

MINING AND ENERGY LAW

Mining and Energy Law is a comprehensive introduction to the laws affecting the resources sector in Australia.

It is the only textbook available that encompasses a discussion of both the law and the policy of mining and resource regulation in existing and emergent areas, for the Commonwealth as well as for the states and territories.

The book begins by examining the ownership framework underpinning natural resources within Australia and reviews the proprietary status and scope of mining tenements, and the regulation of offshore petroleum extraction. It goes on to explore the legal regimes that have emerged in response to more recent developments, such as coal seam gas, renewable energy and geo-sequestration. Other chapters consider the relevance for the mining and energy sector of environmental protection and management laws in addition to climate change regulation. The book concludes with a discussion of the commercial and contractual arrangements commonly used by transacting parties operating in the sector.

Each chapter includes:

- review questions to reinforce key concepts
- legislative extracts
- case discussion
- lists of further reading for those wishing to investigate particular topics in more detail.

Mining and Energy Law is the ideal starting point for anyone seeking to understand the regulatory regimes and policy challenges relevant to one of Australia's most important industry sectors.

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FOREWORD

Minerals and energy law ranges across many issues and has always been complex. Australia's *Constitution* makes it especially complex, with laws in the six states and two territories being different from each other and sometimes in conflict with Commonwealth law. It has become even more complex over recent years with new technologies and concern for climate change generating new policy, law and regulation – and with conflicts over policy leading to major changes over short periods.

Hepburn manages to provide an intelligible, comprehensive account of Australian minerals and energy policy and law without losing the reader in the detail. The greatest strength of the book is to make a bewildering reality comprehensible to the reader who comes new to the subject.

This book takes the reader through the major issues, explains how these issues have led to the adoption of laws, reviews comprehensively the more difficult issues to ensure that the reader has not been left behind, presents detail from important laws, discusses cases to demonstrate how the law has worked in practice, and suggests many avenues for further reading for those who want to dig deeper into the subject.

It is an excellent book for the law student wanting to understand the broad context of her or his subject. It is just as useful for students seeking to understand minerals and energy from other disciplines and wanting to see how their subject is affected by law.

The treatment of the conventional resources issues is thorough and reliable. The early chapters – 2 to 4 – deal authoritatively with old and familiar minerals and energy issues. Resource titles differentiated at the exploration and mining stages of resources development have their own history in Australia, with the history and surviving law varying across states and territories. The resource production leases may be old, but have new overlays of complexity with the recent introduction of international legal issues – with the globally unique joint development zone with Timor, with the law of the sea, with World Heritage listing of some prospective areas, and with new international obligations of varying kinds under the *United Nations Framework Convention on Climate Change*. Natural gas operations introduce new areas of complexity related to pipeline access. Chapter 10 discusses the important question of taxation of minerals rents and again manages to make comprehensive treatment of a complex subject readable.

The most impressive and exciting innovation in this book is the treatment of the issues arising out of new technologies and products (unconventional gas) and new policy objectives (climate change, leading into policy on renewable energy and carbon capture and storage). The discussion of unconventional gas introduces us to new issues arising out of new technologies and to the polarised political response to them – varying across Australia – and to the interaction of new laws covering the new issues, with laws on biodiversity and conservation that themselves have been subject to recent change.

Renewable energy has become much more important in Australia over the past decade as a result of the federal and state Governments' interest in having Australia contribute to the global effort to reduce the impact of climate change. Renewable energy raises different issues in access to land and resources than the exploitation of fossil fuel resources, and

has generated new law and regulations. Chapter 6 manages to relate the evolution of regulation designed to promote growth in renewable energy to the international discussion and negotiation of emissions reduction targets. Chapter 7 takes us into deep exploration of another set of laws and regulations that have their origins in mitigation of climate change – the capture and storage of carbon emissions from fossil fuel combustion – and then the many ways in which climate change concerns have interacted with energy policy. The discussion of international climate change mitigation notes the discordance today between Australian and other countries' approaches.

