is granted, the relevant workers will be granted a 457 visa and be subject to the Worker Protection Act 2009.

Occupational health and safety

In addition to an employer's common law duties of care, occupational health and safety legislation in each State and Territory impose a number of expansive general obligations, including obligations to ensure the health, safety and welfare of their employees at work, and ensure that persons other than their employees are not exposed to risks to their health or safety arising out of the employer's business.

Occupational health and safety legislation is strict liability (i.e. there is no requirement of intent or any other mental element), criminal legislation. The statutory obligations are deliberately wide and general, but employers must also be aware of the increasingly complicated web of specific obligations which are provided for by other sources, including occupational health and safety regulations, codes of practice, court decisions, safety alerts and Australian Standards.

The focus of the legislation is not accidents but risks. There does not need to be an accident or injury in order for an offence to be established. There simply needs to be a risk to health and safety. An obvious example is the risk where an employer allows an employee to use an inadequately guarded piece of machinery, irrespective of whether the employee ultimately injures himself or herself. Employers have limited defences to these very broad obligations.

10

Australia has various taxation regimes which are imposed at either Federal and State level. Federal taxes include income tax, withholding tax, goods and services tax and capital gains tax.

Taxation

Australia has various taxation regimes which are imposed at either Federal and State level. Federal taxes include income tax, withholding tax, goods and services tax and capital gains tax. The most important State based tax is stamp duty.

Corporate tax

Companies which have been incorporated in Australia or carry on business in Australia are liable to pay company tax at a rate of 30% on their worldwide income. Wholly owned Australian group companies can choose to be taxed as a single entity.

Dividends paid by a resident company to a non-resident shareholder are generally subject to dividend withholding tax of 30%. However, the rate of withholding tax may be reduced by an applicable double tax agreement (typically to 15%, e.g. the double tax agreements with China and India). No withholding tax applies to franked dividends (i.e. a dividend paid out of profits of the resident company from which underlying Australian corporate tax has been paid).

In the case of a royalty, a withholding tax is applicable at a rate of 30%. However this can be reduced if the recipient of the royalty is a resident of a country with which Australia has a double tax agreement (e.g. the double tax agreement with China reduces this to 10%).

Capital gains tax

Capital gains tax is payable on any gain on the disposal of any Australian asset, including real property, shares and mining, quarrying or prospecting rights. The rate of tax is the same as the taxpayer's assessable income, which for Australian companies will be 30%. Most capital losses can be carried forward and set off against future capital gains.

Goods and Services Tax

Goods and Services Tax (GST) is a broad based consumption tax on supplies of goods, real property, intangibles, services and other rights in the course of an enterprise. The rate of GST is a flat rate of 10% on all taxable supplies. The GST operates in the same way as similar value added taxes in comparable jurisdictions such as Canada, the UK and New Zealand. While makers of taxable supplies will be liable to GST on those supplies, generally speaking this payment is passed onto the recipient of the supplies. To recoup GST charged in the purchase price of an acquisition or third party services, the recipient must, among other requirements, be registered for GST purposes. The recipient will be entitled to claim back the GST paid to the supplier as input tax credits from the Australian Tax Office where certain conditions are met.

Certain exports (both goods and services) may be GST-free. The purchase of a business by way of a sale of assets may be a supply of a "going concern" that is GST-free provided certain requirements are met. In broad terms, a going concern is an operating enterprise that the vendor carries on until the date of sale when the buyer is provided with all things necessary for its continued operation.

Stamp duty

Stamp duty is a tax levied on transactions by State and Territory governments, including certain dealings in property, transfers of business assets and transfers of some marketable securities. The legislation imposing duty varies between States and Territories. Different rates of duty apply to the dealings in different types of transactions. A party to a transaction subject to duty will usually not be able to enforce its rights under the contract unless the relevant document has been presented at the appropriate Revenue Office and been duly stamped.

All States and Territories impose duty on the acquisition of land interests, including certain mining tenements at a rate of around 5.5%. Transfers of shares in entities which are "land rich" also attract stamp duty at that same rate. In certain cases this may extend to a change of control of an overseas parent.

Duty is levied in certain States and Territories on the acquisition of business assets, including plant and equipment, inventories/stock-in-trade, trade receivables and also intangible property (e.g. goodwill and intellectual property) at a rate of around 5.5%.

