Guide to investing in the oil & gas industry in Australia

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Introduction

Australia has invested heavily in the petroleum industry with significant oil and gas resources which are exported and used domestically. With continued population growth and the ever-increasing need for energy, Australia has a strong growth potential in expanding production and increasing exportation of petroleum.

Australia has about 0.3% of the world oil reserves. According to the Oil & Gas Journal, Australia held more than 1.4 billion barrels of proved oil reserves as of 1 January 2014. Geoscience Australia reported economic reserves, which include proved and probable commercial reserves, of nearly 3.8 billion barrels as of December 2012, composed of 0.9 billion barrels crude oil, 1.9 billion barrels condensates and 0.9 billion liquefied petroleum gas (LPG). The majority of oil and gas reserves are located off the coast of the states of Western Australia, Victoria and the Northern Territory. The two largest oil-producing basins are the Carnarvon Basin in north western Australia and the Gippsland Basin in south eastern Australia. Carnarvon Basin production, accounting for 61% of total liquids production in 2013, is mostly exported, while Gippsland Basin oil production, representing a 19% share in 2013, is predominantly refined for domestic use. Onshore basins, mostly found in the Cooper Basin, account for 5% of the oil resources.

Although Australia is not producing from oil shale, the Australian Bureau of Resources and Energy Economics reported that the country has resources of about 14 billion barrels of demonstrated or potential reserves, mostly located in Queensland. Australia also holds shale oil or tight oil reserves, estimated to be around 18 billion barrels of technically recoverable reserves, located in various areas of Australia, according to a 2013 U.S. Energy Information Administration study on world shale oil and natural gas resources.

Australia also possesses substantial gas resources. It has largest natural gas reserves in the Asia-Pacific region. Production of natural gas has significantly increased over the past decade as a result of new gas field developments (including from coal seam gas) and increased export demand, largely due to policy shift within Asia that encourages increased consumption of cleaner gas-produced energy. Conventional gas resources are widespread both on and offshore, occurring in 14 different basins, with the most being off the north-west margin in the Bonaparte, Browse and Carnarvon basins. As at 1 January 2011, Australia is estimated to have 788.79 billion cubic meters of proved and probable gas reserves.

Initial evaluations indicate that Australia's shale gas resources have the potential to contribute to the Australian energy portfolio, although there is currently limited commercial production of shale gas. The US Energy Information Administrates estimates that "technically recoverable" shale gas resources in Australia are 396 trillion cubic feet (tcf). Western Australia alone was estimated to be holding the fifth largest reserves of shale gas in the world; approximately double the amount of gas held in WA's offshore conventional fields. In Australia, exploration mainly targeting shale gas is being undertaken in the Cooper (QLD, SA), Georgina (QLD, NT), Gailee (QLD), Bowen (QLD), Sydney (NSW), Canning (WA), offshore Perth (WA), Beetaloo (NT) and McArthur (NT) basins.

Australia has the capacity to liquefy and export its gas via existing and proposed LNG terminals on both the east and west coast. It has constructed significant infrastructure to transport gas to the domestic markets or LNG plants. Companies invest in the Australian energy industry not only because of Australia's proximity to growth hubs in Asia but also because of legal certainty for long-term investments provided by the Australian government, as compared to other jurisdictions with similar petroleum resources in the region. This combination of strong regional demand, extensive reserves, significant existing infrastructure and strong investment certainty makes Australia one of the most popular petroleum investment destinations globally.

The image below shows the location of Australia's hydrocarbon reserves and existing infrastructure that may be utilised to transport the hydrocarbon to market.

18.28 LOCATIONS OF OIL AND GAS PRODUCTION AND PIPELINES—2009

Source: Australian Bureau of Statistics

Most recently in August 2014, an oil discovery was made in a province located off the north-west coast of Australia, which has been feted by some as potentially Australia's largest oil discovery in the last 30 years. While further analysis is currently being undertaken to determine whether commercial production will be viable for the province, early analysis of the drilling results have suggested that the field could have potentially up to 300 million barrels of oil in place. It was estimated that the oil field could cost approximately $1 billion to develop, with initial investment costs amounting to approximately $500 million.

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 oil and gas sector. For detailed advice please liaise with your usual contact at Baker & McKenzie or any of the lawyers in section 2.

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Baker & McKenzie operates one of the world's largest natural resources legal teams, with oil and gas focused expertise and M&A capabilities across the globe. In Australia our team specialises in representing foreign companies enter into, and expand their presence in, the Australian market and internationally.

Australian Natural Resources Group

Global resources capability, Australian oil and gas expertise

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How we can help

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

1	**Due Diligence**	– Exploration and licensing – Native title and third party interests – Contractual obligations and encumbrances – Foreign investment approvals
2	**Project Structuring**	– Joint ventures, farm-ins, farm-outs – Seismic acquisition and drilling agreements – Pipeline and infrastructure access – Land access and ILUAs – Co-ordination and co-use agreements, overriding royalty agreements
3	**Processing, and Sales**	– Processing and toll agreements – Offtake and sales agreements – Procurement arrangements – Marketing and distribution agreements – Unitisation
4	**Corporate Finance**	– Primary and secondary equity raisings or issues – Placements and strategic investments – Convertible debentures, warrants and options – Trade finance and letters of credit
5	**Project Development**	– Concession and State agreements – Pipeline and port development – Floating, storage and offload (FPSO) unit development – Project finance and security – Construction contracts
6	**Mergers & Acquisitions**	– Takeovers and schemes of arrangement – Strategic and cornerstone investments – Controlled auctions and tenders

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

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

Our clients include major oil and gas companies, exploration companies, developers, investors, governments, mining contractors, commodity traders, equipment suppliers and financial institutions involved in the resources sector.

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

We work collaboratively with our clients through all phases of a petroleum project, from exploration, financing, development and production, expansions and acquisitions, (including environmental compliance), transportation, marketing and sales, procurement through to site closure and remediation.

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There are six States and two Territories in Australia. Queensland, Western Australia, Victoria, South Australia and the Northern Territory are the key jurisdictions for petroleum.

Australian Petroleum Regulatory Regime

The landscape

There are six States and two Territories in Australia. Queensland, Western Australia, Victoria, South Australia and the Northern Territory are the key jurisdictions for petroleum.

Each of these States and the Northern Territory have well-established petroleum industries, including access to liquefaction terminals that are either operating or under construction.

Petroleum Law and Regulations

The legal framework concerning petroleum is established, transparent and well administered.

The law operates on three levels, Federal, State/Territory and local council, as follows:

1. Exploration and extraction activities are primarily regulated at the State or Territory level and at the Commonwealth or Federal level for offshore petroleum activities in Commonwealth waters;
2. Commonwealth laws affect petroleum activities in all States, including those relating to taxation, native title rights, environmental protection and occupational health and safety; and
3. Certain local council laws apply such as by requiring developmental and planning approvals.

