Australian Government

Department of the Environment and Energy

Dr Gordon de Brouwer PSM
Secretary

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Committee Secretary
Senate Standing Committees on Environment and Communications
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Parliament House
CANBERRA ACT 2600

Dear Secretary

Thank you for the opportunity to provide a written submission to the inquiry on *Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities*.

This submission sets out the roles and responsibilities of the Department of the Environment and Energy that relate to rehabilitation of mining and resource projects, with respect to the *Environment Protection and Biodiversity Conservation Act 1999* and other relevant initiatives.

Environment Protection and Biodiversity Conservation Act 1999

The Australian Government's role in environmental regulation of the resources sector is set out under Part 3 of the EPBC Act, which identifies 11 nationally protected matters, including threatened species, World Heritage properties and Commonwealth land. Under the EPBC Act, any action likely to have a significant impact on one of these protected matters requires assessment and approval by the Minister for the Environment and Energy.

When deciding to approve a resource project the Minister may choose to attach an approval condition that mandates rehabilitation measures, along with bonds or other financial assurance mechanisms. Under section 134 of the EPBC Act, this is only permitted where the approval condition is deemed 'necessary or convenient' to protect, repair or mitigate the impacts of the resource project on a nationally protected matter.

118 mining and resource projects have been approved with conditions relating to rehabilitation and 41 have been approved with conditions relating to financial assurance mechanisms. To date, the Department has not been required to undertake any compliance activities in relation to EPBC Act approval conditions covering mine site rehabilitation or financial assurance mechanisms.

The majority of mines in Australia that are in a rehabilitation phase were approved prior to commencement of the EPBC Act. Section 43A of the EPBC Act exempts actions from requiring an approval if an action was authorised prior to the commencement of the Act. Accordingly, the Commonwealth has no role in regulating these operations. Mines approved under the EPBC Act are not yet at a rehabilitation phase and, therefore, any EPBC approval conditions related to rehabilitation are not yet applicable.

Ranger Uranium Mine

The Australian Government plays a more active role in rehabilitation activities associated with the Ranger uranium mine in the Alligator Rivers Region, Northern Territory, owing to the regulatory and institutional arrangements set out under the *Environment Protection (Alligator Rivers Region) Act 1978,* administered by the Department and the *Atomic Energy Act 1953,* administered by the Department of Industry, Innovation and Science.

The Supervising Scientist, appointed under the *Environment Protection (Alligator Rivers Region) Act 1978,* is responsible for undertaking environmental research and developing standards and practices to protect the environment of the Alligator Rivers Region from the effects of uranium mining. The Supervising Scientist also provides advice to the Minister for Resources and Northern Australia and the Northern Territory Minister for Primary Industry and Resources, who are responsible for regulation of the Ranger uranium mine under the *Atomic Energy Act 1953.*

The document, *Environmental Requirements of the Commonwealth of Australia for the operation of Ranger uranium mine,* sets out the Australian Government's environment protection conditions and rehabilitation objectives under the statutory framework outlined above. The rehabilitation objectives provide for a very high standard of rehabilitation including the requirements that the Ranger project area be returned to a state which would allow it to be incorporated into Kakadu National Park, that all tailings are returned to the mined out pits and that contaminants arising from the buried tailings are isolated from the environment for 10,000 years.

The regulatory arrangements under the *Atomic Energy Act 1953* include a rehabilitation security provided by the mine operator, which would allow for complete rehabilitation of Ranger should the mine operator be unable to fulfil its obligations. The security figure is recalculated annually by an independent assessor based on the rehabilitation and closure works described in an updated closure plan. Further information is available from the Department of Industry, Innovation and Science.

Christmas Island

The Department's Parks Australia Division, in partnership with the Department of Infrastructure and Regional Development, is responsible for phosphate mine rehabilitation on Christmas Island, as the mining activities affect and are taken on Commonwealth land.

Rehabilitation efforts to 2020 will be conducted under the *Christmas Island Mine Site to Forest Rehabilitation Program*, in accordance with a Memorandum of Understanding between the Director of National Parks and the Department of Infrastructure and Regional Development. The program is funded by a conservation levy paid by the mine operator.

Importantly, it provides for the ongoing maintenance of previously-rehabilitated areas, which is anticipated to take 7 to 10 years.

Research

The Department's Office of Water Science commissioned research to inform regulatory decision-making on coal seam gas and large coal mining projects and their eventual closure and rehabilitation. This research was informed by the priorities of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, which includes mine site and gas field remediation.

A number of research reports[1] commissioned by the Office of Water Science include information about techniques to better predict, monitor, and avoid or remediate potential environmental impacts associated with coal mining and coal seam gas extraction. The Office of Water Science report *Temperature Highland Peat Swamps on Sandstone: Evaluation of mitigation and remediation techniques* (Australian Government, 2014) provides information relevant to mine site rehabilitation.

State and Territory Responsibilities

State and territory governments are the primary regulator for most mining and resource projects, including rehabilitation requirements. Approvals under state and territory legislation incorporate requirements for the entire project lifecycle and cover the whole of environment, rather than the more narrow set of nationally protected matters outlined above.

State and territory governments are also primarily responsible for assessing the value of financial assurance instruments, to ensure the amount of the bond or bank guarantee accurately reflects the cost of rehabilitation. This process generally takes into account the performance of the industry, history of the mine operator and risk of default.

Yours sincerely

Dr Gordon de Brouwer
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[1] These and other reports are available on the Office of Water Science website: http://www.environment.gov.au/water/coal-and-coal-seam-gas/resources