For further information, please contact your usual contact at Baker McKenzie.

Annexures

Appendix 1 – Mining tenements in the different States and Territories

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Queensland – Mineral Resources Act 1989			
Prospecting permit (PP)	Entitles holder to prospect for and/or hand mine minerals (excluding coal) and/or peg a mining lease or mining claim on the specified land.	Parcel: 3 months District: 1-12 months Not renewable.	PP not transferable.
Exploration permit (EP)	Allows holder to take action to determine the existence, quality and quantity of minerals on, in or under land by low-impact methods which include prospecting, geophysical surveys, drilling, and sampling and testing of materials to determine mineral bearing capacity or properties of mineralisation. Different permits required for coal and for all minerals other than coal.	Up to 5 years. Renewable subject to timing restrictions. Maximum term of renewal is 5 years in aggregate (but Minister has discretion to extend).	Prior written consent of Minister is required to assign any interest in an EP, otherwise not effective.
Mineral development licence (MDL)	Allows holder to undertake geoscientific programs (e.g. drilling, seismic surveys), mining feasibility studies, metallurgical testing & marketing, environmental engineering & design studies to evaluate the development potential of the defined resource.	Maximum term 5 years (but Minister has discretion to extend), to extend must show significant mineral occurrence of possible economic potential.	Cannot assign or mortgage MDL without Minister's consent.
Mining claim (MC)	Entitles holder to prospect for and hand-mine for specified minerals (other than coal). Usually granted to prospecting permit holders to carry out small-scale operations with limited use of machinery and if authorised, moderate use of explosives when hand mining.	Initial term cannot exceed 10 years. Maximum term of renewal is 10 years. To renew must show evidence that land contains workable quantities of mineral or mineral bearing ore.	Prior written consent of Minister is required to assign MC.
Mining Lease (ML)	Granted for mining operations. Entitles holder to machine-mine specified minerals and carry out activities associated with mining or promoting the activity of mining.	Term as per the terms of the ML. Renewable unless a condition of the ML is that it cannot be renewed.	Consent of Mining Registrar required to assign or mortgage ML.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
New South Wales – Mining Act 1992			
Exploration Licence (general) (EL)	Permits works to be carried out and samples to be removed from land for the purpose of testing its mineral bearing qualities. Rights limited to the group or groups of minerals specified in the grant. Licensee has rights of way and rights to use water and timber.	Maximum term is 5 years. If application for an AL, ML or MC is made the term continues until application is determined, for up to 2 years. Renewable for up to 5 years.	Prior written consent of Minister is required.
Low-Impact Exploration Licence (LIEL)	A special type of EL that can be granted if the Minister is satisfied that the prospecting operations are unlikely to have a significant impact on the land.	As per EL.	Prior written consent of Minister is required.
Assessment Lease (AL)	Enables holder to carry out a more detailed evaluation of mineral deposits found or to assess the commercial viability of developing the mineral or both. Covers intermediate period between EL and ML.	Maximum term is 5 years. If application for ML or MC is made the term is extended until application is determined. Renewable for up to 5 years.	
Mineral Claim (MC)	Allows holder to carry out mining purposes. Particular minerals may be specified in the grant.	Maximum term is 5 years. Renewable for up to 5 years. If application for ML or AL is made the term is extended until application is determined.	Prior written consent of Mining Registrar is required.
Mining Lease (ML)	Authorises the prospecting and mining of minerals specified in the lease. Allows holder to carry out primary treatment to separate minerals from the ore.	Maximum term is 21 years. Renewable, provided within maximum term.	Prior written consent of Minister is required.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
South Australia – Mining Act 1971			
Miner's Right (MR)	Allows the holder to prospect (but not to mine) for minerals (other than precious stones) over a small area. Allows right to peg out a mineral claim. Does not authorise the conduct of mining operations that involve the disturbance of land by machinery or explosives.	Term is 3 years. Renewable for a further period of up to 3 years.	No.
Mineral Claim (MC) (Important as a ML may only be granted to holder of a registered MC or a RL)	Gives exclusive right to prospect for minerals and carry out other exploratory operations (including geophysical surveys) in writing by the Director of Mines. Also provides holder with exclusive right to apply for a ML or RL, but such application must be made within 12 months of registration of the MC. Does not permit mining and without Director's authority cannot remove >1t of minerals from claim area. Ownership of MC does not give right to sell minerals recovered nor use the minerals for any commercial or industrial purpose.	Maximum term is 12 months from the registration of the claim. If application is made for a ML or RL the claim continues until the application is determined. Not renewable.	No.