Oil and gas (including unconventional resources) are generally defined as a petroleum product in each jurisdiction. *The Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) regulates petroleum activities offshore in Commonwealth waters and onshore petroleum activities are regulated by equivalent acts applying in each jurisdiction. A summary of the various legislative frameworks is set out in Appendix 1.

In Australia, the ownership of hydrocarbon reserves is vested in the Crown (i.e. Commonwealth, State or Territory governments). The right to explore or produce petroleum is granted pursuant to a petroleum title or permit issued by the relevant Commonwealth, State or Territory authority.

The regulation of petroleum projects in each State and Territory can be broken down into an exploratory stage and a production/ development stage.

Generally a permit is required to explore for petroleum resources. An exploration permit will cover a defined area and have an initial term, generally of five to six years. An exploration permit will grant a holder the right to enter land, conduct test drilling and surveying activities. Within the terms of most exploration permits, there is the right to renew the permit and/or progress to an exploitation licence.

A production licence is required to extract and sell petroleum discovered during the exploration stage. The term of a production licence varies in each jurisdiction, but is typically at least 21 years. On the grant of a production licence, the licence holder is entitled to extract the petroleum and retain the economic benefit of the petroleum that has been produced, subject to payment of a royalty to the State. The amount of the royalty generally varies from 10% to 12.5% of the value at the well head depending on the State. A summary of the various royalty rates across each State is set out in Appendix 3.

A summary of the various types of permits across each State and Territory which can be applied for are set out in Appendix 2.

Common general characteristics of both exploration permits and production licences include:

- the initial grant or renewal of a petroleum title is subject to meeting certain criteria, including in some cases relinquishing parts of the original title area;
- production licences and exploration permits will generally specify minimum annual expenditure and development levels;
- a transfer of a petroleum title or the acquisition of an interest in it typically requires the consent of the relevant Minister; and
- at both the exploration and production stage, secondary licences and approvals may be required, for example, development approvals or pipeline licences.

The Commonwealth and each State and Territory maintain publicly accessible title registries to facilitate confirmation of title to licences and the registration of encumbrances. Legislation also provides for circumstances where petroleum activities have priority over other land uses.

Freehold, leasehold or native title holders, do not have any ownership right to petroleum resources, although they may be entitled to compensation for the loss of the use of land during petroleum exploration and production activities.

Unconventional oil and gas

Australia has significant known and unproven unconventional resources, such as coal seam gas (CSG), shale gas and shale oil.

In general, unconventional oil and gas is subject to the same regulatory regime as conventional oil and gas. However, some jurisdictions have released laws and policies that apply specifically to unconventional gas exploration and extraction, especially regulating the fracking process.

For example, in May 2013 the Standing Council on Energy and Resources (constituted by representatives of the Commonwealth and each State government) released the National Harmonised Regulatory Framework outlining the recommended approach to regulating coal seam gas (CSG).

In addition, the Commonwealth government and the State governments in Queensland, New South Wales, South Australia and Victoria have entered into the National Partnership Agreement on Coal Seam Gas and Large Mining Development, establishing an Independent Expert Scientific Committee. The Independent Expert Scientific Committee's role is to advise the signatory State and Commonwealth governments on large CSG and coal mining development projects likely to impact water resources.

States, however, have responded in different ways to public concerns about fracking.

- The Victorian government has placed a moratorium on fracking until at least July 2016.
- The Tasmanian government has also place a moratorium on fracking, until at least March 2020.
- In December 2012, South Australia released its Roadmap for Unconventional Gas Projects in South Australia, promoting cautious optimism regarding shale gas opportunities.
- In April 2014, the Northern Territory government announced that it would not be placing a moratorium on fracking following its enquiry into the process. Following this announcement, there have been activities in the Beetaloo (NT), Amadeus (NT) and McArthur (NT) Basins.

Overlapping tenements

Petroleum titles may not always grant exclusive use of or access to an area. It is possible that a petroleum title may overlap with another use of land right or tenure. Examples of the multiple rights that may exist include a petroleum title, a coal seam gas tenement, rights to different minerals, a geothermal tenement or a pipeline or other infrastructure rights.

In most instances, complementary use of land may be possible, but the widespread commercialisation of coal seam gas and other unconventional gas and oil resources (particularly in Queensland) have caused tensions regarding which holders have priority to develop resources.

In most States, the rights to coal seam gas are covered by a petroleum production lease while the rights to coal are covered by a mining lease. Queensland has implemented legislation which creates a specific priority arrangement, giving priority to the party who first applies for a development (mining/production) permit. If parties hold overlapping tenements, then they must try and agree a co-development agreement for the development of both interests. The Queensland Government is currently in the process of consulting on draft legislation which will set out a new framework for managing overlapping resource tenement issues.

Downstream regulation

Third party access to infrastructure

The primary legislation regulating natural gas pipelines is the National Gas Law (NGL), which is set out in the Schedule to *the National Gas (South Australia) Act 2008* (Cth) and given effect by an application Act in each Australian State and Territory. The NGL is supplemented by the National Gas Rules (NGR). The NGL replaced the Gas Pipelines Access Law (including the National Third Party Access Code for Natural Gas Pipeline Systems) (Code) which previously regulated pipeline services throughout Australia.

The NGL governs the provision of access to Australia's gas transmission pipelines and applies access regulation to covered pipelines. A pipeline may be covered under the NGL in the following ways:

Under the Code
Pipelines which were covered pipelines under the Code are deemed to be covered pipelines.

Determination
A person may apply under the NGL to the National Competition Council (NCC) for a determination that a particular pipeline should be a covered pipeline. Where the NCC considers that the access application satisfies the set criteria, it must recommend to the relevant Minister in the State or Territory that the pipeline should be subject to coverage. If the Minister agrees with the NCC recommendation, it must make a determination that the pipeline is covered.

Tender approval pipelines
A pipeline will be covered where a service provider has been awarded a tender to construct and operate a pipeline as a result of a tender approval process which was approved under the NGR.

Voluntary access arrangement
A pipeline will be covered where a service provider voluntarily submits a full access arrangement to the regulator and the regulator approves that voluntary access arrangement.

Covered pipelines will be determined to be subject to either full regulation or light regulation.

National gas market

A national wholesale market for gas does not exist in Australia. Instead, the domestic gas market is made up of three distinct regions – eastern gas region, western gas region and northern gas region.

