

Mapping the Regulatory Framework of Mine Closure

The disparate approaches of Australian jurisdictions to the regulation of mine closure (encompassing decommissioning, rehabilitation, repurposing, relinquishment, and more) represents an array of perspectives on how best to balance the range of environmental, economic, and social concerns associated with mine closure.

KEY FINDINGS

- Queensland has the most legally well-defined and institutionally independent regime; Victoria has a legally well-defined framework on a different institutional model; and Western Australia relies on guidelines as opposed to legislation, which affects enforceability and, to some, credibility.
- There are several key features of effective regulatory design: transparent and progressive rehabilitation planning and implementation from the mining proposal stage, secure financial provision for non-implementation, legally defined community consultation requirements, clear process and criteria for determining tenure relinquishment following certification of rehabilitation, and early identification of residual risks and options for post-mine land use.
- While the Commonwealth has some scope to legislate regarding mine closure for environmental protection purposes, it has not yet articulated specific, clear goals in this area.
- The lack of regulatory guidance for key concepts, such as social transitions in communities affected by mine closure and repurposing of mine assets and landforms, creates uncertainty across regulatory frameworks. Coal mining communities and regions face long-term changes in the mining economy from the effect of climate change policy and law.

This project mapped the current regulatory frameworks from Queensland, Victoria, and Western Australia, comparing their significant differences to identify, at the development, operations, and post-mining stages:

- established and evolving core concepts, goals, and institutions;
- current regulation of mine closure planning for rehabilitation, financial security for fulfilment of rehabilitation, transition to post-mining land use, and community engagement in these processes; and



- analyses of the experience with current regulation and recommendations for future research.

THE CHALLENGE

Mine authorisation and closure regulation is largely a State responsibility, permitting differing approaches. The complexity increases with legal and regulatory communication – voluminous and densely written legislation with an extensive overlay of policy instruments and judicial and administrative interpretation. It was important therefore to have a good overview of mine closure regulation, what are the gaps and barriers to improving Australia’s record of mine closure, plus what research is needed to identify deficient and desirable regulatory practice that will inform policies and routes to reform.

There have been significant relevant regulatory reforms over the past ten years, with the report explaining the effect of historical propositions and acknowledging significant legal and policy reforms. It does not attempt a full history of the relevant law and policy, nor recommend future reforms. The challenge was to make this regulatory map accessible to all.

THE OPPORTUNITY

CRC TiME approached the project research in three stages:

- (1) core concepts, goals, and institutions;
- (2) the main instruments and procedures applied to regulation of mine rehabilitation and closure before, during, and after production operations; and
- (3) the regulatory experience of government, industry, and community participants in the mining industry.

The primary focus was the operation of the key 'mineral resources' and 'environmental protection' laws and policies. This legislation and accompanying guidelines and policies define and utilise the key concepts, engage with the most important institutions, and deploy the most important regulatory instruments. It was also necessary to understand the intersections in the legal landscape. Mining and environmental laws intersect not only with water resources and land use planning laws, but also with a diverse cross section of native title, heritage, corporate, tax, health, labour relations, and local government legislation, among others. This project considered only law and policy that directly contemplates mine closure, being mining and environmental law and, where relevant, insights into the laws relating to water resources, contaminated sites, land use planning, and public health.

OUTCOMES

The current regulatory framework for mine closure in Queensland, Victoria, and Western Australia was comprehensively mapped, including a comparative critical analysis of the three regulatory frameworks and intersection with potential Commonwealth regulation. Key questions for future research are proposed, ranging across the three stages. There is potential for improved regulatory approaches to all aspects of mine closure, as well as assisting in reforms to guide the social transition of communities affected by mine closure and the promotion of sustainable regional economies.

NEXT STEPS

Future research suggestions could inform a range of research planning exercises that focus on specific regional projects (e.g., rehabilitation and closure planning in the Latrobe Valley or the Pilbara), specific practical themes (e.g., community consultation rights or enforcement of rehabilitation obligations), or specific institutional challenges (e.g., Commonwealth-State integration, or intra-state institutional reform). The research suggestions could also inform aspects of broader interdisciplinary approaches.

PROJECT PARTNERS

BHP; Murdoch University; Rio Tinto Services Limited; University of Queensland; University of Western Australia; Central Highlands Development Corporation; Department of Jobs, Precincts and Regions, Victorian Government; Department of Resources, Queensland Government; Department of Water and Environmental Regulation, Western Australian Government; Department of Mines, Industry Regulation and Safety, West Australian Government; Department of Environment, Land, Water and Planning, Victorian Government; Highlands Environmental; Mine Land Rehabilitation Authority; Pilbara Development Commission; Planning 4 Sustainable Development Pty Ltd; Yinhawangka Aboriginal Corporation; Ngadju Conservation Aboriginal Corporation; The Chamber of Minerals and Energy WA; Roy Hill Iron Ore Pty Ltd.

PROJECT PUBLICATIONS

REVIEW FULL REPORT

Besides this final report fact sheet, there are three case studies:

Brown, N. (2022). Regulation of Mine Closure Planning and Pilbara Agreements Case Study. CRC TiME Limited.

Downes, L., Gardner, A. (2022). Post Mining Land Use – Practice Mapping Options: Ensham Coal Mine Case Study. CRC TiME Limited.

Gardner, A., Poletti, E., Downes, L., Hamblin, L. (2022) Case Study, Rehabilitation of the Latrobe Valley Coal Mines: Integrating regulation of mine rehabilitation and planning for land and water use. CRC TiME Limited.

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Comparison of community consultation rights and procedures

Western Australia

- No public notification of mine closure plan required under most common mine approval pathway
- No legal requirement for public comment or submissions on mine closure plan before mining commences.

Queensland

- Public notification is a legislative requirement before mine closure plans can be approved.
- Mine closure planning must provide opportunity for public comment and submissions as a legal requirement.

Victoria

- Public notification is required before a mine rehabilitation plan can be approved.
- Community consultation is required continuously throughout the rehabilitation planning process.

Models of regulatory rigour and flexibility



ABOUT US

The Cooperative Research Centre for Transformations in Mining Economies is part of Australia's national innovation ecosystem. Our diverse partnership brings scale, collaboration and coordinated investment to tackle the most complex mine closure and post-mine transition challenges. Together we're rethinking what's possible to improve outcomes for people, communities, the environment and industry.

We acknowledge the traditional custodians across all the lands on which we live and work, and we pay our respects to Elders both past and present.