Exploration Licence (EL)	Authorises licensee to explore for minerals (except for extractive minerals and precious stones outside of an opal development area) to establish the extent of a mineral deposit and to prospect on the licence area. An EL does not give the holder priority to the grant of a ML because a registered MC must first be obtained.	Maximum term is 5 years	Minister's written consent is required to assign, transfer, sublet or make the subject of a trust or other dealing (directly or indirectly) an EL or an interest in an EL, otherwise such transaction is void. EL may be charged without consent, but to enforce the charge by assignment or transfer requires consent.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Retention Lease (RL)	Gives holder exclusive right to prospect for minerals and such other rights to conduct mining operations as are stipulated in the lease instrument. Gives exclusive right to apply for a ML in respect of that land. Cannot object to grant of RL, but landowner may object to entry upon land.	Maximum term of 5 years. Renewable for a further term of 5 years.	Minister's written consent is required to assign, transfer, sublet or make the subject of a trust or other dealing (directly or indirectly) a RL or an interest in a RL, otherwise such transaction is void. RL may be charged or mortgaged without consent, but to enforce the charge requires consent.
Mining Lease (ML)	A ML may be granted to holder of a registered MC or RL. Gives exclusive right to conduct mining operations and authorises holder to sell or dispose of minerals recovered in the course of mining operations or to utilise those minerals for commercial / industrial purpose.	Maximum term of 21 years. Renewable, provided term doesn't exceed 21 years in aggregate.	Minister's written consent is required to assign, transfer, sublet or make the subject of a trust or other dealing.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Tasmania – Mineral Resources Development Act 1995			
Prospecting Licence (PL)	Authorises holder to map any area of land to which the licence relates and collect rock, mineral, water and soil samples by hand and take geophysical measurements using hand- held instruments. Can prospect on any Crown land which is not subject to a mineral tenement, or on any other land where consent of owner, occupier or tenement holder is first obtained.	Maximum term is 1 year. Not renewable.	No.
Exploration Licence (EL)	Authorises holder to enter on and pass over any Crown land and private land. May explore for minerals specified in licence. Allows licensee to undertake means to determine the existence, quality and quantity of minerals for purposes of commercial exploitation, including conducting various surveys, drilling and the use of appropriate instruments, equipment and techniques, and to take samples and extract and remove from land material, mineral or other substances for sampling and testing.	For category 1, 2 & 3 minerals: 5 years. For category 4 minerals: in force for a period determined by Minister. Possible to apply for extension.	Written consent is required from Minister to transfer EL.
Retention Licence (RL)	Confers right to carry out series of studies and tests to evaluate potential for mining. Authorises holder to enter on and pass over any Crown land and private land, provided consent of owner/occupier is obtained to enter and pass over private land.	Maximum term is 5 years. Renewable for further periods each not exceeding 5 years.	Written consent is required from Minister to transfer RL or application for RL.
Mining Lease (ML)	Authorises carrying out mining operations. Authorises holder to enter on and pass over Crown land and private land, provided consent of owner/occupier is obtained to enter and pass over private land.	In force for period determined by Minister. Renewable for further periods determined by Minister with a maximum term of 20 years.	Minister's written consent is required to sublease or transfer ML.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Victoria – Mineral Resources (Sustainable Development) Act 1990			
Miner's Right (MR)	For small scale prospecting. Does not allow the use of equipment (other than non-mechanical hand held tools) or explosives on the land.	Maximum term is 2 years. Not renewable.	No.
Exploration Licence (EL)	Allows licence holder to conduct geological, geochemical and geophysical surveys, drill, take samples for chemical and other analyses, extract minerals from the land (other than to produce them commercially) and to do all other things that are specified in the licence.	Maximum term is 5 years, subject to the Minister's discretion. Renewable for maximum aggregate term of 5 years subject to certain timing requests.	EL cannot be transferred within first year. With Minister's consent, can transfer EL any time after this. Application for EL cannot be transferred.
Mining Licence (ML)	Entitled to explore for minerals, construct facilities specified in licence (including roads, tailings dams, etc.) and do anything incidental to mining. Only minerals may be mined. Water, petroleum, peat and stone cannot be mined under a ML.	Maximum term is 20 years, subject to the Minister's discretion. May be renewed for period of 20 years.	If instrument of transfer is approved by Minister, can transfer ML No prohibition against assignment of an equitable interest in a ML. Application for ML cannot be transferred.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Western Australia – Mining Act 1978			