While most gas trades are based on long-term bilateral arrangements between producers, major users and retailers linked together through pipeline hubs connecting gas fields to gas consumers, there are some exceptions. Wholesale gas markets exist in the eastern gas region which allow retailers or large customers to purchase gas without entering into long term contracts. These markets include:

– Short Term Trading Market (STTM) - the STTM is a wholesale market designed to facilitate short term gas trading using market-driven, short term (daily) prices. The STTM operates at demand hubs in Adelaide, Sydney and Brisbane; and

– Declared Wholesale Gas Market (DWGM) - the DWGM was established in 1999 in Victoria to enable competitive, dynamic trading based on injections into, and withdrawals from, the transmission system that links producers, major users and retailers.

These markets are operated by the Australian Energy Market Operator (AEMO) and are mainly used for managing short term imbalances that arise on a day when a large buyer's actual demand differs from its contracted supply.

Retail gas market

The National Energy Customer Framework (NECF) commenced on 1 July 2012 and to date has been adopted by the Australian Capital Territory, Tasmania, South Australia and New South Wales. The NECF is a cooperative Commonwealth, State and Territory regime which regulates the sale and supply of gas and electricity though a set of national rules.

The NECF legislative package includes the National Energy Retail Law, the National Energy Retail Regulations and the National Energy Retail Rules. The National Energy Retail Rules are primarily focused on the retail supply of energy to small retail customers, prescribing the details of consumer protection measures and model contracts that govern the relationships between consumers, retailers and distributors. The Australian Energy Regulator has the primary responsibility for regulating energy retailers under the NECF.

In States that have yet to adopt the NECF, State and Territory governments remain responsible for regulating retail energy markets.

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Foreign investment in Australia is regulated by the Foreign Acquisitions and *Takeovers Act 1975 (Cth)*, as significantly amended in 2015 (FATA) and published government regulations and policy. Under FATA , 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), as significantly amended in 2015 (FATA) and published government regulations and policy. Under FATA , 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 proposal by foreign persons:

- Acquisition of an interest of 20% or more in an Australian business valuing the aggregate target assets or shares above A$252 million (higher thresholds apply for NZ, US, Chile, Chinese, Japanese and Korean foreign persons[1]) 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. media); and/or
- Acquiring an interest in "Australian land" or an "Australian land corporation".

Regardless of whether the above dollar or ownership thresholds are met, the direct acquisition of a production licence will require approval as it is deemed an interest in land.

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

Approvals are typically 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. Applicants may also 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 will typically 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);

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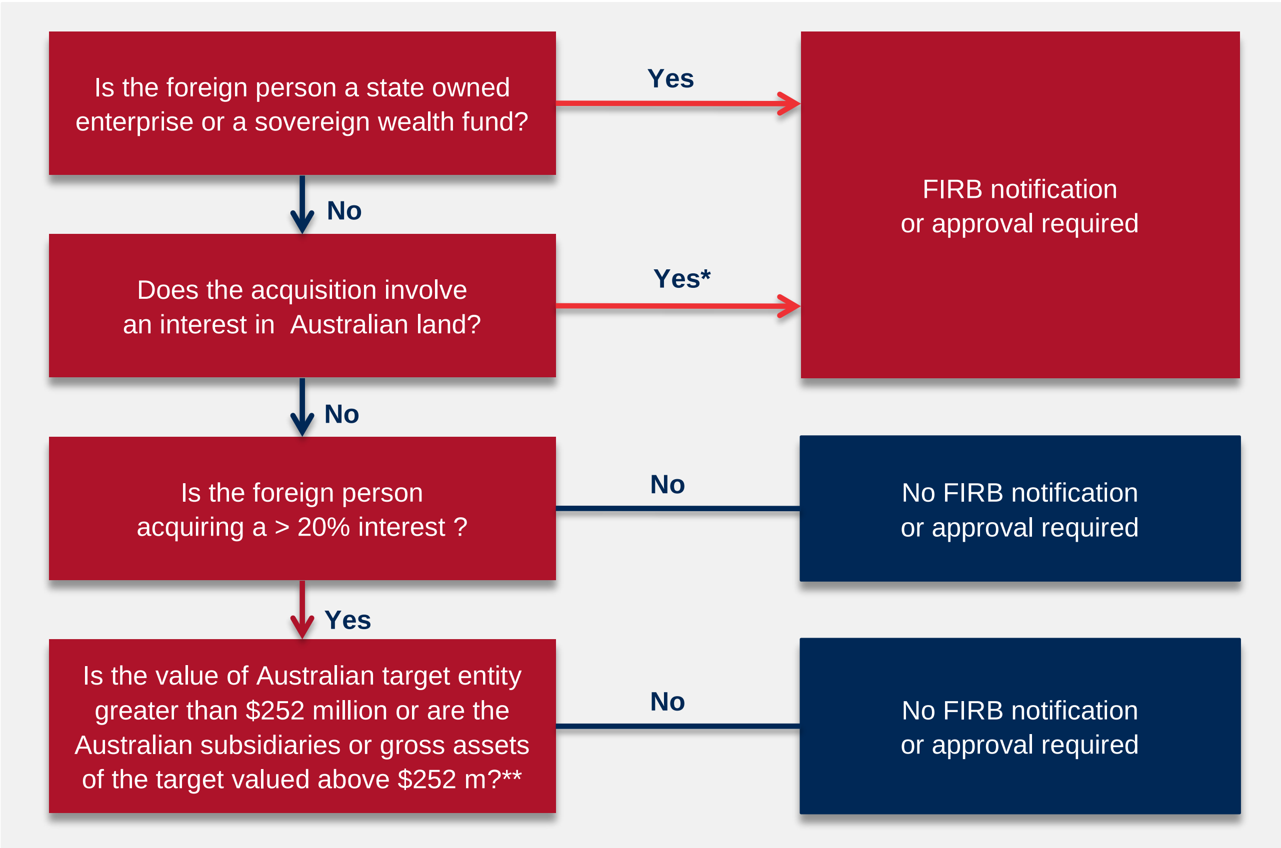
[1] As of January 2015. It is indexed annually

– 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 project lifecycle.

Investment structures

Manner of investment

Investments in Australian resource projects may be made at any time in the project 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 to enter into contracts with third parties. The operator is responsible for carrying out works, implementing budgets and delivering the product to each participant (or its agent). Key decisions concerning exploration and development activities will be made by a management committee, appointed by the UJV participants.

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.
- The relationship between the participants can be clearly defined and limited by contract, and can be tailored to suit the particular circumstances.

Risks and advantages of a UJV

- A UJV requires complete documentation of the entire relationship (i.e. it is not subject to separate regulation in the same way as companies under the *Corporations Act 2001* (Cth) or even partnerships under the Partnership Act of each State).
- 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.
- 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.

