



PROJECT 1.3 MAPPING THE REGULATORY FRAMEWORK FOR MINE CLOSURE & REHABILITATION

RESEARCH QUESTIONS FOR THE POST-MINING
ENVIRONMENTAL, SOCIAL & ECONOMIC TRANSITION

PRESENTATION BY ALEX GARDNER, CRC TIME

| & UWA CENTRE FOR MINING, ENERGY & NATURAL RESOURCES LAW

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The Team

Project Team

Academic Researchers

Professor Alex Gardner, UWA Law School

Dr Yvonne Haigh, Murdoch University

Laura Hamblin, Research Associate, UWA Law School

Dr Natalie Brown, UWA Law School

Lauren Downes, Research Associate, UWA Law School

Independent Consultants

Dr Meredith Gibbs,

Mr Robert Milbourne

Ms Revel Pointon

Partners

Steering Committee

Bell, Bronwyn; Chamber of Minerals and Energy, WA

Bibby, Linda; Earth Resources, Policy & Programs, Vic

Blake, Sarah; Roy Hill Iron Ore

Conway, Peter; Rio Tinto Iron Ore

Endacott, Dan; Department of MIRS, WA

Ferguson, Kim; BHP

Freeman, Kelly; Department of W&ER, WA

Heap, Michael; Pilbara Development Commission

Kadletz, Oskar; Department of Resources, Qld

Langley, Helen; Ngadju Conservation Aboriginal Corp,

McIntyre, Matt; Planning 4 Sustainable Development

Quenette, Jaime Lee; Department JPR, Vic

Robson, Geoff; Department of ES, Qld

Smith, Jenine; Department of JPR, Vic



The Problem: designing & implementing efficient, effective & equitable regulation

Understanding the regulatory frameworks (law and policy) for mine closure, including rehabilitation and repurposing through to relinquishment of mine production tenure and management of residual risks to the environment and community is important for designing and implementing the post-mining environmental, social & economic transition.

\ Project in Overview: 3 stages of research

1. Key concepts,
goals & institutions:
Cth, Qld, WA, Vict

Established &
evolving definitions,
goals & institutions:
context for Stage 2.

2. Key instruments
& procedures in
WA, Qld & Vict

Closure planning & impl'n,
financial security &
community consultation at
pre, during & post -mine
operation

3. Experience with
current regulatory
framework (national)

Empirical research
and analysis of
experience with
current framework.

- Three case studies (Ensham, Pilbara, Latrobe Valley) annexed to the report.
- Important feedback from Steering Committee and Consultants
- Final report completed with peer review 4 April 2022

Top 2-5 Key Findings for Stages 1 – 3 of project report

1. Variation & uncertainty in concepts, goals & institutions

- Established & evolving concepts, & inconsistent
- Uncertain goals / objects
- Varied institutional arrangements

2. Agreement on key elements; much variation in execution

- Closure plan essential part of mining proposal
- Financial security much reformed
- Community consultation provisions differ greatly

3. Cultural shift in approach to regulation

- Value of collaboration
- Core practices need attention
- Include Indigenous knowledge of landforms

1. Closure plan essential part of mining proposal

- Qld: requires environmental authority & progressive rehabilitation and closure plan to be approved at the same time as grant of resource tenure – administered by separate government agencies according to detailed legislated procedures, which may include environmental impact assessment
- Vict: grant of mining tenure with minimal proposal information > subsequent work and rehabilitation plan approval process defined in detail by legislation administered by the resource agency that administers the resource tenure, but including some integration of with the environmental protection (incl. EIA) and land use planning regimes
- WA: (i) traditional legislated pathway through grant of mining lease that may be subject to environmental impact assessment, but almost all projects go through (ii) either State Ag't process (confidential) OR deferred proposal pathway to mining lease – proposal & closure plan processed bureaucratically after grant of mining lease under process defined by 'statutory guidelines' of uncertain legal effect – may be EIA

3. Community consultation provisions differ greatly

- Qld: for EA (with PRC Plan) & EIS process, public notice > submissions > draft agency decision > applications / objections to Land Court > recommendation to D-M > Decision
 - All defined by legislation & EA process runs parallel with similar resource tenure process
 - Are some industry concerns but affirmative outcome of *New Acland v Oakey Coal AA* [2021]
- Vict: notification & public comments re mining licence application, and EES & Planning > rights to submit / object > potential for MRSD Act panel to conduct public hearings (??) > grant of mining license > licensee prepares work & rehab'n plan > no statutory notice & comment process, but licensee subject to statutory duty of community consultation > CEO Decision > surface rights holders' consent & Minister consults Local Gov't re bond
- WA: Deferred proposal pathway after grant of mining lease > proposal & closure plan to contain information on lessee's stakeholder consultation > no requirements for public notice & comment > no independent tribunal review & advice > compensation to private landholders, can be determined by Warden > may be EIA process

During Operation, Relinquishment & Post Operation

- All three jurisdictions provide to some extent for:
 - updating / amendment of mine closure plans by authority holder and agency approval, with monitoring and reporting of implementation
 - Regulatory patterns from first approval of mining proposal and closure plans are perpetuated: Qld is clearly the most legally detailed, legally transparent and enforceable
- All three jurisdictions have procedures for relinquishment, but same regulatory patterns mean (for example) that WA's relinquishment process under statutory and non-statutory guidelines are of uncertain legal effect
 - Ultimately, it is possible that a large amount of the mine closure planning undertaken pre-operation is adapted during operations. Whilst progressive rehabilitation is an optimal aspiration for government, industry and community stakeholders, it is possible that the bulk of mine closure conditions are negotiated in detail once operations cease and decommissioning begins
- Post operation / relinquishment – not well practiced or understood.
 - There are Gov't step-in powers and financial provisions for legacy & abandoned sites
 - Still uncertainty about liability after resource tenure ceases, including for repurposing

How can Industry, Government & Community use these Findings?

- Miners
- METS
- Indigenous
- Regional development & community
- Government
- Research

- Consider how well they understand the legal process and its purposes
- There are important political decisions made in the design of legislation, which should serve the interests of the whole community



Implications for Research

- What are the advantages and disadvantages of conducting procedures for mine closure planning at the same time as the grant of the resource tenure or after the grant of resource tenure, and by the same or separate government agencies?
- What is the role of environmental impact assessment of mining proposals and mine closure and rehabilitation planning – how should be it conducted, by whom and with what ultimate legal effect?
- While each jurisdiction acknowledges the importance of community consultation and the recognition of residual risks, the legal rights and institutional structures for addressing these central issues in mine closure planning and rehabilitation vary significantly between the three jurisdictions. A comparison raises the following research issues.
 - When should community consultation on mine closure planning occur?
 - What should be the legal rights, and should there be an independent tribunal review?
 - What are the appropriate forms of legal expression of the plan and community acceptance of residual risk?



THANK YOU

Alex.Gardner@uwa.edu.au

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