

SENATE INQUIRY INTO THE REHABILITATION OF MINING AND RESOURCES PROJECTS AS IT RELATES TO COMMONWEALTH RESPONSIBILITIES

MCA RESPONSES TO QUESTIONS ON NOTICE

Introduction

Dr Gavin Lind, representing the MCA, appeared at the Perth public Senate Hearing into the Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities on Wednesday, 7 March 2018.

During the hearing, there were five questions taken on notice by Dr Lind.

Each of the five questions has been extracted from the Senate Hearing transcript. Each question, along with the MCA response, is outlined below.

1) CARE AND MAINTENANCE QUESTION: PAGE 29 OF TRANSCRIPT

Senator REYNOLDS: *last person turn the lights out, until you come back. I'm not aware of any other state or territory – maybe this is a question for Dr Lind – that has as high standards as Western Australia does for care and maintenance. It seems to me that WA might be, sort of, best practice.*

Dr Lind: *I'm not sure about that. I will have to take that one on notice for you.*

MCA Response:

All States and the Northern Territory have comprehensive frameworks regulating minerals development, including periods of care and maintenance (C&M) – an industry term used to describe processes and conditions occurring at a mine site which has temporarily suspended operations, but which intends to recommence operations at a later date. C&M should not be confused with either mine closure or mine abandonment.

During C&M, production ceases, but the site is managed to ensure it remains safe and stable, and infrastructure and equipment is maintained to ensure a state of operational readiness. Placing a site on C&M is a major decision for companies, and is not an easy option as it requires active investment and ongoing environmental management that may last several years.

While Western Australia certainly has high standards for C&M, all states and the NT have common features for their regulatory regimes including:

- A requirement to adhere to existing environmental conditions, unless regulatory approval is given for variations. Existing environmental conditions may include agreed environmental outcomes, such as water quality and rehabilitation activities, and agreed environmental activities, such as ongoing water and flora and fauna monitoring.
- Maintenance of the mine rehabilitation bond and the company's liability for rehabilitation of the site.
- Continued inspection and monitoring by relevant regulators, such as mining and environmental regulators.

Recent reviews of local regulatory regimes by states and the Northern Territory have included further consideration of C&M.

Further specific information on each state and territory's provisions appears below.

Queensland

Queensland's minerals regulatory framework requires compliance to approved environmental and other conditions during periods of C&M. Ongoing environmental liability for a mine site also remains with the company during periods of C&M.

While it is practice to notify the regulator of changes in a site's operational status, Queensland's Mineral and Energy Resources (Financial Provisioning) Bill (2018), due to commence on 1 July 2018, includes specific provisions to notify government if a site will cease operations or enter a period of C&M.

The Queensland Government is also working with industry and other stakeholders, including community representatives and environmental groups, to progress reporting requirements and ways to support companies to return to production (if required) during periods of C&M. Any associated legislative amendments will follow in 2019.

Victoria

Victoria's *Mineral Resources (Sustainable Development) Act 1990* requires any mine transitioning to C&M to notify the state's regulator regarding its change in operating status.

While a site is in C&M, the operation's existing approved work plan remains in effect. This includes adherence to all approval conditions, including rehabilitation, and associated bonds.

South Australia

South Australia's *Mining Act 1971* requires companies to prepare a Program for Environment Protection and Rehabilitation (PEPR), which includes detailed information about the mining operation and environmental management, including mine rehabilitation.

The PEPR must also include specific strategies for management for all aspects of the mine in the event of a period of C&M. C&M requirements are integrated into the PEPR guideline, and are also outlined in an associated Ministerial Determination, which requires all activities and strategies to be detailed for the C&M of processing facilities, material transport systems, waste rock and tailings, and supporting surface infrastructure.

Western Australia

Operations regulated under the Western Australian *Mining Act 1978* must have an approved Mining Proposal as a condition of tenure. The proposal includes requirements for monitoring, management actions and environmental outcomes, including mine rehabilitation. An entity must comply with its approved conditions during a period of C&M unless approval is given to vary the Mining Proposal.

Under the *Environmental Protection Act 1986* requirements for agreed environmental outcomes, monitoring, report and non-compliance reporting and investigations continue to apply at entities with a Ministerial Statement and/or a Part V Operating Licence during a period of C&M. Specific approval must be given for amendment to approved conditions.