Main features and advantages of a UJV	Risks and advantages of a UJV
– There are no statutory reporting or accounting requirements for a UJV. However the operator will keep detailed accounts for the participants 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 participants 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.	– 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 operator is generally liable to third parties for the trading debts of the joint venture, the operator will require an indemnity from participants for obligations incurred by it.

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 without the need for distribution to shareholders.

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 exploration permit, an investor often 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 petroleum title 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.

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

- To fulfil agreed expenditure/work program within set time frames;
- To carry out exploration and development activities according to good industry practice;
- To provide regular updates on performance and results of the work program; and
- The entry into a joint-venture agreement at an agreed stage.

Share vs Asset acquisition

Another way that entities invest in petroleum permits, is to acquire the shares of a company which hold a petroleum interest, or to acquire the company's underlying assets (including its petroleum interests).

Share Acquisition	Asset 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, petroleum titles will need to be transferred in accordance with legislative requirements and existing third-party contracts (such as leases, contracts with suppliers and customers, licences and permits, intellectual property and employees) can only be transferred by mutual agreement. – Stamp duty payable by the buyer on a share acquisition may be 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.	**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 – 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 should retain liabilities not specifically assumed by the buyer. – 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.	**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, licences and permits, this may include obtaining ministerial consent to a transfer of a production licence (see Appendix 2 for details). – 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 10 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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The acquisition of a strategic investment in a listed Australian company or planning of 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 take into consideration applicable Australian Stock Exchange (ASX) listing rules (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

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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 the level of shareholdings that it and its associates hold and any subsequent 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%	FIRB approval may be required for acquisitions by foreign persons. The maximum share allocation that can be issued by the board for a normal listed company.
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 resource 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 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 or marketing rights

In a resource-related investment, an investor may also seek an offtake or marketing agreement as part of the investment proposal. The board of the target must consider the proposed terms of the offtake or marketing 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 shares 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.

7

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, where 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 there will generally be no recourse to the foreign parent.

If a foreign company decides to invest in Australia by registering as a foreign company, no separate legal entity will be 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 ASX and subject to the ASX Listing Rules.
Must have at least 1 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 are also 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; or – 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

When investing in an Australian company, a foreign company will generally want to appoint one or more directors to the board. Investors should be aware of the obligations of directors in Australia. Under the *Corporations Act 2001* (Cth), the directors must exercise their powers and duties by:

- using care, diligence and skill as well as 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; and
- 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 gives rise to civil sanctions and should 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. 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 2001* (Cth), 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, petroleum exploration and production operations are subject to significant Commonwealth and State environmental laws and regulations governing environmental protection.

Environment, Planning, Native Title

Environmental and planning considerations

In Australia, petroleum exploration and production operations are subject to significant Commonwealth 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 proceedings being brought against operators who are in breach. 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 petroleum exploration and extraction.

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, are 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, onshore and offshore petroleum exploration and extraction projects in each State or Territory (to the extent covered by the State or Territory legislation) require land use planning approvals from the State or local government, an environmental approval from the State government (and sometimes also from the Commonwealth government), as well as approvals from the relevant State or Commonwealth petroleum authority. Legislation in most jurisdictions provides for the integrated assessment of these issues. At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) 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. The Act requires any person taking an action which could have a significant impact on matters of national environmental or heritage significance to refer the proposed action to the Federal Minister for the Environment for consideration and potential assessment. Project proponents are required to refer their projects to the Commonwealth Department of Environment to determine whether an action is likely to have a significant impact on matters of national environmental significance. 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.

For petroleum operations carried out in offshore areas, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) has, over the past few years, been amended to increase the environmental regulation of petroleum activities. Petroleum regulators has been given extensive investigative and remedial powers to address oil spills and the liability regime for operators that cause or contribute to spills has been materially strengthened.

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. Generally, only non-exclusive rights are recognised in respect of offshore areas, such as a non-exclusive right to access waters for fishing or for the purposes of carrying out traditional customs.

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 petroleum as such. However, if native title rights exist over the area of a proposed production lease they must be taken into account and certain procedures must be complied with. In some cases compensation may be payable.

The *Native Title Act 1993* (Cth) and legislation enacted in each State 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 Commonwealth 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 the area relating to a target petroleum title is affected by native title. If the petroleum title has been granted, it should investigate if the correct procedures have been complied with under the Native Title Act and obtain details of any agreements entered into.

If the proposed grant of a petroleum title 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 petroleum 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 petroleum title. 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.

Aboriginal cultural heritage agreements are also a consideration and surveys of target areas must typically be undertaken.

National parks

Generally petroleum-related activities are not permitted in protected areas, such as areas designated as national parks or marine protected areas, without special approval. At the State level, the Ministers have the power under the relevant petroleum laws to classify forests or wilderness areas as protected areas, with restrictions or prohibitions on petroleum-related activities. There is a network of marine protected areas around Australia, covering both State and Commonwealth waters.

Strategic land and CSG

During 2012 Queensland, New South Wales and Western Australia 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 gas and petroleum exploration and mining activities. The relevant legislation typically provides that operators wishing to conduct exploration or production activities in an area that is determined to be strategic cropping land or of regional interest will not be granted an environmental authority 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.

Coal seam gas exploration in New South Wales and Queensland has been contentious with landholders and conservationists raising concerns about environmental impacts, in particular on groundwater. As a result, there has been a moratorium of new exploration licences being granted in New South Wales and existing projects are being required to meet new environmental standards.

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, State and Commonwealth legislation, common law and decisions of Commonwealth and State tribunals. 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, State and Commonwealth legislation, common law and decisions of Commonwealth and State tribunals. 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 petroleum industry may be members of a trade union. State and Commonwealth 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, specify the eligibility requirements for employees to become members. These rules are regulated by statute. Industrial disputes are also heavily regulated by Commonwealth and State legislation. The Commonwealth 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 or is unlawful.

Economic conditions in recent years have seen an escalation of costs, especially in relation to development capital and labour costs. The increase in labour costs has been argued in part to be due to an undersupply of relevant skilled labour. In 2011 the Commonwealth government released the Enterprise Migration Agreement (EMA) submission guidelines which provides a framework and necessary information for the application for visas for the import of a workforce for mega projects under the terms of a negotiated EMA. The guidelines provide that 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. In practice, 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 *Migration Legislation Amendment (Worker Protection) Act 2008* (Cth).

Occupational health and safety

In addition to an employer's obligations arising out of a duty of care under common law, 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 criminal legislation. That is criminal liability can be established without the need to prove any intent of the employer (or any other mental element). 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.

