

Mining Industry House
216 Northbourne Avenue
Braddon ACT 2612
POST: PO Box 363, Dickson ACT 2602
ABN 21 191 309 229

Telephone (02) 6279 3600
Facsimile (02) 6279 3699



Minerals Council of Australia Comments on Draft Global MMSD Report

Introduction

The minerals industry is a unique MMSD stakeholder in that it primarily will be responsible for carrying forward the project's outcomes. As such the Minerals Council of Australia has an interest in ensuring that the process and its resulting report is credible, rigorous and provides a balance of views. The Council therefore welcomes the draft global MMSD report emphasising that the importance of achieving balance is fundamental to the MMSD process and its outcomes.

In defending the integrity of the report, it is not the Council's intention to seek to constrain the views expressed by participants in the process or to influence the MMSD outcomes or conclusions. This would be counter-productive to the whole thrust of the initiative as well as being inimical to the industry's interests. In providing these comments the Council therefore seeks to ensure that the global MMSD report is an accurate reflection of industry practices, is robust in its arguments and is presented in a manner that is readily accessible to a wide range of stakeholders.

The Minerals Council of Australia is the peak national body representing companies involved in mineral exploration, mining and processing of minerals. Its activities are funded entirely by its member companies which, between them, produce 90 percent of Australia's mineral output. On behalf of its member companies, the Minerals Council offers the following comments on key chapters of the draft global MMSD report.

Comments

General comments

While the report makes a number of firm recommendations, there is still little analysis to justify many of them.

Clarification should be provided on the source of the report recommendations to indicate which are the outcomes of the overall MMSD project and which are the views of selected MMSD participants. While the MMSD authors have indicated support or not for some recommendations, they are silent on others.

A report strength is the recognition that there are many players with different roles to play. However many of these roles are not clear and the need for to define boundaries of responsibility – to each other as well as the broader community – must be clarified.

Apart from the initial chapters there is little reference to the role/cost of capital, the need for risk management, and the fact that the industry is a price-taker unable to pass on the costs of externalities or sustainable development initiatives.

The complexity of the trade-offs issue is not sufficiently recognised in a consistent way throughout the document eg. who makes the decision, does the general public have more of a say than the local community or vice versa, hard vs soft sustainability etc.

The metals and down-stream elements of the industry are not sufficiently covered nor their issues adequately addressed.

Chapter 6 – Viability of the Minerals Industry

The draft report's representation of the Minerals Council's 1999 safety culture survey is not accurate and the survey results are misrepresented. The consultant who conducted the survey for the Council has provided the following suggested replacement wording for the paragraph:

“In 1999 the Minerals Council of Australia commissioned a survey into the factors determining safety culture. The survey found that in most organisations the strong focus of senior management on safety might have inadvertently eroded the focus on and responsibility for safety at lower levels. It identified several key factors, such as perceived lack of recognition for safety, rigid safety systems and procedures and “neutrality” towards mining dangers, that suggest mineworkers had become more complacent towards risk. This was further exacerbated by workers experiencing and perceiving high levels of protection through hazard engineering, risk management systems and strong leadership.

The survey identified several key requirements for a sustained and positive change in safety culture, namely that:

- safety becomes more integrated with other business outcomes at strategic and goal-setting levels of organisations,
- responsibility for and decision-making in safety are increasingly devolved to lower levels, especially to the supervisory levels and their teams, and
- a concerted effort is made to make safety management more flexible, simpler and team-driven.”

Based on the above survey, the Council also suggests that the words in the final paragraph on this topic be amended to read:

“The achievement of an effective safety culture in mining needs a sustained and visible commitment and leadership from the top, with health and safety being the responsibility of all workers, teams and leaders in the organisation.”

Chapter 8 – Minerals and Economic Development

Most of the chapter presents the industry as exploitative and lacking in motivation to act responsibly.

The chapter recommendations, while constructive in some instances, are presented in a summary form. They therefore lack an analysis of how they can be implemented. It should be incumbent on the report to consider the implementation of all recommendations contained therein.

The sections on *Corruption, Protecting and Promoting Human Rights* and *The Impact of Armed Conflict* all contain important discussions of these issues. However, the question of their direct link to minerals and economic development is a complex one. These issues extend well beyond the scope of the MMSD project and an analysis of minerals and economic development. It is questionable whether the discussion contained in these sections belongs in the chapter.

The chapter discussion focuses on the (generally negative) impact of minerals industry activities. Little attention is paid to the critical role of governments in managing minerals wealth. This was a key focus of the report commissioned by MMSD Australia on the question of managing minerals wealth. That report's findings about the role of government and the impact of government policies on the sustainable management of minerals wealth is not adequately reflected in this chapter.

There is insufficient reference to the economic benefits that minerals projects can bring. Australia provides an excellent historical (and contemporary) example of these benefits.

In summary, the main deficiencies of the discussion and analysis contained in the chapter are:

- the chapter contains a number of unsupported assertions, “summary” analysis and “summary” recommendations – much of it does not appear to be backed by rigorous economic analysis;
- little analysis is contained in the chapter of the role and responsibilities of government in managing minerals wealth; and
- the chapter has an overwhelming focus on developing countries – as a consequence, little of the important analysis and discussion contained in the MMSD Australia study on managing minerals wealth has found its way into this chapter.

On the other hand, a strength of the chapter is that it provides a global focus on these issues – something often missing from country-specific studies.

Much of the discussion and analysis in this chapter is not reflected directly in Chapter 16 (The Agenda for Change). This is unfortunate given the central position of economic development in any discussion of the minerals industry. Much of this position seems to be

assumed. The only significant attempt to encapsulate some of the recommendations contained in Chapter 8 is Table 16-1.

