

Draft Sustainability Report

Comment by Tracey Anton

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Thank you for the opportunity to be a participant in the department's initiative to improve community engagement.

I have already provided feedback via teleconference for the community engagement strategy with a hard copy pending.

For me, as a community advocate for mining reform, a lot of my suggestions to reduce and further minimise risks to the person involve changes to both resource acts and their corresponding regulatory frameworks.

So, it is to this point that both the **Community Engagement** and the **Sustainability Report** provide no substance to highlight how improvement can occur when it is done prior to or without legislative change.

Without reform, both these strategies are just words that hold no credence for our communities that the Minister is, in fact, genuine to tackle the real issues faced by the landholder with forced multiple land use options.

As this document pertains to operational works, it has to be assumed, that until otherwise advised and/or implemented, that all approvals of mining projects (including exploration) are granted under the current legislative regime which is unsatisfactory.

While mining holds exemption rights according all other departments a lower order of ranking how can DEDJTR possibly achieve the right balance with project assessment and risk management frameworks when all mining need water entitlements and results in land degradation.

It is for this reason that mining should lose its privileged position and improved planning take priority with water as a resource be given a monetary value.

How many -

- agencies have a co-regulatory relationship with the resource sector
- acts is there a cross over in jurisdiction
- acts does mining hold priority rights being exempt from the planning provisions of the Planning & Environment Act 1987

I have made comment on the strategies but have included some which are not yet a legislative requirement and should be to ensure transparency.

Other considerations for legislative reform in consideration of our own contractual agreements with lending institutions, insurance companies, agricultural licencing requirements and the like are –

- **combining both resource Acts to ensure continuity**
- **presumptive liability**
- **separation distances**
- **rehabilitation bonds**
- **land farming controls**
- **Mining loses its exemption rights.**
- **Authority to enter land including appropriate disclosures and baseline studies**
- **Inclusion of unconventional mining**
- **Fracture stimulation**
- **Closures of loopholes**
- **Creation of industry fund to finance mismanagement by industries own**

In regards to Minister's discretion is can be corrupted and cannot prove transparency as to what considerations of legal principle informs ultimate decision making power which does not give the community confidence in their competency.

In consideration of **Section 26** and **77J** of the Mineral Resources (Sustainable Development) Act 1990 I have related my comments to those legislative requirements for the granting of a licence concerning –

- **Conditions**
- **Rehabilitation and bonds**
- **Protection of groundwater**
- **Elimination of risks**
- **Fees, levies, royalties,**
- **Land access agreements**
- **Workplans**

1 Introduction

This section should provide an introduction to the Sustainability Report and should include basic information about the mining licensee/ EIWA holder.

No comment for this section

2 About the operation

This section provides an opportunity to showcase the economic benefit of the activity you are undertaking.

It should:

- provide a brief description of the site eg location and size - maps can be included*
- describe what you are mining or extracting and what this material is used for*
- identify the number of people working at the site*

To give weight to this section, the economic modelling assessed with the licence application needs to be provided to ensure transparency otherwise the community have no concept of what the government gave economic consideration to and the determination made leading to the assumption that the public benefit of extracting earth resources is greater than any other costs that may arise from doing so.

These other costs, that may appear intangible, are not given a value worth so the real cost versus net benefit of mining projects over a lifecycle are not factored. Therefore, public benefit of mining over public and environmental health is now emerging to be a significant cost liability to the taxpayer.

To highlight an economic benefit in this section needs to provide a full cost analysis of the project if the government really want to show transparency to the public.

This need to include -

- the royalties paid and to whom (public or private). This way royalty payments can be followed up with government as to distribution of monies raised and where used.
- any subsidies and tax exemptions received in operation of the activity
- value of land per hectare
- disclosure of all shareholder announcement

Note *

The **economic modelling** for a project's assessment of jobs and value adding to the local economy is a process of making politically fraught decisions about a project's future based on a governments department's ability to correctly assess and apply a monetary value on the environment vs net community benefit vs short term capital gain in increasingly and unreliable market conditions.

3 Environmental management

3.1 Overview of environmental management plan

This section should provide a brief summary of your approved environmental management program:

- *what are the key environmental issues/risks at your site? E.g. noise, dust, air quality, ground or surface water impacts, land/soil impacts)*
- *for each issue/risk:*
 - *what mitigation or control mechanisms are in place?*
 - *how are you monitoring the impact of your activities on the environment?*

To prove the appropriateness of the project and to satisfy this section baseline studies should be the key critical element that underpins a successful management plan.

Without it you have nothing to compare that the key risks noted in the initial EES, attached conditions (or comparable) have been managed to the satisfaction of the landholder.