10

Australia has various taxation regimes which are imposed at either Commonwealth and State level. Commonwealth 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 Commonwealth and State level. Commonwealth 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 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 an Australian asset, including real property, shares and petroleum exploration or production 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 petroleum production rights 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%. Stamp duty also applies for the transfer of shares in a private company that has been incorporated in South Australia or New South Wales (which is not land rich) at a rate of 0.6%. No stamp duty applies to share transfers of listed companies or private companies which are not land rich and have been incorporated in other States. Relief is available for certain internal restructures.

Petroleum Resource Rent tax

The Petroleum Resource Rent Tax (PRRT) is a profit-based tax which is levied on a petroleum project. As such, an entity will need to calculate its PRRT liability separately for each project interest it holds, subject to certain exceptions. PRRT is currently applied to profits generated from the sale of marketable petroleum commodities from Commonwealth waters, including crude oil, natural gas, liquid petroleum gas (LPG) condensate and ethane.

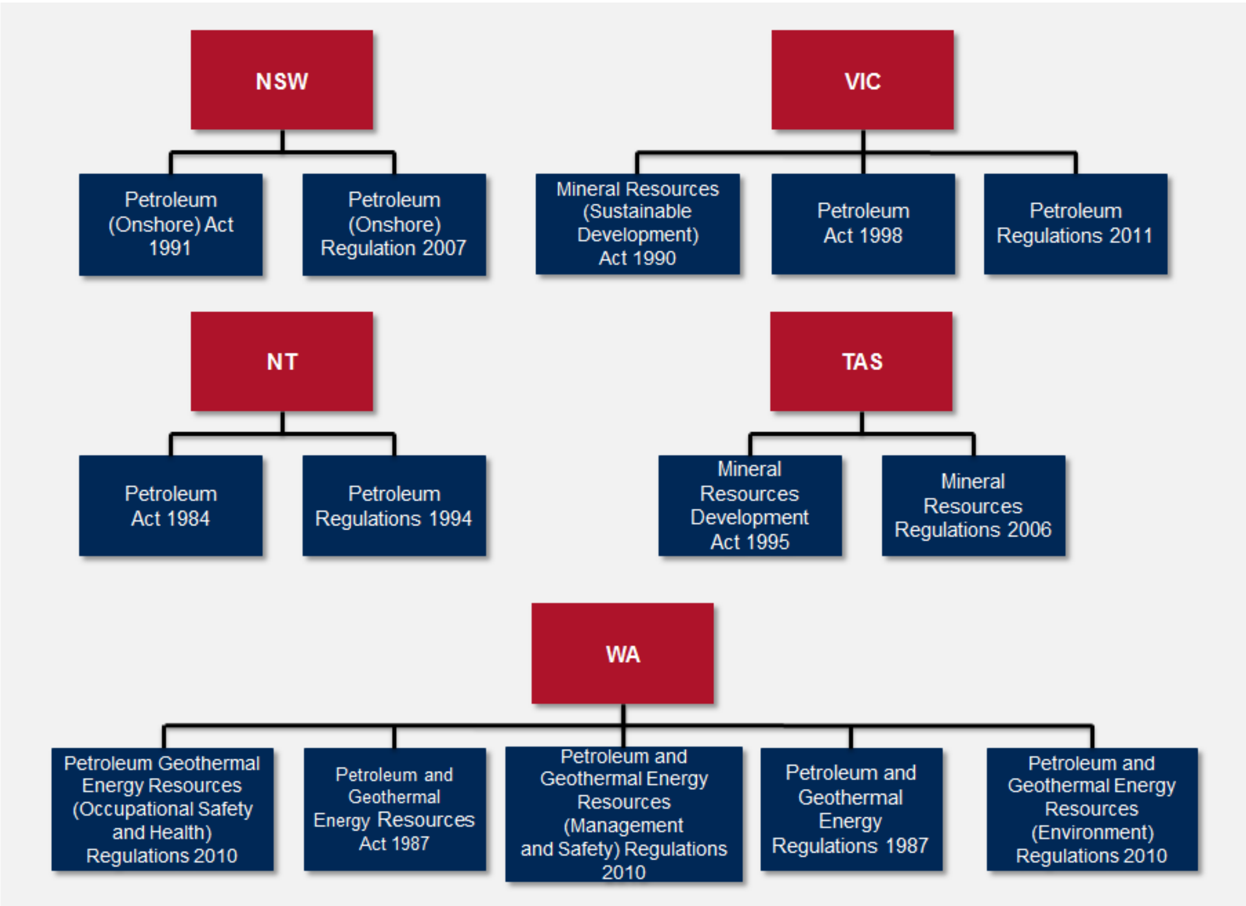
From 1 July 2012, the PRRT, which previously applied only to offshore petroleum projects, became a compulsory tax applied to all Australian onshore and offshore petroleum projects. Several changes were made to the PRRT regime as a result of this extension to recognise the unique features of onshore petroleum projects. This exclusion includes CSG produced as a necessary incident of coal mining, or collected from the controlled burning of underground coal.

