

Index

Access

- ACCC determination, 17-19
- airports, 45
- application for, process of, 17-20, 43
- criteria, 5-17
 - existing regime, no effective, 12
 - health and safety, 12
 - national significance, 11-12
 - trade and commerce power, 11
 - promotion of competition, 5-9
 - extent required, 7
 - public interest, not contrary to, 16
 - uneconomical to duplicate, 9-11
 - monopoly characteristics, 10
- electricity, 35-36
 - National Electricity Market Code of Conduct, 36
- fee, 7-8, 20-25, 44
 - pricing models, 22-24
 - purpose of, 21
- gas, 36-41
 - Cooper Basin Ratification Act 1975, 39
 - ACCC's
- recommendations for
 - review, 40
 - national access arrangements, 25-31, 37
 - Code adopted by States, 26, 37
 - important elements of Code, 26-29

- reference tariffs, setting, 29
- ring-fencing obligations, 27, 38
- National Competition Council,
 - view of, 4, 10
- open, 32-48
- practical aspects of, 1-31
- rail, 46-47
 - current applications, 46
- service, to a, 2-5, 34, 42
- State and Territory regimes, 12-16, 34
- telecommunications, 41-44
 - access pricing, 44
 - industry self-regulation, 43
- Trade Practices Act
 - Pt IIIA, 2-25
 - arbitrations under, 35
 - introduction of, 33
 - State regimes, relationship with, 12-16, 34
 - Pt XIC, 42

Airports, access to — see Access

Alcohol — see Drugs in the workplace

Alliances, project, 127-146 — see also Contracts, construction

- agreements, alliance, 141
- aligned objectives groups, 147, 151-152, 158
- commercial drivers, 144
- contractual structures, 138
 - multiple-contract model, 140
 - single-contract model, 140
 - two-contract model, 139

- definition, 134, 150
 - development contracts, 142
 - contractual checklist, 143
 - East Spar project, 139
 - facilitators, 145
 - history of, 135
 - Ampolex, 136, 152-157
 - BHP, 137
 - BP, 135
 - WMC, 137
 - lawyers involved in, 145
 - participant selection, 151-152
 - Port Hedland Construction
 - project, 141
 - principles of, 138
 - risk management, 148-149
 - risk/reward curve, 144
 - sub-alliancing, 145
 - terminology, 128
 - traditional contract model, 129-131
 - Wandoo project, 140, 144, 152-157
- Arrangement, schemes of — see**
Mergers and acquisitions
- Australian Heritage Commission v Mount Isa Mines Ltd, 453-458**
- commission's authority, 454
 - decision, 455
 - implications of, 457
 - issue to be determined, 454
 - reasons of High Court, 456
- BHP — see Disclosure of discoveries; Alliances, project**
- Coal mining — see also Mining**
- deposits, 323-324
 - Australian, 324
 - development, 326
 - exploration, 325
 - feasibility assessment, 326
 - geology, 321-322
 - handling and preparation, 338-339
 - history, 320-321
 - marketing, 342
 - mine management, 344
 - environment, 346
 - industrial relations, 345
 - productivity, 345
 - return on investment, 346
 - safety, 344
 - operations
 - production, 343
 - surface mining, 328-331
 - mining the coal, 330
 - overburden removal, 328
 - recent developments, 330
 - surface reclamation, 330
 - transport, 339
 - underground mining, 331-338
 - emergency response, 338
 - gas management, 337
 - longwall, 334-336
 - room and pillar, 333
 - services, 336
 - spontaneous combustion, 338
 - subsidence, 338
 - ventilation, 337
 - uses of coal, 339-342
- Competition policy reforms — see Access**
- Construction contracts — see Contracts, construction**
- Contracts, construction**
- improved, 132-133
 - partnering, 133
 - project alliancing — see Alliances, project
 - traditional model, 129-131
- Co-operative projects — see Alliances, project**

Cultus — *see* **Disclosure of discoveries**

Dai Hung

- acquisition, 289-290
- exit, 292
- legislative framework, 290-292
- questions about project, 290-291

