DEVELOPMENT ASSESSMENT AND APPROVAL (DAA), REGULATIONS AND PROCESSES.----Comments on DRAFT /PRELIMINARY REPORT

This is a submission (with 12 specific recommendations) from

JIM LEGGATE

Please note that there is nothing in this submission that is confidential .

My main points;-

Australia continues to use a lot of taxpayers' money (more than $ 60 million so far) to clean up after mining - and that is not productive . There already exists a potential/possible, even likely, clean up cost, estimated at a further $ 10 billion, on existing sites *that are already mined , but not rehabilitated. Furthermore, if we do not address serious shortcoming in our approval/regulation of large mining projects there could be a further huge clean up of future new mine sites.*

I do not think Australia should relax a system that is currently falling so far short of its goals. The social licence, for mining, is already seriously compromised.

There are huge risks staring us in the face from proposed mining projects, and we should step back and be cautious, in order to avoid serious impacts.

My comments below are restricted to technical aspects, and I do not attempt to deal with federal state duplication, and other political matters. I have been involved in some very large mining projects in Qld, NSW and at Ranger in NT - as a mines' regulator, as a mine site manager, and as a consultant. **My comments are confined to mining projects**. Until we address the glaring effectiveness issues, the efficiency of mining regulation should be dealt with later. In making my comment I have recognised the following concerns that have been expressed so far in this review :-

- Unnecessary regulatory burdens
- Lengthy approval time frames
- Lack of regulatory certainty
- Conflicting policy objectives,
- Adequate consultation

My starting point is to declare, from my standpoint, that the negative social and environmental impacts from mining in Australia have been grossly understated and misunderstood. Perceptions of mining are false and based more on propaganda rather than facts. **NB such concerns, apparently, have not yet registered with the authors of the preliminary draft report that I am commenting on**. Clearly, these are not the mining outcomes intended by the approvals that were given. The first and main issue therefore is not whether the regulatory burden is **excessive** but whether it is **effective -** in managing the impacts of mining on the environment, on our heritage, and on our local amenity.

Following the assertion above, I argue that the approvals of mining in the past , given largely to manage such impacts , must have therefore failed. **This failure must be the premise for any attempts to reform the system.** Furthermore, if mine owners , in causing such impacts, have breached the conditions of the approvals given them, approvals which are enshrined mostly in law - then that raises several legal issues, including official misconduct. Where breaches persist the mining is unlawful, and that is a very serious issue for all stakeholders, including the Productivity Commission and for ASIC. I will attempt to give the reasons why breaches occur.

But firstly, in the absence of any independent audit of the scores of large mining projects, it is the case that not one of us really knows the full picture. I myself had a lot of inside information up to 1997, but even my factual knowledge is now incomplete, although I suspect it is still better than most. So – my **first recommendation 1 – to obtain up- to -date info on the environmental and social impacts of mining in Australia.** I have good reason to believe there has been unacceptable impact on land and water resources, already, and much more is to come. I believe that serious health impacts continue to arise from old mine sites where toxic mining wastes are not properly managed. There are serious matters out there related to lead poisoning, and arsenic, copper, cadmium and other heavy metal- wastes, generated by mining. There are also asbestos wastes, caustic , acid, sodic and cyanide wastes; and also elevated salts. Many of these wastes are hazardous and some are toxic.

From the mid 1970s I have tracked the mining industry's commitment to – "sustainable development", "balanced development", "industry best practice", "continuous improvement", and the "triple bottom line" – only to see that, at this point, in 2013, all have been abandoned in favour of just the economic value of the resource. (see recent planning assessment proposals in NSW). Ie. There is now an attitude, in government as well as amongst mine owners, that nothing should be allowed to get in the way of large mining proposals. **The problem is that that would mean no social licence for most mining** ; and a significant opportunity cost.(Particularly when it becomes known that **mining is now a permanent land use ,-**see below). The Productivity Commisssion would surely be concerned by that.