Annexures

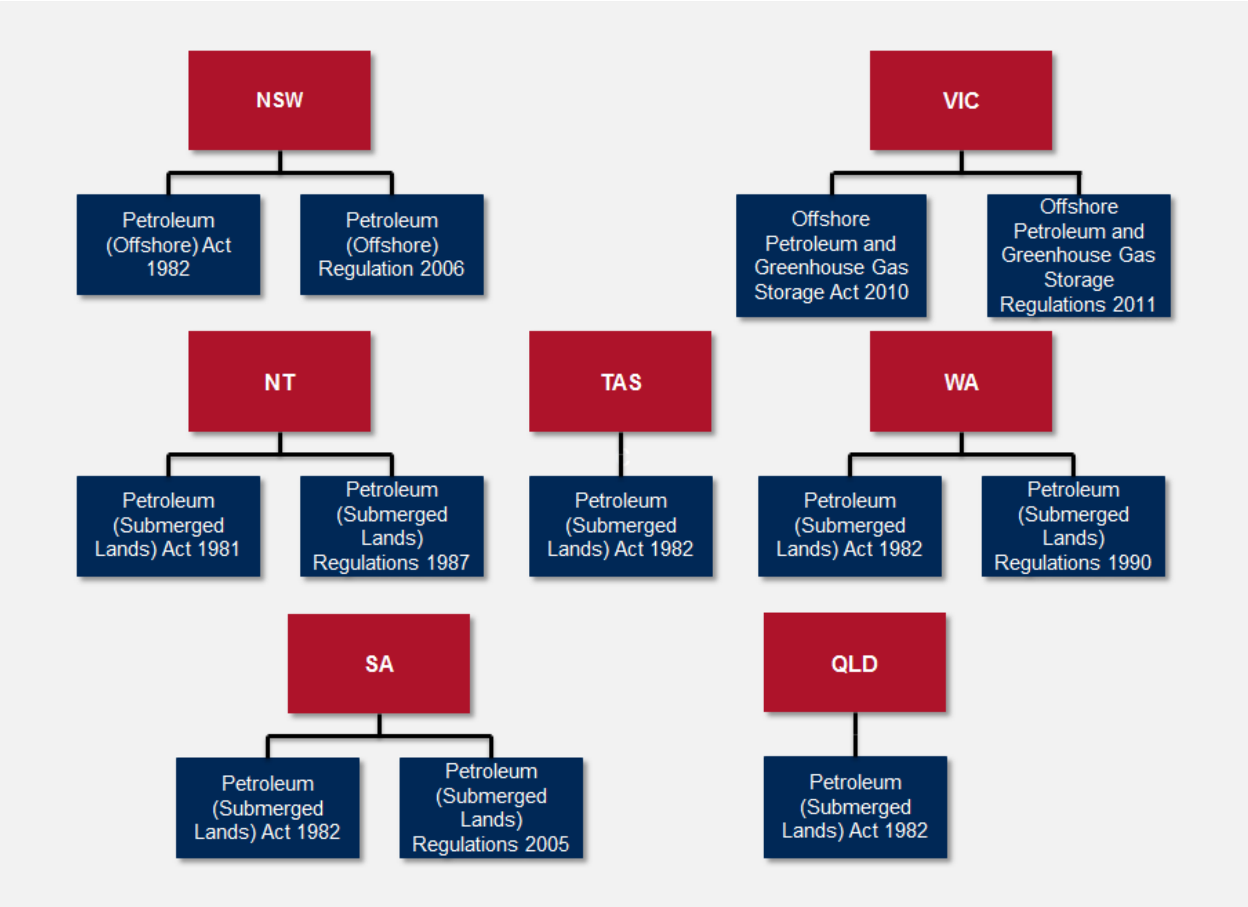
Appendix 1 – Legislative Frameworks for petroleum activities in Australia

