



10 April 2017

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

**Inquiry into
The rehabilitation of mining and resources projects
as it relates to Commonwealth responsibilities**

This union seeks to make a brief submission to the Senate Committee inquiry on this matter. The submission is intended to be a public document.

The Construction, Forestry, Mining and Energy Union consists of three Divisions, namely the Construction and General Division, the Forestry and Furnishing Products Division, and the Mining and Energy Division. We are the major union in these industries and represent approximately 110,000 members across Australia.

In particular we represent the majority of workers employed in the coal mining industry.

The CFMEU has always supported the regulation and practice of good mine rehabilitation.

It is noted that State Governments have primary responsibility for land management including the approval of mine leases and related environmental management and rehabilitation plans. The jurisdiction of the Australian Government in this area is therefore limited.

Improvement over last three decades

It is well-known that the mining industry had an extremely poor record in rehabilitation of mine sites until at least the 1980s. Expenditure on rehabilitation was not even regarded by the Australian Taxation Office as a legitimate deductible operating expense until that time. There is also the infamous story that the former Premier of Queensland, Johannes Bjelke-Petersen, threatened to raise the royalties paid by coal mining companies if they wasted money on rehabilitation!

In the 1989-92 period the Hawke and Keating Governments conducted the Ecologically Sustainable Development Working Group process, which included a focus on mining. Mining was portrayed as a temporary land use, with mine sites able to have other uses – agricultural, conservation, etc – before and after the mining phase. “Multiple and sequential land use” was the buzz phrase.

The mining industry has certainly improved its performance substantially on rehabilitation over the last three decades, and has also sought to portray its performance that way. Globally and within Australia, the industry and government agencies have developed extensive capabilities, best practice guidelines, and significant regulation.¹

Mining projects seeking development approval from regulators are generally required to engage in progressive rehabilitation of the site as mining proceeds, and are required to plan for the final rehabilitation of the site.

There is in place in most jurisdictions in Australia the provision for bonds or other financial assurance to guarantee that rehabilitation occurs.

Causes for concern

It is therefore disturbing to determine that the industry is not performing as well as the impression it seeks to portray.

¹ See, for example: <https://www.industry.gov.au/resource/Programs/LPSD/Pages/default.aspx>
http://www.minerals.org.au/leading_practice
<http://www.icmm.com/en-gb/environment/mine-closure/land-rehabilitation>

Less than full rehabilitation

A 2013 presentation from the NSW Dept of Primary Industry² indicates that the record of the industry in establishing robust and durable soil and vegetation profiles after mining is patchy. That is, the landforms, soil and vegetation established post-mining are often not as resilient as that which existed prior to mining, and is therefore more subject to deterioration and decline. Lack of robustness / resilience lessens the opportunity for other activities to be undertaken. Mining becomes less of a temporary land use and more of an enduring one.

Recent research published by The Australia Institute indicates that, in New South Wales, there have been almost no relinquishments of mining leases that show mining is totally concluded and the site fully available for other purposes. Most mine sites not in active production tend to be placed on “care and maintenance”.³

It is also known that the management plans for many open cut mines do not provide for complete rehabilitation – there will be at least 45 final voids left in NSW.

It is obviously preferable that mine sites be fully rehabilitated to the point of being genuinely available for other uses – including conservation uses. If the science and economics of rehabilitation is still at the stage of being unable to fully rehabilitate mine sites than that should be acknowledged and planning should be on that basis.

Perpetual maintenance of a site is not desirable, if for no other reason than that it is difficult to achieve certainty that any activity can occur indefinitely. However, the mining industry is not alone in having this problem – there are many other industrial processes and human activities that do not provide for, or are incapable of, the restoration of the site to its natural form. Most heavy industry falls into this category, and so do most human settlements.

It is noted that the closure of the German black coal mining industry – now in its final stages, provides for some continuing management of the disused mine

² Jo Powell (2013), Presentation on Strategic Land Use Policy to University of New England Mining in a Sustainable World conference, 13-15 October.

³ The Australia Institute (2017), Dark side of the boom – what we do and don’t know about mines, closures and rehabilitation in New South Wales.

sites indefinitely.⁴ This includes an ongoing workforce and various support services. In a future context where mining activity is being reduced or ended, the ongoing management of sites can be seen as mitigating the employment losses and assisting in the transition to other activities.