Prospecting Licence (PL)	Allows holder to enter land to prospect for minerals with employees and contractors and vehicles, machinery and equipment as may be necessary or expedient. Allows prospecting for minerals and undertaking of operations and works necessary for that purpose. Can excavate or remove earth, soil, rock, stone, fluid or mineral bearing substances not exceeding a prescribed amount. Rights to use water are conferred. Iron ore cannot be prospected without Minister's authority. Can be made over only subsurface rights – where surface rights are then subsequently sought, additional notice requirements and consents will be required.	Maximum term is 4 years, but where application to convert from PL to ML is being determined, PL will continue. Renewable, for period(s) of 4 years at a time. Holder may not mark out ground once again for a PL or EL during a 3 month moratorium period	Yes, PL may be transferred freely and without requirement for consent at any time.
Special Prospecting Licence for Gold (SPLG)	After 12 months from the grant of a PL or EL, any person may mark out any part of the PL or EL as a SPLG. Prevents prospecting for any mineral other than gold. Confers right to apply for ML for Gold (under which mining amounts are limited). Continues in force even when RL, ML or general purpose lease is applied for and/or granted.	3 months or any period which is a multiple of 3 months, which does not exceed 4 years. Not renewable.	
Exploration Licence (EL)	Allows holder to enter land and undertake operations for the purposes of exploration for minerals . The holder of a current EL has the right to apply for one or more MLs or one or more GPLs (or a combination of both) in respect of the land the subject of that EL. Confers priority right to apply for ML. Applicant must be same as EL holder, but if transfer after application is made then application will continue in name of transferee.	5 years, but where application to convert to ML is being determined, EL will continue. Minister may extend term by one further period of 5 years, followed by a further period(s) of 2 years each.	The consent of the Minister is required for the transfer of an EL if it is to be transferred within the first year of the licence. Otherwise, the consent of the Minister is not required. An EL application is not transferable.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Retention Licence (RL)	Authorises entry to land and to take such plant and carry out such works as are necessary for further exploration. Can remove mineral bearing substances up to 1,000 tonnes and take water. Iron ore requires Minister approval. Confers priority right in competing applications for ML .	Maximum term is 5 years. May be renewed for further periods not exceeding 5 years.	Written consent is required from Minister to transfer or mortgage interest in RL.
Mining Lease (ML)	Allows holder to do all acts and things necessary to carry out mining operations effectively. An application for an ML is accompanied by a notice of intent to commence productive mining operations or a mineralisation report prepared by a qualified person and a statement setting out information about proposed mining operations. A mining lease accompanied by a "mineralisation report" will only be approved where the Director of Geological Survey considers that there is a reasonable prospect that the mineralisation identified will result in a mining operation.	21 years. May be renewed for successive periods of 21 years.	Prior written consent of Minister is required to assign ML. Failure to receive such consent will result in a breach of a condition of the ML. A ML application is not transferable.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Northern Territory – Mining Act 1980			
Exploration Licence (EL)	Includes the right to enter the land and undertake operations for the purposes of exploration for minerals. An exploration licence does not, in respect of the licence area, prevent the granting of an extractive mineral permit or extractive mineral lease to a third party.	Maximum term 6 years. Renewable for two further 2 year terms.	Prior written consent of Minister is required to transfer EL.
Miner's Right (MR)	Authorises entry onto certain land for survey and reconnaissance work to establish its exploration potential and to mark out the land.		
Exploration Retention Licence (ERL)	Permits evaluation of the feasibility of an iron ore body, or anomalous zone of possible economic potential, for further development via geological, geochemical and geophysical programs, mining feasibility studies, metallurgical tests, environmental studies, marketing studies and engineering and design studies.	Maximum term 5 years. Yes, for 5 years and further renewal is also permitted.	
Mineral Claim (MC)	Permits small scale mining.	Maximum term is 10 years. Renewable for further 10 years.	
Mineral Lease (ML)	The rights of the holder of a mineral lease are set out in section 60 of the Mining Act and include the right for the holder to do all acts and things necessary to carry out the mining of minerals and for other purposes in connection with the mining of minerals.	A mineral lease remains in force for a term determined by the Minister and upon expiration of that term can be renewed for a further term not exceeding 25 years.	Prior written consent of Minister is required to transfer ML.