New South Wales

Companies may apply to the Minister of Resources to transition a site into C&M. Upon approval, a Mining Operations Plan (MOP) for the period of C&M must be prepared and approved by the Department of Planning and Environment (DPE), Division of Resources and Geoscience.

Under the *Mining Act 1992* the MOP details the rehabilitation activities that will take place during the term of C&M. All environmental conditions, including rehabilitation obligations, remain during the period of care and maintenance unless approval is given to vary. This includes rehabilitation requirements stipulated in Development Consent/Project Approval and Environmental Protection Licence.

Northern Territory

The Northern Territory's *Mining Management Act 2015* requires companies undertaking mining activities in the territory to have an authorised Mining Management Plan (MMP). An MMP is an approved approach to managing impacts on the environment which is required for new projects and must be updated on an annual basis for existing projects or when operations or activities change.

When a mine transitions to C&M, ongoing environmental obligations must continue to be met. A specific C&M, detailing how environmental impacts will be managed during this period, is developed to supplement the existing MMP. Authorisation for C&M activities can only be issued on approval of an amended MMP.

2) SUSTAINABLE DEVELOPMENT GOALS QUESTION: PAGE 30 OF TRANSCRIPT

Dr Lind: *The Minerals Council members subscribe to what we call 'enduring value', principles against which member companies conduct their business. A very recent change for us is that we are busy mapping our 10 principles of enduring value against the UN Sustainable Development Goals. Quite neatly, we are able to use that mapping process to see all the amazing things that the member companies are doing and we as an industry are doing together.*

Senator REYNOLDS: *I think the big leap for Australians is that the SDGs, unlike the Millennium Development Goals, are not just for us to support overseas. We actually have to walk the walk on them here as well.*

Dr Lind: *Correct. I agree.*

Senator REYNOLDS: *How far into the mapping are you?*

Dr Lind: *We've just started that process, but it's becoming quite clear that all our member companies fully understand what the Sustainable Development Goals are. We can now do that as an industry, and as an industry map against those Sustainable Development Goals what we are doing in our enduring value principles.*

Senator REYNOLDS: *Could you perhaps take that on notice, and, if you're in a position to provide the committee with more information about how you are doing that, I'm sure the committee would be very grateful for that. I think you're right, it is a way forward – and on mine rehab.*

MCA Response:

Enduring Value is the Australian Minerals Industry Sustainable Development Framework.

As a starting point, the MCA is adapting an approach adopted in the *Mapping Mining to the Sustainable Development Goals: An Atlas* to understand linkages with *Enduring Value, the Australian Minerals Industry Sustainable Development Framework*.

The Atlas was developed by the Columbia Center on Sustainable Investment, UN Sustainable Development Solutions Network, United Nations Development Programme and the World Economic Forum.

Taking this approach should give us a deeper understanding of the SDGs in the Australian context.

Once complete, the work will support ongoing dialogue about the role of mining in society. The work is also intended to provide a platform for future knowledge-sharing and collaboration between industry, host communities, Traditional Owners, governments, civil society and other stakeholders to support the global sustainable development agenda.

Initial work shows strong alignment between priorities identified in the Sustainable Development Goals and the Enduring Value framework.

The MCA will also make a submission to the Foreign Affairs, Defence and Trade References Committee inquiry into the UN Sustainable Development Goals.

3) QUESTION ON CORPORATIONS ACT AND BANKRUPTCY: PAGE 31 OF TRANSCRIPT

Senator LINES: *You don't have a comment? So the chamber doesn't have a comment? All right. This is to both of you again: the WA government has suggested changes to the Corporations Act in relation to bankruptcy, and it specifically referenced Ellendale. What is your view about changes to the Corporations Act in relation to bankruptcy to hold these companies to account?*

Dr Lind: *I don't have a comment on that.*

Senator LINES: *So your organisation doesn't have a view on that?*

Dr Lind: *No.*

CHAIR: *Could you take that on notice?*

Dr Lind: *I will take it on notice.*

MCA Response:

The MCA advocates that the Council of Australian Governments' (COAG) Principles of Good Regulation should guide state, territory and the federal government's approach to regulation. In addition to these criteria, the MCA considers regulation should be set at the minimum level required to achieve environmental objectives without being unduly prescriptive.