Critical info for this Productivity Commission review is to be found in –

- The NSW ICAC report 2013 – and its finding of corruption in mining
- The extension approval sought for Warkworth mine (NSW) – refused by Judge Preston
- Matthews Inquiry for CJC in Qld 1994 – the Judge accepted there was massive non-compliance in the Queensland mining industry. (NB I was a key witness).
- The Connolly/ Ryan Inquiry in Qld 1997- heard that prima facie official misconduct in the mines dept had occurred. Deliberate non-enforcement of the law was the issue. (NB I was a key witness)
- Chief Scientists report, in NSW, on CSG 2013-08-10 identified many uncertainties
- The current CMC investigation into Bligh govt approvals of CSG in Qld. arising from ABC4 corners programme re Simone Marsh ; and from complaints made by Premier Newman, and Drew Hutton..

- Various recent publications and documentaries about mining – ref authors Cleary, Munro, Lucke , Benns , and Hutton - plus SBS doco. "Dirty Business".
- Speech to Canberra Press Club by broadcaster Alan Jones. 19th Oct 2011
- The ABC reporter Quentin Dempster 's book – The Whistleblowers , published in 1997.

The upshot of all this is that a growing number of Australians (who recognise that they own the mineral resources,) have lost faith in regulators to control the mining industry. Many are resorting to activism and peaceful protest (ref Lock the Gate) – and , largely, the industry and govt have only themselves to blame. What has happened is **regulatory capture** – pure and simple, and it is not serving the public interest. A social license for mining is not forthcoming from such capture.

Members of the public, that are well informed about mining and who are not gullible to the propaganda, have formed the view that the regulation of mining has failed , spectacularly. **Drew Hutton has said – when govt has failed then ordinary people have to stand up and act.**

This failure of govt to control a burgeoning mining industry must surely be of grave concern to the Productivity Commission, and be the premise for the intended reform of planning approvals. Yes – there still may exist some unnecessary regulatory burden and duplication, but overall I am arguing for much better planning of large projects, with much more science and engineering assembled beforehand – even where that entails a longer lead time. **In many cases a scientific or engineering *vie*w *or opinion* is critical and it should be peer-reviewed – <u>recommendation - 2</u>.** Nothing can now be left to trust, and a wing and a prayer. There is too much at stake. And prevention of serious health and environment impacts should be avoided and prevented before they occur. For too long mine owners have evaded their responsibilities with spin and propaganda (aided and abetted by captured consultants) **and now we can no longer trust them**. Govts, eg in Qld and NSW, have gone soft on mine owners and even risked official misconduct and perjury charges to appease mine owners. As a result there is already a huge burden on taxpayers to clean up after mining. (see below).

Let me now address some very specific issues , critical to the regulation of large mining projects, and the delivery of intended outcomes,

1. <u>Compliance /Non compliance</u> - tough regulation is not tough at all if compliance is not enforced. Compliance with conditions of approval is fundamental, but I assert , with respect to mining, there is widespread and continuing non compliance, Yes - it would help to expose this if there were **annual compliance audits - <u>recommendation 3</u>**, as has been suggested. Such audits should be truly independent. Let's now take minesite rehab, and water management, as an example of the compliance issue. (please refer to an extra note on this added at the end of my submission) The law re open cut mining requires rehab and containment of polluted water; and clean up at taxpayer expense in the future is neither intended by the law, and not good for

productivity. The law requiring rehabilitation needs to be firmly enforced from the start of operations; but it isn't. There is an estimated $10 billion owing by mine owners for rehab not yet completed. Why has there not been rehab. ; and why are there so many irregular (TEP) water releases from coal mines to the Fitzroy river in Queensland? I offer the following reasons