As to the status regarding reform of the EES process, it has still not proceeded even though an inquiry had determined the current EES process was outdated and inadequate. Therefore, the community cannot be assured that environmental assessment has effectively considered risks to the environment and at the appropriate stage of assessment.

The record of initial studies would also determine the effectiveness of any controls and/or conditions in place.

Additionally, baseline studies provide a key measure to encourage compliance when self-reporting is the preferred mechanism used by industry and government but not the preferred method trusted by the community.

Self-regulation is reporting to minimum statutory obligations where a fee is paid for a report so government can rubber stamp that the required obligations have been met.

Mining is the industrialisation of the land where emissions and waste stream discharges are the norm but to be reliant on self-regulatory reporting is to not give the community a definitive outcome of the potential risk that may never truly be identified

It would also be assumed that the approved work plan would have previously been made publically available prior to operational works to ensure the licensee response is transparent and that-

- siting is appropriate
- that the licensee is complying
- no new risks have arisen

3.2 Activities and monitoring outcomes 2015 - 16

This section should set out, for each environmental issue/risk identified in your environmental management program:

- an overview of any environmental management activities you have undertaken in the 2015-16 financial year Eg weed control spraying, spraying dust suppression polymer.*
- an overview of monitoring outcomes (in tables format, where applicable) eg air sampling, dust deposition, dewatering volumes, water quality sampling profiling*

Again I would comment the concern with self-reporting.

What criteria would be used to benchmark against self-monitoring of environmental management as reported by licensee because the community want to see the regulator doing the monitoring and need to see evidence.

The implementation of any given legislative framework can degenerate from effective to ineffectual without enforcement if those responsible for monitoring compliance fail to carry out their tasks.

To replace prescriptive legislative regimes with other legally non-binding mechanisms such as:

- codes of practice
- voluntary agreements
- self-regulatory codes; and
- co-regulatory codes - is a failure by government to do what is needed to prevent risks, rather it is a reactive

What is robust regulation in consideration of past Auditor General's report and technical review boards and how are you showing the community that the One Stop Shop (OSS) is capable in consideration of past incidents including the sinkhole and consequential impact to the 2011 Morwell Princes Freeway section, 2012 Morwell River diversion collapse into the Yallourn open cut coal mine, the Yallourn Northern Batter collapse in 2008 and the Morwell Mine Fire debacle in 2014.

How is DEDJTR -

- encouraging compliance
- monitoring compliance
- responding to noncompliance

4 Rehabilitation

4.1 Overview of rehabilitation activities 2015 - 16

This section should provide an overview of land rehabilitated during the 2015-16 financial year, including:*

- a brief description of rehabilitation works undertaken for the reporting period eg placement of fill/overburden, revegetation*
- site maps identifying worked out areas, areas rehabilitated in the reporting period and total rehabilitated area since mining/quarrying commenced*
- identifying the percentage land rehabilitated in the reporting period that has been revegetated with local vegetation*

** As per the Regulations, rehabilitated land means landforming complete and planting undertaken.*

Every stage of rehabilitation should compare present soil profiles from baseline studies to determine any residual contaminants that need to be managed to support future land use requirements.

Furthermore, in the absence of securing adequate bonds to service rehabilitation costs when a company can easily find a legal loophole to avoid the greater cost of rehabilitation how is the government proving to the community that particular licensee will have the capacity to rehabilitate at the end life if insufficient funds are held up front.

This is now relevant given the current state of QLD companies avoiding major endlife cost burdens.

A major issue of concerns has been a company's' ability to avoid paying environmental costs including avoidance of rehabilitation cost burdens and how legal loopholes allow this

These costs are, in turn, transferred to the taxpayer.

An operational mining/extractive company going into administration when the market value of the minerals/resource reduces with the costs of rehabilitation being more than

Administrator Michael Fung said there was no way the Government could recoup the money for the clean-up from the administrator, and that Denehurst's shareholders were not liable under the laws governing listed companies.

Baillieu linked to mine debacle - LIBERAL Party leader Ted Baillieu has been linked to one of Victoria's most damaging environmental debacles through his shareholding in a collapsed mining company.

<http://www.theaustralian.com.au/news/nation/baillieu-linked-to-mine-debacle/story-e6frq6nf-111112492922>

Mining companies onselling a venture at greatly reduced value to avoid rehabilitation costs

"The sale of closed mining sites by global mining majors to private firms of unknown but limited financial capacity is the standard way to dodge the rehabilitation liability," Mr Buckley wrote in a report for the institute in September.