Appendix 2 – Royalty rates in the different States and Territories 2016

Queensland – Mineral Resources Act 1989; Mineral Resources Regulation 2013

Royalties payable (all royalties in A$)

- Variable royalty rate for a prescribed mineral (cobalt, copper, gold, lead, nickel, silver and zinc): 2.5% and 5% of value (varying in 0.02% increments) depending on average quarterly market price and specified reference prices
- Clay shale, clay used for fired clay products, gypsum, lime, earth, sand, gravel and rock (other than rock mined in block or slab form for building and monumental purposes): $0.50 per tonne
- Feldspar, limestone, wollastonite: $0.75 per tonne
- Silica: $0.90 per tonne
- Calcite, dolomite, kaolin, marble, perlite, rock mined in block or slab form for building and monumental purposes: $1 per tonne
- Diatomite, magnesite, mica, salt: $1.50 per tonne
- Bentonite: $1.80 per tonne
- Bauxite: for export use – higher of 10% of the value of the bauxite or $2 per tonne; for use within Queensland – higher of 75% of the calculated rate per tonne of export bauxite or $1.50 per tonne.
- Coal: 7% of the value for average coal prices up to and including $100 per tonne. The royalty rate for average coal prices between $100 and $150 and average coal prices greater than $150 are determined by a formula prescribed in the regulations
- Corundum, gemstones and other precious stones: 2.5% of the value of the mineral (no royalty payable on the first $100,000 per annum)
- Manganese, molybdenum, rare earths, tantalum and tungsten: 2.7% of the value of the mineral (no royalty payable on the first $100,000 per annum)
- Mineral sands (including anatase, ilmenite, leucoxene, monazite, rutile and zircon): 5% of the value of the concentrate
- Phosphate rock: higher of $0.80 per tonne or the rate determined by the formula in the regulations
- Iron ore: where average price per tonne is $100 or less - $1.25 per tonne. Where average price per tonne is greater than $100 - the higher of 1.25% of the value or the amount calculated according to the formula in the regulations
- Uranium: where the average price per kilogram of uranium is $220 or less - 5% of the value of the uranium; where the average price per kilogram of uranium is more than $220 - the amount calculated according to the formula in the regulations (no royalty payable on the first $100,000 per annum)

Other minerals not prescribed in regulations: 2.5% of value

Discounts may apply where cobalt, copper, iron ore, lead, manganese, molybdenum, nickel, tantalum, tungsten and zinc are processed in Queensland

Where more than one mineral with a threshold exemption for the first $100,000 per annum is mined, the mining operation must nominate one of the minerals to receive the exemption

New South Wales – Mining Act 1992; Mining Regulation 2003

Royalties payable

- Agricultural lime, bauxite, chert, clay/shale, gypsum, structural clay: $0.35 per tonne
- Calcite, dolomite, halite (including solar salt), limestone, magnesium salts, potassium salts, sodium salts: $0.40 per tonne
- Barite, bentonite (including fuller's earth), borates, chlorite, diatomite, dimension stone, feldspathic materials, fluorite, kaolin, magnesite, marble, mica, mineral pigments, olivine, peat, perlite, phosphates, potassium minerals, pyrophillite, quartzite, reef quartz, serpentine, sillimanite-group minerals, staurolite, talc, vermiculite, wollastonite, zeolites: $0.70 per tonne
- Coal: 6.2%-8.2% of value, depending on how it is mined (8.2% of value of open cut coal, 7.2% of value of underground coal, 6.2% of value of deep underground coal) plus the additional rate of 1.0% of the value of coal less the applicable MRRT offset amount (as calculated according to the formula in the regulations)
- Any mineral not specified in regulations: 4% of value