1. State Territory

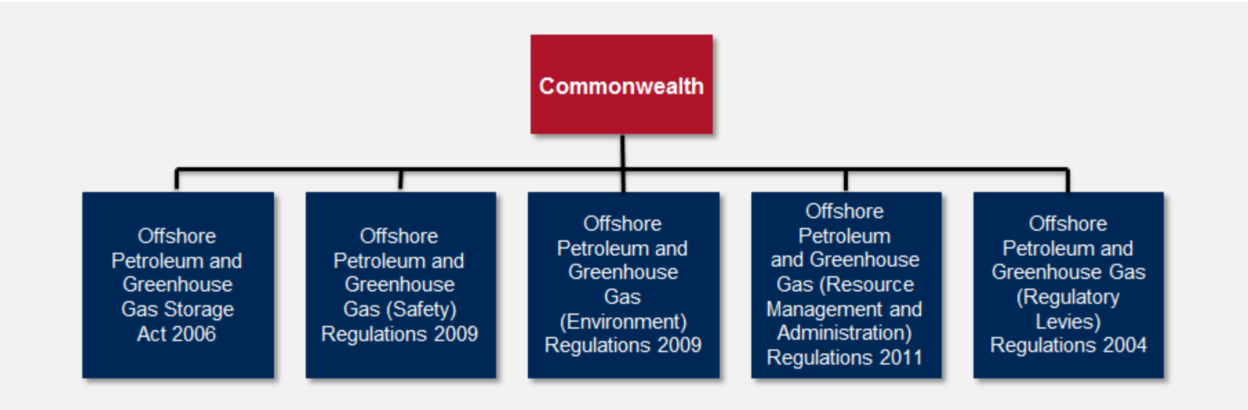
1.1 Onshore petroleum activities



1.2 Offshore petroleum activities



2. Commonwealth Territory



Appendix 2 – Legislative Frameworks for petroleum activities in Australia

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Commonwealth – Offshore Petroleum & Greenhouse Gas Storage Act 2006			
Petroleum Exploration Permit	Authorises the holder to explore for petroleum in the permit area and to recover petroleum on an appraisal basis in the permit area, including to carry on such operations, and execute such works, in the permit area as are necessary for those purposes.	Initial term of 6 years. Renewable for a further term of 5 years. Holder to relinquish 50% of existing licence area upon any licence renewal.	Requires prior approval of the Titles Administrator and registration of the instrument of transfer.
Petroleum Special Prospecting Authorities	Authorises the holder to carry on, in the authority area, the petroleum exploration operations specified in the authority.	Term as specified in the authority, but may be extended by the Titles Administrator for a further specified period.	Not transferable.
Petroleum Retention Lease	Authorises the holder to explore for petroleum in the lease area and to recover petroleum on an appraisal basis in the lease area, including to carry on such operations, and execute such works, in the permit area as are necessary for those purposes.	Initial term of 5 years. Maximum aggregate of 15 years.	Requires prior approval of the Titles Administrator and registration of the instrument of transfer.
Petroleum Production Licence	Authorises the holder to recover petroleum in the licence area and to explore for petroleum in the licence area, including to carry on such operations, and execute such works, in the licence area as are necessary for those purposes.	No fixed term, unless the licence was granted before 30 July 1998 whereby initial term is 21 years.	Requires prior approval of the Titles Administrator and registration of the instrument of transfer.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Queensland – Petroleum (Production and Safety) Act 2004 (Onshore), Petroleum (Submerged Lands) Act 1982 (Offshore)			
Authority to Prospect / Offshore Exploration Permit	Allows holder to carry out various activities in the area of authority, including exploring for petroleum, testing for petroleum production, evaluating the feasibility of petroleum production and evaluating or testing natural underground reservoirs for the storage of petroleum or a prescribed storage gas.	**Onshore**: initial term must be for at least the length of the period of the required initial work program as set out in the relevant call for tender, but cannot exceed 12 years. If initial term is less than 12 years, holder of ATP may apply for renewal (Form ATP-02A). Renewal period cannot be greater than the period of the initial grant, nor can the ATP continue for longer than 12 years from its initial grant. Compulsory relinquishments at the dates set out in the ATP. Otherwise, default date of no later than every four years of the term. 8.33% of the ATP's original national sub-blocks to be relinquished for each year since ATP took effect. **Offshore**: initial term of 6 years. Renewable for a further term of 5 years. Holder to relinquish 50% of existing permit area upon any permit renewal.	**Onshore**: requires registration by giving the chief executive a notice of the dealing in the approved form (Form PA-05A) accompanied by the prescribed fee. **Offshore**: requires prior approval and registration by the Minister.
Petroleum Lease/ Offshore Petroleum Licence	Entitles the holder to recover petroleum in the licence area, to explore for petroleum in the licence area and to carry on such operations and execute such works in the licence area as are necessary for those purposes.	**Onshore**: term must be for at least the plan period for the initial development plan for the lease but maximum term of 30 years. Application for grant (Form PL-01A) must be accompanied by a proposed "initial development plan", generally covering a five year period of proposed activities for the lease. Renewable. **Offshore**: maximum term of 21 years. Renewable.	**Onshore**: requires registration by giving the chief executive a notice of the dealing in the approved form (Form PA-05A) accompanied by the prescribed fee. **Offshore**: requires prior approval and registration by the Minister.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
South Australia – Petroleum & Geothermal Energy Act 2000 (Onshore), Petroleum (Submerged Lands) Act 1982 (Offshore)			
Exploration Licence/ Offshore Exploration Permit	Authorises the licensee to carry out in the licence area exploratory operations for regulated resources, and operations to establish the nature and extent of a discovery and the feasibility of production.	**Onshore**: initial term of 5 years. Maximum term of 15 years. Renewable for one or two further terms of five years. Holder to relinquish certain quantities of the licence area upon any licence renewal. If the exploration licence can be renewed once, this relinquishment will be an area equal to at least 50% of the original licence area. Where the exploration licence can be renewed twice, the relinquishment will be at least 33.3% of the original licence area upon each renewal. **Offshore**: initial term of 6 years. Renewable for a further term of five years. Holder to relinquish 50% of existing licence area upon any licence renewal.	Requires prior approval and registration by the Minister.
Petroleum Retention Licence/ Offshore Petroleum Retention Lease	When a discovery is made that warrants production in an area of an exploration licence, the licensee is entitled to a petroleum, geothermal or gas storage production licence over the discovery area.	**Onshore**: granted for an unlimited term. **Offshore**: initial term of 21 years. Renewable for further terms not exceeding 21 years.	Requires prior approval and registration by the Minister.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Western Australia – Petroleum and Geothermal Energy Resources Act 1967 (Onshore), Petroleum (Submerged Lands) Act 1982 (Offshore)			
Petroleum Exploration Permit	Allows holder to explore for petroleum, and to covert any discovery made to a Production Licence or if presently uneconomic a Retention Lease.	**Onshore and offshore**: initial term of 6 years, renewable for two further periods of 5 years. Maximum term of 16 years. Holder must relinquish 50% of the area at the end of each term. In relation to onshore Petroleum Exploration Permit, the holder must also complete the first two years guaranteed work program before the permits can be surrendered.	Requires approval by the Minister and the registration of the instrument of transfer.
Petroleum Retention Lease	Allows holder to explore for petroleum to convert to a Production Licence once economic viability confirmed.	**Onshore and offshore**: 5-year term. Right of renewal for subsequent 5-year periods.	Requires approval by the Minister and the registration of the instrument of transfer.
Petroleum Production Licence	Allows holder to recover petroleum in the licence area, to explore for petroleum in that licence area and to carry on such operations and execute such works in the licence as are necessary for those purposes.	**Onshore and offshore**: initial term of 21 years. Renewable for a further term of 21 years, and after that, indefinitely.	Requires approval by the Minister and the registration of the instrument of transfer.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Northern Territory – Petroleum Act 1984, Petroleum (Submerged Lands) Act 1981			
Exploration Permit	Provides holder with exclusive right to explore for petroleum, and to carry on such operations and execute such works as are necessary for that purpose in the exploration permit area.	**Onshore**: initial term of 5 years, renewable for two further terms of 5 years. Holder must relinquish 50% of the area at the end of each term. **Offshore**: initial term of 6 years, renewable for further periods of 5 years. Holder must relinquish 50% of the area at the end of each term.	Requires approval by the Minister.
Retention Licence/ Offshore Retention Lease	Allows holder to carry on in the licence area such geological, geophysical and geochemical programmes and other operations and works, including appraisal drilling, as are reasonably necessary to evaluate the development potential of the petroleum believed to be present in the licence area.	**Onshore**: 5-year term. Right of renewal for subsequent 5-year periods. **Offshore**: 5-year term. Right of renewal for subsequent 5-year periods.	Requires approval by the Minister.
Petroleum Production Licence	Allows the holder to exclusively explore for petroleum and recover it from the licence area, and to carry out such operations and execute such works in the licence area as are necessary for the exploration for and recovery of petroleum.	**Onshore**: initial term of either 21 or 25 years as determined by the Minister. Renewable. **Offshore**: initial term of 21 years. Renewable for further terms of 21 years.	Requires approval by the Minister.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
New South Wales – Petroleum (Onshore) Act 1991, Petroleum (Offshore) Act 1982			
Exploration Licence/ Offshore Exploration Permit	Allows holder to have exclusive right to prospect or explore for petroleum in the area covered under the licence or permit.	**Onshore**: initial term of not exceeding 6 years. Renewable. **Offshore**: initial period of 5 years. Renewable.	Requires approval by the Minister. Transferor or transferee may apply for registration of the transfer with the Director-General once approval is obtained.
Production Lease/ Production Licence	Allows the holder to conduct petroleum mining operations and recover petroleum in the lease or licence area. In relation to onshore production lease, this includes the right to construct and maintain on the land such works, building, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electric power lines and other structures and equipment as are necessary.	**Onshore**: initial term of not exceeding 21 years. Renewable. **Offshore**: initial term of 21 years. Renewable for further terms of 21 years.	Requires approval by the Minister. Transferor or transferee may apply for registration of the transfer with the Director-General once approval is obtained.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Tasmania – Mineral Resources Development Act 1995, Petroleum (Submerged Lands) Act 1982			
Exploration Permit	Allows holder to explore for petroleum and to carry on such operations and execute such works as are necessary for that purpose in the permit area.	**Onshore**: initial period of 5 years. Renewable. **Offshore**: initial term of 6 years. Renewable for further terms of 5 years. Holder must relinquish 50% of the area at the end of each term.	**Onshore**: requires approval by Minister. **Offshore**: requires approval by Minister and registration of the instrument of transfer.
Retention Lease	Authorises holder to explore for petroleum and to carry on such operations and execute such works as are necessary for that purpose in the permit area.	**Onshore**: initial term of 5 years. Renewable for further 5 year terms. **Offshore**: initial term of 5 years. Renewable.	**Onshore**: requires approval by Minister. **Offshore**: requires approval by Minister and registration of the instrument of transfer.
Production Licence	Authorises holder to recover petroleum in the licence area, to explore for petroleum in the licence area and to carry on such operations and execute such works in the licence area as are necessary.	**Onshore**: initial term of 10 years. Renewable. **Offshore**: initial term of 21 years. Renewable for further terms of 21 years.	**Onshore**: requires approval by Minister. **Offshore**: requires approval by Minister and registration of the instrument of transfer.