Derivatives

- Bankers Trust v Dharmala, 369
- controls, 353-365
 - external, 353
 - internal, 367-369
 - management, 367-368
- Corporations Law, application of the, 355-358
- dealers' duties to end-users, 369-371
- definition, 349
- documentation, 371-376
 - checklist, 376
 - content, 375-376
 - form of, 372
 - ISDA, 372-374
 - advantages, 372
 - disadvantages, 373
 - electricity transactions, in, 381
- electricity market, hedging and, 377-384
 - end-users, by, 382
 - hedging contracts, 379-381
 - New South Wales, 380
 - Victoria, 379
 - ISDA documentation, 381
 - Sydney Futures Exchange, 383
 - vesting contracts, 378
- futures contract, 356-359
 - adjustment agreements, 357
 - consequences of treatment as, 359
 - eligible commodity
 - agreements, 356
 - eligible exchange-traded options, 357
 - futures options, 357

futures market, 361

ASC exempt, 362

gaming and wagering legislation, application of, 365

hedging, 349

electricity market, and, 377-384

insurance contracts, 366

legal regulation in Australia, 354-356

regulatory framework, 355

risks, against, 354-355

licensing regime, 360-361

netting, 367

off-exchange, 353

on-exchange, 352

Proctor & Gamble v Bankers Trust, 370

reform, outlook for, 364

uses of, 349

hedging, 349

trading, 351

Disclosure of discoveries, 433-452

Australian Securities

Commission,

action by, 449

Australian Stock Exchange,

action by, 448

"aware", 434

BHP, 439-443

Corporations Law

civil liability for non-disclosure, 439

criminal liability for non-disclosure, 438

Cultus, 443-448

effect of information, expected, 435

exceptions to requirements, 435

integrity of regime, 451

listing rules, 434-438

future of, 449

waivers, when to grant, 451

"material", 435

mining companies, requirements of, 437

- “spirit” of disclosure, 436
- Discovery, disclosure of** — *see*
Disclosure of discoveries
- Drugs in the workplace**, 231-245
 confidentiality, 238
 consequences, 243
 duties of employer, 232
 education, 244
 employment contracts, 233
 impairment, 231
 observation as detection, 234
 policy, implementation of, 243
 rehabilitation, 244
 testing
 blood, 236
 collection and handling, 237
 cut-off levels, 238
 frequency, 239
 performance, 234
 specific, 235
 types of, 235
 urine, 236
 who to test, 241-242
- Electricity, access to** — *see* **Access**
- Employee relations** — *see*
Workplace relations
- Employment contracts** — *see*
Workplace relations
- Environmental Management Systems**, 530-570
 Australian Minerals Industry Code, 543-554, 570
 development of, 544
 features of, 545, 559
 implementation of, 553
 obligations under, 546, 559
 principles, 549, 560
 systems and processes, 550
 reproduction of, 548-554
 best practice, 565
 certification, 562-563
 commitment required, 537-539
 competitiveness, 560-561
 components of, 534-536, 555-556
 due diligence
 demonstrating, 538, 557, 568
 importance of, 567
 environmental accounting, 568
 incentives
 industry-wide, 559, 560
 regulatory, 557-559
 ISO 14001, 561-563, 566
 limitations, 539
 Minerals Council of Australia, 530
 National Environmental Protection Measures, 540-541
 Normandy Mining, 564-570
 purpose, 533
 risk management, 568
- Essential facilities, access to** —
see **Access**
- Esso Australia Resources Ltd v Commissioner of Taxation**, 459-475
- Expenditure** — *see* **Exploration expenditure**
- Exploration expenditure**
 deductibility
 feasibility studies, costs of, 465-467
 tenement acquisition costs, of, 467
 Esso Australia Resources Ltd v Commissioner of Taxation, 459-475
 joint venture, payments under, 468-469
 operatorship assumption payment, 469-470
 petroleum exploration, 461-463
 review, evaluation and bidding costs, 463-467

rewrite of tax law, 472-474
 technology payment, 468-469
 tenement acquisition costs, 470-472
 deductibility of, 467

Financing

assessing international mining regimes, 297-308
 country risks, 304-308
 ambiguities in law, 306
 civil disturbance, 304
 customary land tenure, 307
 dispute resolution, 308
 environmental risks, 307
 expropriation, 305
 foreign exchange restrictions, 306
 land access, 307
 political violence, 304
 war, 304
 issues, 298-299
 preconditions, 300-304
 credit and security, 303
 fiscal regime, 301
 legal regime, 302
 management, 302
 mineral title, 301
 repatriation of profits, 301
 sale of product, 301
 suitability, 299-300
 assessing petroleum developments, 286-296
 debt funding, 187-189
 equity funding, 189
 overseas ventures, 190
 project, 298