The reality in which Australian minerals and energy law operates in the years immediately ahead will continue to change rapidly, forcing more change in policy, law and regulation. Better understanding of the realities, including the realities of other countries' action on climate change, will also be a source of pressure for change. Students and others who have established a strong foundation in Australian minerals and energy policy and law through this book will have an advantage in understanding complex new realities as they reveal themselves to us.

Ross Garnaut
University of Melbourne

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ACRONYMS

| | |
|-------|---|
| ABARE | Australian Bureau of Agriculture and Resource Economics |
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AEMR | Annual Environmental Management Reports |
| AER | Annual Environmental Report |
| AER | Australian Energy Regulator |
| AIP | Aquifer Interference Policy |
| APPEA | Australian Petroleum Production Exploration Association |
| ARENA | Australian Renewable Energy Agency |
| BREE | Bureau of Resources and Energy Economics |
| BSAL | biophysical, strategic agricultural land |
| CBA | cost-benefit approach |
| CBM | coal bed methane (used internationally to describe CSG) |
| CCS | carbon capture and storage |
| CDM | clean development mechanisms |
| CEC | Code of Environmental Compliance |
| CEFC | Clean Energy Finance Corporation |
| CER | Clean Energy Regulator |
| CIC | critical industry cluster |
| CLCS | United Nations Committee on the Limits of the Continental Shelf |
| CMATS | <i>Treaty on Certain Maritime Arrangements in the Timor Sea</i> |
| COAG | Council of Australian Governments |
| CSG | coal seam gas |
| DEHP | Department of Environment and Heritage Protection |
| DMP | Department of Mines and Petroleum (WA) |
| DoE | Department of Energy (WA) |
| DoIR | Department of Industry and Resources (WA) |
| DTSSP | Declared Transmission System Service Provider |
| DWGMR | <i>Declared Wholesale Gas Market Rules</i> |
| EA | environmental authority |
| EC | <i>Energy Charter</i> |
| ECT | <i>Energy Charter Treaty</i> |
| EEA | <i>Environmental Effects Act 1978</i> (Vic) |
| EES | environmental effects statement |
| EEZ | exclusive economic zone |
| EIA | Environmental Impact Assessment |

- EIS environmental impact statement
 EITC emissions-intensive trade-exposed
 EM environmental management
 EMPC *Environmental Management and Pollution Control Act 1994* (Tas)
 EOR enhanced oil recovery
 EPA *Environmental Planning Act 1986* (WA)
 EPA *Environment Planning Act 1993* (SA)
 EPAA *Environmental Planning and Assessment Act 1979* (NSW)
 EPA *Environmental Protection Act 1994* (Qld)
 EPA Environmental Protection Authority
 EPBCA *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
 EPGR *Environment Protection (Greentape Reduction and other Legislation Amendment) Act 2012* (Qld)
 EPHC Environment Protection and Heritage Council
 ERA Economic Regulation Authority (WA)
 ESD ecologically sustainable development
 ESG2 Environmental Impact Assessment Guidelines for NSW
 EURATOM European Atomic Energy Community
 FLNG floating liquid natural gas
 FM flexible mechanisms
 FSMP fracture stimulation management plan
 GGGSA *Greenhouse Gas Geological Sequestration Act 2008* (Vic)
 GGSA *Greenhouse Gas Storage Act 2009* (Qld)
 GHG greenhouse gas
 GS Greater Sunrise oilfield
 IEA International Energy Agency
 IEC *International Energy Charter*
 IESC Independent Expert Scientific Committee on CSG and Large Coal Mining Development
 ILUA Indigenous Land Use Agreement
 IMO International Maritime Organisation
 IPCC Intergovernmental Panel on Climate Change
 IUA International Unitisation Agreement
 JI joint implementation
 JORC Code Australasian Code for Exploration Results, Mineral Resources and Ore Resources
 JPDA Joint Petroleum Development Area
 LEP Local Environmental Plan
 LGC Large-scale Generation Certificate
 LNG liquid natural gas
 LPG liquid petroleum gas