"The July 2015 'sale' of the closed Wilkie Creek coal mining site in Queensland for a reported US\$10-20 by Peabody to the private Exergen frees Peabody of an associated US\$55 million liability relating to rehabilitation costs and take or pay infrastructure obligations."

<http://www.theherald.com.au/story/3631765/tinklers-dartbrook-mine-plan-predictable-and-alarming-says-former-coal-executive/>

A loophole in [Queensland](#) mining laws could allow a startup company to avoid government scrutiny of its suitability to operate a coalmine with a \$120m-plus environmental liability after raising less than \$750,000 from investors. Batchfire Resources has [inked a deal to buy Callide mine](#) that may also not require it to seek a new environmental permit, sparing it from a possible hike in the amount of money it must guarantee for site rehabilitation should it go under.

<http://www.theguardian.com/environment/2016/feb/12/startups-purchase-of-queensland-coalmine-avoids-environmental-scrutiny>

Government should include refineries and processing plants in new laws that prevent part of a production stream from avoiding environmental obligations.

Queensland Parliament will soon debate the Environment Protection Chain of Responsibility Amendment Act, which attempts to expand Government powers to chase cleanup costs from the owners of resources projects.

"These laws will allow the Environment Department to target parent companies, to target ultimate beneficiaries and to target shadow decision makers," Environment Minister Steven Miles said. <http://www.tradescareer.com.au/news/blame-and-bills-in-palmer-s-wake>

<http://www.edoqlld.org.au/law-reform/>

Manipulation of company law to insurance company

<http://www.wattelectricalnews.com/NEWS/Linc-Energy-placed-in-administration-to-avoid-penalties/31357>

Queensland Environment Minister Steven Miles said this was a prime example of why the Government introduced "chain of responsibility" laws in a bid to make it easier to recover the costs of environmental clean-ups if a company crashes.

"We need better laws to ensure companies can't avoid their environmental obligations," he said.

5 Community engagement

5.1 Overview of community engagement plan

This section should provide a brief overview of your approved community engagement plan

Baseline studies to be included with data owned by landholders and community.

Full disclosures of risk as afforded to shareholders be made known upfront to all stakeholders including lending institutions, insurance bodies and co-regulatory agencies so informed decisions can be made.

5.2 Overview of community engagement activities 2015-16

This section should provide:

- *details of any community engagement activities for the reporting period*
- *details of the number and nature of complaints received, and any actions taken to respond to concerns*

Community are very distrusting of the engagement process because the company say one thing to the landholder but another thing to the shareholders.

Full disclosures that are accorded to a shareholder should also be presented to the community for update and ongoing status.

Engagement should also include results of unscheduled audits with transparency to compliance as opposed to scheduled site audits.

6 Compliance record

6.1 Corrective actions

This section should provide:

- *Details of any compliance notices received under section 110 of the Mineral Resources (Sustainable Development) Act 1990 (Vic)*
- *Details of any corrective actions taken to respond to the compliance notice*

By what means will the government show the community how monitoring is changing to encourage compliance by licensees.

This section needs to come with a notation to prove that compliance was not based on self-regulation alone. Monitoring records should be included of unscheduled site audits, soil and water testing against baseline data.

If corrective actions have taken place there needs to be acknowledgement by regulator that the corrective works were successful with an assessment as to future risks.

6.2 Reportable events

This section should provide details of:

- *any 'reportable events' under section 41AC of the MRSD (mining and exploration) or s116A (extractive industries),*
- *an overview of the actions taken to minimise the impact of each event to prevent a recurrence.*

Was monitoring testing completed against baseline data to prove extent of impact.

Currently, no presumptive liability exists and should be included in legislation. One of the major problems identified with the current legislation is that the licensee is only liable when an event is obvious or reported. This is where baseline data is so important and this section would be welcome by the community.

If an incident goes under the radar there is no point of entry, date or incident record that can prove that the licensee is liable and therefore no proof of incident event, assessment or details of type of contamination.

Additionally, potential for contamination relates to what are real or perceived impacts.

It has always been that the landowner has to prove, at considerable expense, that an incident and impact has occurred; however it should be that the licensee has to prove that they did not cause the incident and if impacts have occurred required to remunerate the aggrieved.

If contamination is obvious, state acts are applicable. If contamination or other incidents cannot be proved, no insurance company will compensate. The landowner has loss control of his property through Government sanctioned transfer of rights.

Both acts are significantly inadequate to give the landowner protection, surety and compensation from any impacted contamination in the future. There is no commonality between both acts especially if the acts do not even distinguish between convention and unconventional and drilling techniques with reference to injected substances.