Gas, access to — *see* **Access**

Hedging — *see* **Derivatives**

Industrial relations — *see* **Workplace relations**

Injunctive relief — *see* **Kalkadoon People v North Queensland Electricity Commission**

Investment — *see* **Financing**

Joint ventures — *see* **Taxation**

Judicial review

lack of jurisdiction for, 453-458

Kalkadoon People v North Queensland Electricity Commission,
 476-484

balance of convenience, 481
 decision, 482
 delay, 482
 Electricity Act 1994 (Qld), 479
 facts, 476-478
 Federal Court jurisdiction, 479
 harm, irreparable, 480
 issues, 478-482
 powerline, construction of, 479

Legislative frameworks for petroleum development,
 246-285

bankability of, 286-296
 Bank group's petroleum sector investments, 283-285

Dai Hung - *see* **Dai Hung**
 disputed areas, 293
 essential elements, 249-262
 access to land, 261
 arbitration, 262
 competent authority, 250
 definitions, 260
 duties, 254
 environmental protection and safety, 259
 fiscal stabilisation, 258
 natural gas development, 260

- petroleum agreements, 252
 - petroleum operations, 252
 - qualifications, 253
 - regulations, 253
 - rights, 254
 - state property in petroleum, 249
 - taxation
 - duties and exchange controls, 257
 - profits, of, 255
 - unitisation, 261
 - extraterritoriality, 293
 - foreign investment, 247
 - model contracts, 273-281
 - cost recovery and expenses, 277
 - declaration of discovery, 276
 - environmental protection, 279
 - fees and bonuses, 279
 - joint management committee, 277
 - minimum work obligations, 275
 - production shares, 277, 279
 - relinquishments, 276
 - requisition, emergency, 280
 - rights, 275
 - standard provisions, 273-281
 - supply of domestic market, 280
 - taxation and duties, 278
 - training of personnel, 281
 - types in use, 274
 - objectives
 - host country's, 249
 - international oil companies', 252
 - regulations, 262-273
 - agreements, 266
 - assignment of rights, 270
 - competent authority, 263
 - environmental protection, 271
 - exploration period, 267
 - financial regime, 268-270
 - land use, 271
 - licensing, 263
 - miscellaneous provisions, 272
 - model forms, 273
 - operations, 266
 - risk, legal, 293
 - zones of co-operation, 293
- Mergers and acquisitions**
- CRA/Rio Tinto Zinc, 502-507
 - exemptions from ASC and ASX, 506
 - implementation agreement, 503
 - shareholders voting, 504
 - sharing agreement, 503
 - dual listed company, 502-507
 - advantages of, 506
 - Australia, in, 507
 - goodwill, 498-500
 - Normandy Mining, 485-502
 - elements of schemes, 487
 - goodwill, 498-500
 - accounting standard AASB 1015, 499
 - ASC relief, 499-500
 - group pre-merger, 486
 - implementation agreement, 488
 - listing rule complications, 501-502
 - Newcrest
 - blocking of merger, 488
 - proposal by, 489
 - rejection of, 490
 - recommended terms, 487
 - scheme meetings,
 - developments before, 488
 - shareholders, option for, 495-497
 - successful proposal, 490-491
 - Tanami Option, 496-497
 - schemes of arrangement
 - advantages over takeovers, 492-498
 - complexity of, 500
 - control under, 492
 - convertible securities, 493-495

- disadvantages of, 500-502
 - flexibility of, 495-498
 - shareholders, meetings of
 - classes of, 501
 - stamp duty considerations, 497
 - takeover schemes — *see*
 - Takeovers**
- Mine management** — *see* **Coal mining**
- Mineral processing**, 316-318
- comminution, 316-317
 - concentration, 317
- Mining**
- coal — *see* **Coal mining**
 - glossary of terms, 318
 - mine planning, 310-311
 - design and layout, 310
 - production schedules, 311
 - reserves and resources, 310
 - mineral processing — *see*
 - Mineral processing**
 - open pit, 312-314
 - blasting, 312
 - drilling, 312
 - haulage, 314
 - loading, 313
 - preconditions to activity, 309
 - underground, 314-316
 - mine access, 316
 - stopping methods, 315
 - ventilation, 316
 - unit operations, 311
- Native Title**
- harm, irreparable, 480
 - injunctive relief, 476-484
 - Kalkadoon case — *see*
 - Kalkadoon**
 - People v North Queensland Electricity Commission**
 - Mabo v Queensland (No 2), 385-387
 - Native Title Amendment Bill, 406-432
 - extinguishment, 410-413
 - compensation for, 412
 - complete by exclusive possession, 410
 - compulsory acquisition, 412
 - partial by inconsistent rights, 411
 - future acts, 413-419
 - classes of valid, 413
 - determinations, criteria for, 430
 - exercise of options, 418
 - freehold test, acts passing, 419
 - indigenous land use
 - agreements, 414
 - alternative procedure agreements, 417
 - area agreements, 416
 - body corporate agreements, 415
 - procedures indicate
 - absence of native title, 417
 - right to negotiate, 419-431
 - exclusions, 420
 - exploration, right to, 425
 - single right, 427
 - good faith, negotiation in, 428
 - intervention, ministerial, 429
 - mining
 - single right, 427
 - small-scale acts,
 - approved, 428
 - parallel processing, 428
 - pastoral leases, 421
 - project acts, 428
 - public reserves, 421
 - registration test, 422
 - merits of claim, 423
 - procedural conditions, 424