The financial assurance system

The union is aware of claims that the current provisions made by mining companies for rehabilitation are inadequate. A report from the Queensland Dept. of Environment and Heritage Protection leaked in August 2016 indicated that financial assurances of \$1.2 billion were substantially short of estimated rehabilitation costs of \$3.25 billion.⁵

In the case of the Hazelwood brown coal power station mine, the owner has recently substantially upgraded the final mine rehabilitation cost to \$439 million – six times higher than the \$73.4 million bond provided to the Victorian state government. The power station rehabilitation cost is estimated at a further \$304m – making \$743m in total.⁶

There are multiple issues to juggle here:

- Mining companies should fully provide for the rehabilitation of mine sites and, where full rehabilitation is not possible, for the ongoing maintenance of the site.
- The methodologies for determining the monies required for full or best-practice rehabilitation should be robust.
- The financial assurances placed with governments should be adequate to meet the properly estimated rehabilitation costs, with actual rehabilitation undertaken also reflecting (reducing) the assurance held.
- While it could be assumed that large successful companies can reasonably carry some of the cost of rehabilitation on their own balance sheet rather than lodging assurances with government, it must also be recognised that even the largest companies can be caught in severe financial difficulty. During the Global Financial Crisis in 2008-09 mining majors Rio Tinto and Xstrata (now part of Glencore) both had near-death experiences.

⁴ Norbert Maus (2016), German Black Coal Phase Out, Presentation to ACTU Just Transition Forum, 8 November https://www.dropbox.com/s/s23vjy3kqd2j2tc/Norbert_Maus-German_black-coal_phase-out_nov2016.pdf?dl=0

⁵ Department of Environment and Heritage Protection (Qld)(2016), Report of Targeted Compliance Program. Financial Assurance for Queensland coal mines. (TCP15-009), 29 January.

⁶ footprintnews.com.au, 20 January 2017, International Power puts \$743m price tag on remediating Hazelwood.

- Caution should be exercised in any policy response around increasing financial assurances. Proposals to ensure that rehabilitation actually occurs should not themselves be responsible for pushing companies into insolvency and therefore unable to complete rehabilitation responsibilities! We do not want a cure that is worse than the problem!
- It should be recognised that employment and other expenditure in mine site rehabilitation form an important part of facilitating the transition from mining in a region or locality.

Transfer of liability to smaller firms

Where rehabilitation costs have been underestimated, it follows that sale of the mine to another party will involve inadequate recognition of the liability in the sale price.

This should always be a concern, but where the sale is to a much smaller company with a much smaller balance sheet, the concern is magnified. During the recent downturn after the end of the resources investment boom, a number of mines have been sold to much smaller companies.

Again, this is not a problem that is solely the province of the mining industry. It occurs in other industries in decline, or in a declining phase – larger businesses sell assets to smaller businesses. While in many cases the smaller businesses genuinely intend to run the business profitably, they have lesser capacity to ride through market turbulence and are more likely to fail. This has adverse implications for workers' entitlements as well as for site rehabilitation.

In this situation, the larger business that sold the mine or business has limited its losses by offloading an asset at a price that did not fully reflect the liabilities attached.

It is particularly important that, where mine sites are being sold, the estimation of the rehabilitation liabilities has been robust, and the financial assurances are adequate.

Mine rehabilitation done on the cheap

If there has been under-provision for rehabilitation it follows that there will be substantial pressure to mitigate costs when rehabilitation does occur.

The union has already witnessed situations where mining companies have declined to enter into collective agreements with the union for the post-mining rehabilitation phase (even where the union recognised that the rehabilitation task would not be a for-profit activity). The mining company has preferred the course of tendering out the rehabilitation task with a view to finding the lowest cost option.

Of immediate concern to the union is that permanent mining jobs are transformed into casual and poorly paid jobs. The use of poorly-paid and insecure labour has implications for the quality of the rehabilitation work done. As a consequence, and also as a result of cost-cutting in other parts of the process, the rehabilitation outcome is likely to be worse.

The union suggests that appropriate standards be set for the conduct and outcome of minesite rehabilitation projects. It is noted that the tendency with respect to environmental approvals is to specify environmental outcomes. Attention should also be paid to the processes, including employment practices, through which the outcome is achieved.

In addition to the intrinsic merit of mine site rehabilitation being undertaken through the provision of decent (ie fairly paid, secure) work, it has implications for the transition of mining communities and regions to the post-mining period.

Mine closures are inevitably a traumatic loss for a region where mining is usually a major activity and a source of much employment and economic demand. The post-mining phase of rehabilitation is a major means by which the transition to life after mining may be managed. The sudden and large loss of jobs is mitigated if there is significant rehabilitation employment. This mitigates the social and economic impact of sudden major unemployment and gives the regional community more time to adjust. Rehabilitation projects, just like most mining projects themselves, are generally not long term, but their good management in a manner that benefits the local community can be a significant contributor to the transition process.

If you wish to discuss these matters further, the relevant point of contact in the first instance is Peter Colley, National Research Director

Yours sincerely,

General President