- Projects are too big to fail and as a consequence mine owners can intimidate regulators to turn a blind eye, and allow endless deferral into the future of important actions. Suspending operations, and terminating leases, is not a political option; and mine owners know that . What authority can regulators exert? **Such projects must be squeaky clean, and owners completely trustworthy to start with**. – **<u>recommendation 4.</u>** see also recommendation 10 below.
- Promises were made to gain approval, and conditions attached – without either party, proponent or regulator, checking that planning and costing and budgeting has incorporated the necessary compliance actions. (so the way mining has been approved eg to greater depths means rehab , very often ,can not occur as per conditions) Such approval if challenged should, and will, be ruled invalid by the courts. (see below) .In many cases mine owners make promises (probably with no intention of keeping them) without the science or engineering knowledge to deliver on them. In many cases it is not feasible to deliver them. **This is all just poor planning.** NB the biggest breach of trust in Australian mining history has been the promise from BHP, Rio Tinto , Xstrata/ MIM and others to return grazing land after mining for coal in Qld and NSW. ; and their promise to protect downstream water quality. Neither of these two promises has been kept. Perversely, mine owners continue to break their own (Minerals' Council) best practice guidelines, by submitting deficient planning. How ironical it is that coal owners are complaining about too much rain when it is, in all probability, a trend associated with climate change.! If there was more rehab on site there would be less polluted water. Regulators have been slow to identify sloppy science and engineering, when it is presented to them. **<u>Recommendation 5</u> – the Federal expert scientist committee existing at present must be retained to assist in the approvals process.**
- *Fait accomplit* strategies are employed by mine owners. Open cut coal mining generally, and sites such as Ok Tedi and Bougainville, are all examples of how Australian companies have successfully used such strategies to avoid expensive rehab and water management. They create a mess that can not be fixed ! **<u>Recommendation 6</u> – there must be a much higher standard of planning for large mines.**
- Offsets – to substitute for mine rehabilitation is a fudge. Toxic and hazardous wastes on disused mine sites, no matter what offsets are agreed, are required to be contained via proper rehab and decommissioning, and even then , if there is no sequential land use , mining has to be seen as permanent land use. This is why the "offset" never completely offsets the rehab requirement. A lot of this is just trickery. **<u>Recommedation 7 –</u> rehab of mined land for waste**

containment must be treated quite separately from off-setting land and bio-diversity values.

- Obfuscation. Unambiguous measurable success criteria have never been forthcoming from the Qld govt for mine site rehab, although some attempts were made to declare them. I contend that mine owners have taken regulators on a circuitous route since 1990s. Prescriptive lease conditions had been used for years in Qld, but never complied with. Mine owners still said they were unsure what was required; but when the govt tried to introduce technical standards to remove any ambiguity, the mine owners rejected that outright. A draft Code of Practice, incorporating technical standards, for coal mine rehab was also rejected in favour of voluntary guidelines. I say the industry has clearly opted for obfuscation and confusion as to the requirement; probably to avoid any basis for prosecution. The only certainty mine owners are really interested in is the certainty that govt will remove any impediments. However, the productivity commission should be aware that obfuscation and confusion, in matters that could affect the share price (and rehab and water containment are very significant costs to mine owners) will not be tolerated by ASIC. I have alerted ASIC to this matter. **Recommendation 8- at the time of first approval unambiguous, measurable, success criteria for rehab of open cut mines must be stipulated.** They must not be changed without a new approval being issued, and **Recommendation 9 – proper accounting standards must be enforced for providing funds for rehabilitation liabilities, and a truly independent annual audit made against relevant legal obligations.** That is the only way there will be transparency and integrity in the market.
- Blurring of pre-mine or benchmark conditions. This is another form of obfuscation. Impacts of mining and compensation requirements are , by this means, deliberately confused. (Ref the website EEMAG and the new book – Road to Exploitation by Alec Lucke) - NB there is a real danger of this occurring in the CSG industry). **Recommendation 10 – pre-mine bench marking is crucial and breaches of any requirement for it should lead immediately to cancellation of the approval.**

2. Invalid approvals

Initial approvals are vital because there is no going back for regulators if they get it wrong. Once a proponent has a foot jammed in the door, then entry is assured. Here are some of the challenges facing regulators