- timing, 429
 - transitional provisions, 431
 - validation of existing titles, 408-410
 - intermediate period acts, 409
 - powerlines, construction of, 479
 - Wik decision — *see* Wik
- Peoples v Queensland**
- Open access** — *see* Access
- Petroleum development** — *see*
 - Legislative frameworks for petroleum development**
- Petroleum exploration** — *see*
 - Exploration expenditure**
- Practical mining** — *see* Mining
- Project alliances** — *see* Alliances, project
- Rail services, access to** — *see* Access
- Revenue** — *see* Taxation
- Schemes of arrangement** — *see*
 - Mergers and acquisitions**
- Service, continuity of** — *see* Supply
- Stamp duty** — *see also* Taxation
 - conveyance duty, 160, 168
 - exemption, 168
 - information, communication of, 160-170
 - land-rich provisions, 161
 - mortgage or loan security duty, 169-170
 - Nischu case, 161-162
 - Pancontinental case, 163-165
 - property, significance of, 160-170
 - schemes of arrangement, under, 497
 - valuation provisions, Western Australia, 165-168
- Step-in rights**
 - Corporations Law, insolvent trading under, 125
 - definition, 118
 - difficulties negotiating, 114
 - legal ramifications, 123-125
 - legislative basis for, 115
 - reason for, 119
 - protect bargain, to, 120-123
 - project company involved, 121
 - reason for bargain, 120
 - value of bargain, 123
 - protect plant, 119
 - remote sites, 123
 - Sithe Energies, 117
 - supplier's perspective, 117-126
 - time, length of step-in, 122
 - who needs, 119
 - who steps in, 122
- Supply**
 - continuity of, 109-116
 - establishing the right
 - environment, 111-112
 - existing legal concepts, 113-115
 - contract, 113
 - security, 113
 - legislation, 115
 - Melbourne City Link Project, 112
 - step-in right — *see* Step-in rights
 - techniques for ensuring, 111
 - outsourcing of, 110
- Takeovers** — *see also* Mergers and acquisitions

advantages over schemes of
arrangement, 500-
502

compulsory acquisition
provisions, 525-529
Homestake case, 526-528
share-splitting and, 525-529

contested bids, 508-529

convertible securities, 493-495

disadvantages of, 492-498

earnings forecasts, disclosure
of, 517-525
Pancontinental case, 521-
524, 525
Solomon Pacific Resources
case, 524-525

intentions, disclosure of, 509-
517
Ampolex case, 514-517
Gantry case, 511-514

Pt A statements
earnings forecasts in, 517-
525
offeror's intentions,
disclosure of,
509-517

shareholders, lost, 492

share-splitting, 525-529

Taxation

asset, 181

capital gains, 181-184
farm-out agreements, 207

considerations in resource
ventures, 186-189

farm-out agreements
capital gains tax, 207
income tax, 206
types of, 205

Income Tax Assessment Act
balancing charge provisions,
171-173
capital gains, 181-184
Div 10, 171-181
Div 10AA, 171-181
Div 330, 171-181
Pt IVA

application to withholding
tax, 193
Spotless Services case, 209
s 160M, 181-183

information, sale of, 172-177

joint ventures
roll-over relief, 187
tax losses, 186

property, 173-181
expenditure and, 177-181

prospectors, exemption
removed, 203-205

research and development
concession, 200-
202
deductibility of expenses,
201-202

resource ventures
Australian
debt funding
deductibility, 187-189
from overseas, 189
equity funding, 189
overseas
funding, 190
Spotless Services case, 209

stamp duty — *see* **Stamp duty**

thin capitalisation, 195-200
anti-avoidance measures, 197
changes to provisions, 195-200
foreign debt, extension of
definition, 196
gearing ratio, reduction of, 195
partnerships and trusts, 196
planning, 198
withholding tax, 190-195
assignment of debt, 193
changes to regime, 190-195
defeasance arrangements, 192
interest, extended definition,
191-194