The MCA advocates that regulation be consistently enforceable and administered. The MCA also supports investigation of a range of policy options, and thorough and open consideration of whether a regulatory response is required. Sector specific regulation, in this case targeting the mining industry, should be avoided.

As noted in Dr Lind's statement to the Senate Inquiry on March 7, 2018, on 24 November the COAG Energy Council agreed to an investigation into a nationally-consistent approach to mine site rehabilitation financial obligations and associated interpretations of the *Corporations Act* and the Australian Accounting Standards Board rules.

The Council's Land and Resources Working Group is responsible for undertaking this investigation. The minerals industry has engaged constructively with the working group in the past, and looks forward to engagement on this matter once the scope of the investigation is refined.

The MCA is seeking additional information and advice about the implications of proposed sector-specific changes to the *Corporations Act 2001*. This advice will inform expected engagement with COAG's Land and Resources Working Group. Participation in this process may further industry consideration of issues relating to bankruptcy, the *Corporations Act* and rehabilitation commitments.

4) QUESTION ON AUSTRALIAN ACCOUNTING STANDARDS: PAGE 32 OF TRANSCRIPT

Senator LINES: *The other point the Western Australian government make is around the Australian accounting standards, where they say that further improvements could consider:*

- the extent to which liabilities associated with mine site rehabilitation are shown separately, rather than combined with all other liabilities (current or non-current);*
- the treatment of mine site rehabilitation costs as current or non-current liabilities;*
- the transparency relating to assumptions made on actual costs, discounting rates and scheduling of planned expenditure.*

So they are saying that, in this age of transparency, greater transparency should be required under the Australian accounting standards. I'd just be interested to know if either of your organisations have a view on that.

Dr Lind: *We'll take that one on notice. I think that forms part of the previous comment you had.*

MCA Response:

The Australian mining industry is committed to providing accurate and transparent reporting.

Mining companies are required to make provision for rehabilitation and closure liabilities in accordance with Australian Accounting Standards Board (AASB) Standard 137 titled Provisions, Contingent Liabilities and Contingent Assets which aligns with the International Accounting Standard (IAS) 37. Where material, these will be disclosed in the company's audited financial statements. The provision will be updated annually or more frequently dependent on internal company requirements. Companies make provisions on a range of issues, for example warranty claims on products sold or workers compensation; provisions do not relate solely to rehabilitation and closure liabilities.

Australian Accounting Standards apply to:

- Entities required by the *Corporations Act 2001* to prepare financial reports
- Entities in the private or public for-profit or not-for-profit sectors that are reporting entities (as defined by Australian Accounting Standards) or that prepare general purpose financial statements.

The MCA advocates that the Council of Australian Governments' (COAG) Principles of Good Regulation should guide state, territory and the federal government's approach to regulation. In addition to these criteria, the MCA considers regulation should be set at the minimum level required to achieve environmental objectives without being unduly prescriptive. The MCA advocates that regulation be consistently enforceable and administered. The MCA also supports investigation of a range of policy options, and thorough and open consideration of whether a regulatory response is required. Sector specific regulation, in this case targeting the Mining Industry, should be avoided.

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The MCA is seeking additional information and advice about the implications of proposed sector-specific changes to the Australian Accounting Standards. This advice will inform expected engagement with COAG's Land and Resources Working Group. Participation in this process may highlight issues that could inform the industry's position.

5) QUESTION ON PILBARA SITE VISIT: PAGE 33 OF TRANSCRIPT

Senator REYNOLDS: *I would ask if you could take this on notice, and the committee might be in touch with you more formally: the committee would be interested in going up to the Pilbara and having a look at Pilbara mine site rehabilitation activities. I have seen firsthand that there are a number of really good things happening up there on behalf of different companies. The secretary will be in touch.*

CHAIR: *Thank you, Ms Bell and Dr Lind.*

MCA Response:

This request is being implemented through both the MCA and the CMEWA.

Options for a site tour are being discussed with the Committee, based on site and Committee member availability.