South Australia – Mining Act 1971; Mining Regulations 2011

Royalties payable

- Extractive minerals (sand, gravel, stone, shell, shale, or clay but not any such minerals mined for a prescribed purpose, or fire clay, bentonite or kaolin): $0.55 per tonne sold / extracted
- A prescribed purpose includes chemical, cement, lime and glass manufacture; metallurgical flux, refractories and industrial fillers; foundries, fertiliser, agricultural, jewellery and crafted ornamental uses; and any purpose connected with the production of dimension stone
- Declared industrial minerals (including extractive materials that are mined for a prescribed purpose, gems and semi-precious stones, alunite, andalusite, anatase, barite, calcrete, celestite, cement shale, diamond, diatomite, dolomite, feldspar, garnet, graphite, gypsum, ilmenite, kaolin, kyanite, leucoxene, lime sand, limestone, magnesite, marble, mica, micaceous hematite, monazite, palygorskite, peat, phosphate, potash, rutile, salt, shell grit, silica, silica sand, sillimanite, talc, vermiculite, wollastonite, xenotime, zircon)): 3.5% of value
- Refined metallic minerals with a metal content of at least 95 per cent (including copper, gold, silver, lead and zinc) (): 3.5% of value
- Declared mineral ores and concentrates (including iron ore and other iron bearing substances, uranium oxide concentrate, heavy mineral sand ores and concentrates, coal including lignite and other metallic mineral ores and concentrates such as those that contain copper, uranium, gold, silver, lead and zinc): 5% of value
- In any other case: 5% of value

New mines (as declared by Minister on application) are eligible for a concessional rate of 2% royalty for the first five years. This is not available for extractive minerals

Tasmania – Mineral Resources Development Act 1995; Mineral Resources Regulations 2006

Royalties payable

- Clay, kaolin, dolomite (metallurgical and chemical use), limestone (metallurgical and chemical use), iron oxide (pigment manufacture use): $1.32 per tonne
- Dolomite (other uses), limestone (other uses), magnesite (other uses), silica (other uses excluding silica flour), sand, gravel, and crushed and broken stone: $0.66 per tonne
- Silica (metallurgical use), magnesite (metallurgical and chemical use): greater of $1.32 per tonne or 5.35% of value
- Pebbles: $2.64 per tonne
- Building and dimension stone: $5.50 per cubic metre
- Geothermal substance: 2.5% of value of the sale at the well head.

Victoria – Mineral Resources (Sustainable Development) Act 1990; Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013

Royalties payable

- Lignite (brown coal): in accordance with formula prescribed in s 12A of the Act
- Tailings from Crown land disposed under s 14(2)(b) of the Act: $1.43 per cubic metre
- All minerals other than gold and lignite (including cobalt, copper, iron ore): 2.75% of the net market value
- Minerals not prescribed in regulations: specified in licence after consultation by the Minister with the licensee

Western Australia – Mining Act 1978; Mining Regulations 1981

Royalties payable

- Aggregate, clays, dolomite, gravel, gypsum, limestone for agricultural/construction, rock, salt, sand: royalty amount determined in reference to the formula specified in regulations
- Building stone, limestone (metallurgical purposes), silica, talc: royalty amount determined in reference to the formula specified in regulations
- Attapulgite, chromite, feldspar, ilmenite, iron ore (beneficiated ore), kaolin, leucoxene, lithium minerals, beneficiated manganese, ochre, rutile, spongolite: 5% of royalty value
- Bauxite, exported coal (including lignite), diamond, gems and precious stones, iron ore (other than beneficiated ore), manganese, semi-precious stones: 7.5% of royalty value
- Coal (including lignite) that is not exported: $1 per tonne, to be adjusted each year in accordance with the % increase of the average ex-mine value of Collie coal when compared to the corresponding value of Collie coal for the year ending on 30 June 1981
- Cobalt, copper, lead, zinc: 5% of royalty value if sold as concentrate; 2.5% of royalty value if sold in metallic form, formula specified in regulations if cobalt or copper is sold as nickel by-product