Telecommunications, access to
— *see* **Access**

Timor Gap Treaty
Area A

- activities regulated, 95
 - contract areas, 85-86
 - wells drilled in, 87
 - background, 92-93
 - Bayu-Undan field, 106
 - costs, liability for, 99
 - discovery, notification of, 103
 - Elang Kakatua field, 104
 - employment, 88, 102
 - implementation, 84-86
 - issues emerging under, 107
 - joint authority, 78-90, 98
 - establishment of, 81
 - organisation chart, 82
 - production sharing with, 98
 - jurisdiction under, 81, 83, 94
 - ministerial council, 80, 97
 - outline of, 93-95
 - petroleum exploration activities, 99-100
 - Petroleum Mining Code, 83, 95-96
 - petroleum operations, definition, 95
 - Production Sharing Contract, 83, 96-97
 - arbitration, 97
 - awarding of, 100
 - minimum requirements, 96
 - multiple companies entering, 97
 - sharing formula, 84
 - subcontracts, tendering for, 101
 - termination of, 96
 - retention lease, 105
 - sharing of work
 - contracts, 89, 90, 101
 - employment, 88, 102
 - subcontracts, tendering for, 101
 - taxation, 84
 - unitisation, 106
 - Zone of Co-operation, 79-80
 - BHP Petroleum's role in, 91
- Trade Practices Act 1974 (Cth) —**
see Access

Treaties

- Agreement Establishing the South Pacific Regional Environment Program, 58-59
 - objectives, 58
- Basel Convention for the Transboundary Movements of Hazardous Wastes and their Disposal, 59-62
 - main provisions, 60
 - objectives, 59
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 56-58
 - main provisions, 57
 - objectives, 56
 - protocols of 1986, 58
- Convention for the Protection of the World Cultural and Natural Heritage, 65-67
 - implementation in Australia, 66
 - main provisions, 65
 - objective, 65
- Framework Convention on Climate Change, 62-65
 - main provisions, 63
 - objectives, 62
 - proposed protocol, 64
- Geneva Convention on the Continental Shelf, 56
- impact of on resources industry, 49-77
- Noumea Convention, 56-58
- Timor Gap Treaty - *see Timor Gap Treaty*
- treaty-making process, 68-73
 - concerns about, 69

- recommendations of Senate Committee, 69
 - reforms, 70-76
 - appraisal of, 73-76
 - United Nations Convention on the Law of the Sea, 51-56
 - amendments to, 54
 - main provisions, 52-56
 - objectives, 51
- Wik Peoples v Queensland**
- activities of lessees, 400
 - fiduciary relationship of Crown, 404
 - implications, 397-405
 - history of native title, necessity of, 401-402
 - intention of grant, 402-403, 404
 - issues, 387
 - Mabo v Queensland (No 2), 385-387
 - majority views, 394-397
 - Gaudron J, 398-399
 - Gummow J, 399
 - Toohey J, 394-396
 - postscript, 396, 399-400
 - minority view, 388-394
 - common law doctrines, 391-392
 - Native Title Amendment Bill, 407 — *see also*
 - Native Title**
 - Racial Discrimination Act, 400
 - rights, inconsistency between, 389, 397, 400
 - State ownership of minerals, 404
 - suspension of native title, 404
 - 10 Point Plan, 407
- Workplace relations**
- coal industry, in the, 211-230, 345
 - Coal Industry Tribunal, 213-215
 - need for change, 212
 - drugs and alcohol — *see* **Drugs in the workplace**
- Workplace Relations Act**
- AIRC, role of, 226-228
 - benefits of, 216
 - employment arrangements, 216-220
 - award, 216
 - certified agreements, 217-218
 - registered individual contracts, 218-219
 - freedom of association, 225
 - industrial action, regulation of, 220-25
 - bans clause, 222-225
 - permitted, 221
 - prohibited, 220
 - types of, other, 222-225
 - unfair dismissal, changes to, 228