- LREC Large-scale Renewable Energy Certificate
 LRET Large Scale Renewable Energy Target
 MA *Mining Act 1971* (SA)
 MA *Mining Act 1978* (WA)
 MA *Mining Act 1992* (NSW)
 MNES matters of national environmental importance
 MODU Mobile Offshore Drilling Units
 MOP Mining Operations Plan
 MRA *Mineral Resources Act 1989* (Qld)
 MRDA *Mineral Resources Development Act 1995* (Tas)
 MREMP Mining, Rehabilitation and Environmental Management Process
 MRRT Minerals resource rent tax
 MRSD *Mineral Resources Sustainable Development Act 1990* (Vic)
 MTA *Mineral Titles Act* (NT)
 MTPA million tonne per annum
 NCC National Competition Council
 NEL National Electricity Law
 NEM National Electricity Market
 NERL National Energy Retail Law
 NGC National Gas Code
 NGL National Gas Laws
 NGL natural gas liquids
 NGR National Gas Rules
 NNTT National Native Title Tribunal
 NOPSEMA National Offshore Petroleum Safety Environment Management Agency
 NOPTA National Offshore Petroleum Titles Administrator
 NPACSG National Partnership Agreement on Coal Seam Gas
 NTA *Native Title Act 1993* (Cth)
 NTPC Native Title Protection Conditions
 NWI National Water Initiative
 OCSG Office of Coal Seam Gas (NSW)
 OMA *Offshore Minerals Act 1994* (Cth)
 OPGGSA *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth)
 OPGGSA *Offshore Petroleum and Greenhouse Gas Storage Act 2010* (Vic)
 OSPAR *Convention for the Protection of the Marine Environment of the North-East Atlantic*
 PA *Petroleum Act 1998* (Vic)
 PDA *Planning and Development Act 2005* (WA)
 PEA *Planning and Environment Act 1987* (Vic)
 PEC Partial Exemption Certificate
 PEERA Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects

- PEOA *Protection of the Environment Operations Act 1997* (NSW)
 PGEA *Petroleum and Geothermal Energy Act 2000* (SA)
 PGERA *Petroleum and Geothermal Energy Resources Act 1967* (WA)
 PGPSA *Petroleum and Gas (Production and Safety) Act 2004* (Qld)
 POA *Petroleum (Onshore) Act 1991* (NSW)
 PP precautionary principle
 PPSA *Personal Property Securities Act 2009* (Cth)
 PRRT petroleum resource rent tax
 PSC profit sharing contract
 PSLA *Petroleum (Submerged Lands) Act 1967* (Cth)
 PSLA *Petroleum (Submerged Lands) Act 1992* (Tas)
 QELRO Qualified Emission Limitation and Reduction Objective
 REC Renewable Energy Certificate
 REEA *Renewable Energy Electricity Act 2000* (Cth)
 REF Review of Environmental Factors
 RET Renewable Energy Target
 RPP Renewable Power Percentage
 RSPT Resource Super Profit Tax
 SCER Standing Council on Energy and Resources
 SDPWOA *State Development and Public Works Organisation Act 1972* (NSW)
 SEPP State Environmental Planning Policy
 SMP safety management plan
 SREC Small-scale Renewable Energy Certificate
 SRES Small-scale Renewable Energy Scheme
 SRET Small-scale Renewable Energy Target
 SRLUP Strategic Regional Land Use Plan
 SSD state significant development
 SSI state significant infrastructure
 SSLA *Sea and Submerged Lands Act 1973* (Cth)
 STC Small-scale Technology Certificates
 STTM Short Term Trading Market
 TST *Timor Sea Treaty 2003*
 UNCED United Nations Conference on Environmental Development 1992
 UNCLOS *United Nations Convention on the Law of the Sea*
 UNEP United Nations Environment Program
 UNFCCC *United Nations Framework Convention on Climate Change*
 WAL Water Access Licence
 WMA *Water Management Act 2000* (NSW)
 WMO World Meteorological Organization

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