Western Australia – Mining Act 1978; Mining Regulations 1981

Royalties payable

- Garnet: 2.5%-5% of value depending on grade
- Nickel: in accordance with formula specified in regulations
- Platinoids, silver: 2.5% of royalty value
- Rare earth elements: in accordance with formula specified in regulations
- Tantalum: 5% of either royalty value or value in concentrate (depending on the form it is sold in)
- Tin: 2.5% of either royalty value or value of the contained tin calculated at ruling price during sale, depending on form it is sold in
- Uranium: 5% of the royalty value if sold as a uranium oxide concentrate
- Vanadium: 5% of vanadium pentoxide price if sold as concentrate (vanadium oxide); 2.5% of ferrovanadium price if sold in metallic form
- Zircon: 5% of the royalty value
- Gold: 2.5% of the royalty value (first 2,500 ounces produced per year and obtained from the same gold royalty project is royalty-free)
- Ilmenite feedstock of marketable quality: 5% of its value; ilmenite feedstock that is not of marketable quality: $1.50 per tonne indexed in accordance with the regulations

Northern Territory –Mineral Royalty Act 1982

Royalties payable

- All minerals: 20% of the net value of saleable mineral commodity (where net value is $50,000 or less - no royalty payable; where net value is $50,000 or more - royalty otherwise payable is reduced by $10,000)

Appendix 3 – Useful links

The following is a list of useful websites of various government departments providing information relevant to the Australian mining regulation and investment environment.

Government links

Federal	
Australian Government Department of Resources, Energy and Tourism	http://www.ret.gov.au/Pages/default.aspx
Queensland	
QLD Department of Natural Resources and Mines	http://mines.industry.qld.gov.au/
QLD Department of Environment and Resource Management - Natural Resources and Water	http://www.derm.qld.gov.au/
QLD Department of Environment and Resource Management – Native Title	http://www.derm.qld.gov.au/nativetitle/index.html
QLD Government	http://www.business.qld.gov.au/industry/mining
New South Wales	
NSW Department of Trade and Investment - Mining Resources	http://www.business.nsw.gov.au/industry/mining/
NSW Department of Trade and Investment, Resources and Energy– Minerals & Petroleum	http://www.resources.nsw.gov.au/
NSW Office of Environment and Heritage	http://www.environment.nsw.gov.au/
NSW Government Mine Subsidence Board	http://www.minesub.nsw.gov.au/templates/mine_subsidence_board_hp.aspx?pageID=3824
South Australia	
SA Department of Primary Industries & Regions	http://www.pir.sa.gov.au/
SA Department of Primary Industries & Regions – Minerals	http://www.pir.sa.gov.au/minerals
SA Department of Environment	http://www.environment.sa.gov.au/
Tasmania	
TAS Department of Infrastructure, Energy & Resources	http://www.dier.tas.gov.au/
TAS Infrastructure and Resource Information Service (IRIS) – Mining	http://www.iris.tas.gov.au/resource_industry/mining
TAS Department of Primary Industries, Parks Water and Environment	http://www.dpiw.tas.gov.au/inter.nsf/Home/1?Open
Victoria	
VIC Department of Primary Industries – Minerals & Petroleum	http://www.dpi.vic.gov.au
VIC Department of Sustainability and Environment	http://www.dse.vic.gov.au/

Western Australia	
WA Department of Mines & Petroleum	http://www.dmp.wa.gov.au/
WA Department of Commerce	http://www.commerce.wa.gov.au/index.htm
WA Department of State Development	http://www.dsd.wa.gov.au/
Northern Territory	
NT Department of Mines and Energy	http://www.nt.gov.au/d/Minerals_Energy/
NT Department of Lands, Planning and the Environment	http://www.dlp.nt.gov.au/

Native Title links

National Native Title Tribunal	http://www.nntt.gov.au/
Native Title Representative Bodies	https://www.ntrb.net/
Registrar of Aboriginal Corporations (ORAC)	http://www.orac.gov.au/
Torres Strait Regional Authority	http://www.tsra.gov.au/
Attorney General's Department, Native Title Division	http://www.ag.gov.au/LegalSystem/NativeTitle/Pages/default.aspx

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