LEIGH CREEK ENERGY Limited

Manager

Small Business Entities & Industry Concessions Unit

The Treasury Langton Crescent

PARKES ACT 2600

Submission by Leigh Creek Energy Limited – Thursday 26th July 2018

Consultation on the draft Treasury Laws Amendment (Research and Development Incentive) Bill 2018 and Explanatory Materials June 2018

Leigh Creek Energy – Comments on Other Matters in the Draft Bill

Leigh Creek Energy Limited (LCK) is an emerging ASX listed energy company focussed on developing its Leigh Creek Energy Project (LCEP), in northern South Australia. The project location at the now closed Leigh Creek Coalfield was initially chosen as a result of a screening process that evaluated potential resource development sites around the world for in situ gasification (ISG). LCK has undertaken a rigorous and detailed discovery process to select the exact site for its Pre-Commercial Demonstration at the former Leigh Creek coal field in northern South Australia. In doing so, LCK has followed the recommendations of the leading and internationally recognised Lawrence Livermore National Laboratory (LLNL) in the United States and has been guided by the LLNL publication "Best Practices in Underground Coal Gasification".

LCK has approved Advance Findings in relation to the eligibility of its ISG Pre-Commercial Demonstration (PCD) R&D activities for the financial years 2015/16, 2016/17 and 2017/18. <u>A key factor in the ability of LCK to raise funding for the PCD and the decision to proceed with the project was the Advance Finding and supporting R&D legislation with an uncapped R&D refundable tax offset mechanism.</u>

LCK expects to receive a refundable tax offset of approximately $9 million for approved eligible R&D activities in FY2018. LCK also expects to receive a refundable tax offset for eligible activities incurred in 2018/19 which align with those in the approved Advance Finding but have been deferred due to delays in the PCD approvals and schedule. As we understand under the proposed changes to the Incentive, LCK's claim in future years will be capped at $4 million, significantly disadvantaging LCK and the sector as a whole given that it is proposed that the cap will apply to all companies eligible for the refundable tax offset, with the exception of companies conducting clinical trials.

<u>It is within this context that we urge further consideration of the proposed changes to implement the $4 million cap on refundable R&D tax offsets, and in-particular we recommend that projects that have have/had an Advance Finding to support eligibility should be grandfathered for an interim period (two-three years) from the $4m cap on the basis that a key factor in the decision to proceed with the project is likely to have been the prevailing refundable tax offset legislation.</u> The phasing in of the cap over several years for such projects would seem to be a much more equitable position.

Leigh Creek Energy – Comments on the Clinical Trial Exemption in the Draft Bill

We are concerned that the proposed 'clinical trials' definition and finding process will provide unintended additional benefits to a single industry sector that will not necessarily best serve the Australian taxpayer. Such unintended benefits could limit the future potential for similar targeted support for R&D in other sectors, including the minerals exploration sector in which LCK operates. We anticipate that the exemption for clinical trials will preferentially support overseas clinical trials that often require access to facilities, expertise and populations not available in Australia. We understand that more closely aligning the 'clinical trial' definition and finding process with existing findings processes, especially Advance and Overseas findings, could support greater transparency for industry and better serve the public interest. For example, it might be better to publish the Incentive benefits for overseas clinical trials, rather than the total R&D benefit to each company.

The specific requirements to be satisfied prospectively for eligible overseas activities are less relevant in many other industry sectors where a high level of expertise, facilities and conditions exist to conduct R&D in Australia. For example, minerals exploration contributed $1.565 billion of expenditure to the economy in 2016/17 (Mineral Exploration in South Australia 2017 Commodity Report). Our sector supports R&D across the broader manufacturing and services sectors of the economy and conducts R&D within regional Australia to develop Australia's natural resources.

The adaptation of the broad based R&D Tax Incentive to target support to specific industry sectors is unprecedented and was not specifically recommended by ISA in conjunction with its review of the program in 2016. Instead, ISA specifically recommended additional, targeted, non-tax-based incentives. ISA recently affirmed that view in response to the Government's proposed changes to the R&D Tax Incentive. Typically, specific financial incentives target industry sectors with regard for any potential duplication through other broad based programs such as the R&D Tax Incentive. For example, minerals exploration to discover or better determine the location, size or quality of deposits is specifically excluded as experimental R&D from the R&D Tax Incentive. Instead, such exploration is targeted by the specific $100 million Junior Minerals Exploration Incentive to secure additional private investment in vital greenfield mineral exploration.

The R&D Tax Incentive is intended to support industry driven R&D across all industry sectors, including R&D for some purposes in the minerals exploration sector. However, AusIndustry takes what we consider an overly restrictive view of minerals exploration R&D claims by applying a broad interpretation of the specifically excluded exploration purposes, failing to accept that using known techniques in a unique combination and in a unique environment can be an eligible R&D activity, and failing to accept that unknown geology is an indicator of the requirement to develop new knowledge.

The level of support for minerals exploration provided under the R&D Incentive has been declining in recent years due to AusIndustry's interpretation of experimental R&D and broad application of the specific exclusion for some exploration activities. Of particular concern is the apparently inconsistent approach to delegated decision-making for different industry sectors. For example, AusIndustry does not readily acknowledge that changes in geology at particular regional locations across Australia drive R&D but readily acknowledges that subtle changes to the chemical structure of drug candidates drive R&D during clinical trials.

It is within this context that we urge further consideration of the administrative arrangements and proposed changes to implement the exclusion of clinical trials from the $4 million cap on refundable R&D tax offsets.

Sincerely,

Phillip Staveley

Managing Director – Leigh Creek Energy