Tenement	Purpose / Nature of Right	Term and ability to renew	Transferable?
Victoria - Petroleum Act 1998, Offshore Petroleum and Greenhouse Gas Storage Act 2010			
Exploration Permit	Authorises holder to carry out petroleum exploration in the permit area, including to recover petroleum on an appraisal basis in the permit area.	**Onshore**: initial term of 5 years, renewable of one further 5 year term. Maximum term 10 years. Holder must relinquish 50% of the permit area upon each renewal of an exploration permit. **Offshore**: initial term of 6 years, renewable for further 5 year terms.	**Onshore**: requires approval by Minister. **Offshore**: requires prior approval and registration by the Minister
Retention Lease	Allows holder to retain certain rights to a petroleum discovery that is not commercially viable to develop under a production licence at the time the lease is granted, but which might become viable to develop within 15 years.	**Onshore**: Minister may specify term of up to 15 years. Not renewable. **Offshore**: initial term of 5 years. Renewable.	**Onshore**: requires approval by Minister. **Offshore**: requires prior approval and registration by the Minister.
Production Licence	Authorises holder to carry out petroleum production and exploration in the licence area and to do any thing in that area that is necessary for, or incidental to, those purposes.	**Onshore**: indefinite term, until it is surrendered or the Minister cancels it in accordance with the Petroleum Act. **Offshore**: indefinite term.	**Onshore**: requires approval by Minister, **Offshore**: requires prior approval and registration by the Minister.

Appendix 3 – Royalty rates in the different States and Territories 2014

Commonwealth - Offshore Petroleum and Greenhouse Gas Storage Act 2006, Offshore Petroleum (Royalty) Act 2006
Royalties payable (all royalties in A$)
– Holder of petroleum production licence must pay the Titles Administrator royalty for petroleum recovered within the licence area. – Fixed royalty rate of 10% of the value of the petroleum at the well-head. – Where an application for a production licence (primary licence) has been made and the applicant makes an application for a secondary licence, royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head applies, as determined by the Minister.

Queensland – Petroleum and Gas (Production and Safety) Act 2004/ Petroleum and Gas (Production and Safety) Regulation 2004, Petroleum (Submerged Lands) Act 1982
Royalties payable (all royalties in A$)
Onshore – A petroleum producer must pay the State petroleum royalty for petroleum that the producer produces or that the producer accepts from an overlapping mining lease holder (under the Mineral Resources Act). – Fixed royalty rate of 10% of the value of the petroleum at the well-head. **Offshore** – Holder of petroleum exploration permit or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit or licence area. – Royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head, as determined by the Minister.

South Australia – Petroleum and Geothermal Energy Act 2000, Petroleum (Submerged Lands) Act 1982

Royalties payable

Onshore

- Holder of a licence must pay to the Crown a royalty for petroleum produced within the licence area.
- Fixed royalty rate of 10% of the value of the petroleum at the well-head.

Offshore

- Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area.
- Royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head, as determined by the Minister.

Western Australia – Petroleum and Geothermal Energy Resources Act 1967, Petroleum (Submerged Lands) Act 1982

Royalties payable

Onshore

- Holder of production licence must pay to the Minister a royalty in respect of all petroleum recovered from the licence area.
- Royalty rate of between 5% and 10% of the value of the petroleum at the well-head, as determined by the Minister.
- Where an application for a production licence (primary licence) has been made and the applicant makes an application for a secondary licence, different royalty rates apply in respect of petroleum recovered under the secondary or primary licence, as follows:
- 5% to 12.5% of the value of tight gas at the well-head; or
- 10% to 12.5% of the value of the petroleum (other than tight gas) at the well-head.

Offshore

- Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area.
- Fixed royalty rate of 10% of the value of the petroleum at the well-head.
- Where an application for a production licence (primary licence) has been made and the applicant makes an application for a secondary licence, royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head applies, as determined by the Minister.

Northern Territory – Petroleum Act 1984, Petroleum (Submerged Lands) Act 1981
Royalties payable
Onshore – Holder of production licence must pay to the Minister a royalty at the rate of 10% upon the gross value at the wellhead of all petroleum produced from the licence area. **Offshore** – Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area. – Fixed royalty rate of 10% of the value at the well-head of the petroleum. – Where an application for a production licence (primary licence) has been made and the applicant makes an application for a secondary licence, royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head applies, as determined by the Minister.

New South Wales – Petroleum (Onshore) Act 1991/ Petroleum (Onshore) Regulation 2007, Petroleum (Offshore) Act 1982
Royalties payable
Onshore – Holder of petroleum title must pay to the Crown a royalty in respect of all petroleum by the holder in the area under the title. – Fixed royalty rate of 10% of the value of the petroleum at the well-head. **Offshore** – Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Crown royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area. – Fixed royalty rate of 10% of the value at the well-head of the petroleum.

Tasmania – Mineral Resources Development Act 1995/ Mineral Resources Regulations 2006, Petroleum (Submerged Lands) Act 1982

Royalties payable

Onshore

- Holder of production licence must pay to the Minister a royalty in respect of all petroleum recovered under the licence.
- Fixed royalty rate of $12.00 for each $100 of the gross value of the petroleum at the well-head.

Offshore

- Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area.
- Fixed royalty rate of 10% of the value at the well-head of the petroleum.
- Where an application for a production licence (primary licence) has been made and the applicant makes an application for a secondary licence, royalty rate of between 11% and 12.5% of the value of the petroleum at the well-head applies, as determined by the Minister.

Victoria – Petroleum Act 1998, Offshore Petroleum and Greenhouse Gas Storage Act 2010

Royalties payable

Onshore

- Holder of production licence must pay to the Minister a royalty in respect of all petroleum extracted or recovered from any well within the licence area.
- Fixed royalty rate of 10% of the value of the petroleum at the well-head, unless a different rate is specified in the licence under which the petroleum was extracted or recovered.

Offshore

- Holder of petroleum exploration permit, petroleum retention lease or petroleum production licence must pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered within the permit, lease or licence area.
- Fixed royalty rate of 10% of the value at the well-head of the petroleum.

Appendix 4 – Useful Links

The following is a list of useful websites of various government departments providing information relevant to the Australian oil and gas 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	http://www.business.nsw.gov.au/industry
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/
South Australia	
SA Department of Primary Industries & Regions	http://www.pir.sa.gov.au/
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)	http://www.iris.tas.gov.au/resource_industry
TAS Department of Primary Industries, Parks Water and Environment	http://www.dpiw.tas.gov.au/inter.nsf/Home/1?Open
Victoria	
VIC Department of Environment, Land, Water & Planning	http://www.depi.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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