- General obfuscation and ambiguity is preferred by proponents in submitting plans, at the same time as govt is being asked to give certainty. eg "We will adopt best practice " – but it is ill-defined. "We will develop operating plans as we go " – but decisions crucial to acceptable outcomes must be considered up front since many design requirement are impossible to retrofit. Plans that lack important detail should be rejected, no matter the delay.
- Ticking boxes , and sighting relevant reports, but not *giving proper consideration to the information.* Compliance with procedural

guidelines is the focus rather than proper identification of potential impacts. That fault must be rectified.

- Not solving the "too big to fail" weakness. How does govt assert any authority over a project that is too big to fail. Approval conditions become meaningless. "Banks that are too big to fail are too big " according to Paul Keating ! (I think this is where the Georgetown pulp mill proposal ran into trouble. Opponents were not convinced that operating conditions could be enforced). **Recommendation 11 – govt officials and mine owners must agree, and make public , an answer to this challenge, that is legally-binding.**
- Not detecting unfunded, impractical and false promises. Promises that are not feasible and will not be delivered. (eg Whitehaven coal Biodiversity Plan, and also rehab promises for Wandoan coal mine). Coal owners, in the past, were promising to restore grazing lands and were making false promises just to get approval. That tactic is being repeated.
- Not detecting "approval creep" – eg the supertrawler and woodchip proposals (where the tail can easily start wagging the dog once a start has been made), and also for example various mines such as Ernst Henry mine in Qld ., and also Hunter Valley mines where access roads were built into the mines before the mining lease was granted. Start small and use leverage of existing jobs (plus threats of compensation demands) etc to get further approvals for something much bigger. It is a clever tactic, but it is dishonest and devious. The mining industry engages in double-speak over access for "exploration". On the one hand it says it is only exploration, but if they find a resource they argue a certain right (having spent money on exploration) to development approval, It is common sense that there should be no mining – neither exploration (which itself is becoming quite invasive) nor development, in certain areas. Yes - **Recommendation 12. - there must be a clear hierarchy of imperatives , agreed for all regions of Australia; addressing bio-diversity, conservation, water, land and mineral /energy resources.**

So - finally, it is clear to me - until mine owners and proponents are more trustworthy and professional, there should be **more so-called "green tape", not less.**

Signed JIM LEGGATE date 15.8.13

EXTRA INFORMATION ON MINE SITE LIABILITIES.

There is taxpayer funded rehab of many problematic abandoned mine sites in Australia including the following large sites :-

- Mt Lyell in Tasmania (NB it has been acknowledged recently that there are 40 river catchments currently polluted by mining in Tasmania, and in time taxpayers will probably insist on some clean up)
- Rum Jungle mine in NT
- Mt Morgan, Chariah, Croydon, Herberton, Horn Island, Agricola, Mt Oxide and Ipswich coal mines in Queensland
- Captains Flat, Broken Hill, and Woodsreef in NSW

I predict some further tax-payer funded clean up to address future on- going health and/or pollution issues at the following sites which are, or soon will be, closed

- Waratah mine in Tasmania
- Woodlawn, and many Hunter Valley coal mines in NSW,
- Collinsville, Kidston. Pajingo, Gunpowder, Mt Isa, Weipa, Mt Leyshon, Red Dome , Oaky Creek, Gregory, Saraji, Peak Downs, Goonyella/Riverside in Queensland; and at Mary Kathleen where there is a radioactive leak that is ongoing.
- Gove (caustic red mud on edge of Gulf), and Ranger (radioactive waste) in NT
- Radioactive wastes at Olympic Dam in S.Australia
- Super pit at Kalgoorlie in W.A

Under the laws of Australia, and under the approvals for mining that have been given since about the 1970s, the above clean up was clearly a cost to shareholders and not to taxpayers! Somebody has not been doing his job.

Signed Jim Leggate