Chapter 14 – Roles, Responsibilities and Instruments for Change

This chapter accurately points out that there are many players who need to understand and fulfil their roles and responsibilities. It also identifies that a suite of instruments are needed to promote change.

Government: There is acknowledgment of the need to combine a strong national legal framework with a good understanding of local systems as well as achieving a balance in the distribution of costs and benefits

International conventions: The report appears to imply that there should be an international governance regime or statement of principles for mining and mineral resources, because there is none at present. There is no recognition of the fact that an international governance regime raises difficult sovereignty issues.

Terminal liabilities: The extreme case studies of “controversial end-of-life” solutions featuring the Ok Tedi and Marcopper mines would benefit from a best practice example to demonstrate that mine closure costs are being effectively anticipated and managed by the industry.

Lenders and investors: The responsibility of the finance community to be open and transparent in its dealings (eg. divulging its screening methodologies) is not recognised in the report and should be included. The finance community rightly demands transparency from industry, but the screeners’ preoccupation with competitive advantage has resulted in them being neither open nor transparent with companies nor with shareholders.

Policy, Codes and Guidelines: The Australian Minerals Industry Code for Environmental Management is featured as an example of an environmental policy framework adopted by an industry association for application on an industry-wide basis at international and national level.

There is no acknowledgment that the Code is based on sustainable development principles or that work is underway to enhance its social dimension. While a short case study on the Code is provided (Box 14-1) there is no suggestion that it could provide a model for developing a global sustainable development code (which in fact it could). An updated version of the case study is attached for consideration (**Attachment A**) which presents the Code as a possible model for moving forward.

Certification Schemes: While it might be impractical to suggest that all minerals and their products can be certified, it is not impossible to envisage a time where certain mineral products and all mineral operations are certified. This element of the report, along with other discussions of product stewardship and life-cycle assessment, are important issues but are inadequately addressed.

Corporate Reporting: While the industry supports the move to a consistent set of reporting guidelines, developed through the Global Reporting Initiative, the report does not adequately acknowledge the need for operations to have the flexibility to negotiate and then report on a set of performance indicators that has relevance, meaning and import to their local/immediate stakeholders. A balance must be struck between the need for uniformity to allow comparison and the need for flexibility to meet stakeholder information requirements.

Stakeholder engagement: The report would benefit from an adoption of (or reference to) the stakeholder categories identified in this chapter throughout the rest of the document. There is a clear need to consistently recognise that there is a hierarchy of stakeholders, and that some have stronger rights to engagement and participatory decision-making than others.

Chapter 16 – Agenda for Change

The report accurately recognises that there are many players with different roles to play. However many of these roles are not clear and the need to define boundaries of responsibility – to each other as well as the broader community – must be clarified. There should be reference to the need to establish mutually accepted rules of engagement between the players.

While this chapter goes to some lengths to outline the roles and responsibilities of some players (ie. industry, government and the World Bank) there are inadequate details relating to others (ie. NGOs). Reference could be made, for instance, to the Seoul Millennium Declaration of NGOs which calls on all NGOs to “act, in their programmes, projects and activities, in accordance with the highest standards of ethical integrity, transparency and accountability”.

The comments below do not attempt to address each of the players outlined in the chapter but to highlight strengths and areas of concern.

Individual companies: The recommendation for companies to (1) develop and adopt a sustainable development policy (2) review end-of-life plans at existing operations and (3) establish community sustainable development plans – are sensible and achievable. Credible and effective community sustainable development plans can only be achieved through a partnership of the affected community, the company and government.

Industry collectively: The recommendation of a global industry declaration on sustainable development embodying a commitment to a sustainable development code is a logical stretch-target. It should be noted, however, that many of the multilateral agreements proposed to be covered by the declaration are government to government agreements and may have little direct relevance or application to mining operations.

Any ombudsman or other mechanism established to facilitate complaints would need to have a global reach to be effective. Jurisdictional and sovereignty issues would need to be identified and addressed. Successful global models in other industries would need to be examined rather than the version established by Oxfam which is not independent of all stakeholders and as a result not supported by the industry.

The recommendation to adopt a product stewardship approach is a reasonable one.

Governments: The chapter suggests two versions of a Sustainable Development Support Facility to deal with emergency response and related capacity building. The first version, an independent authority supporting government and others as part of the regulatory system of checks and balances, appears to be nothing more than another multilateral body and would not receive support from industry. The second version, an industry-based model, would provide technical advice. More thought needs to be given to creating this capacity within an existing organisation than creating a new one.

The chapter recognises that there is a role for government in collaboration with industry and affected communities in addressing abandoned mines. Further work needs to be done to identify a credible funding mechanism that can be supported by all parties.

Commercial lenders, equity investors: The comments made above in relation to the need for the finance community to be open and transparent in its dealings should be reflected in the relevant recommendations made in this chapter.

Non-Government Organisations: While the chapter outlines five roles for NGOs it also could (as mentioned above) usefully make reference to the Seoul Millennium Declaration of NGOs.

Forum on Minerals and Sustainable Development: While there may be substantial reasons for the establishment of an international mining forum, as recommended in this chapter, any suggestion that this entity should be a formal multilateral decision- and rule-making body would not have the support of industry.

International Indigenous Organisation: It is not clear how such an organisation could “advise strategically, **direct** and monitor industry performance in the area of Indigenous relations”. How would the membership of the organisation be determined? Would it seek to represent Indigenous communities? If so, this would seem an impossible objective. How would the obvious issues of sovereignty be resolved?

Requests for clarification or queries on the above comments can be directed to:

Paula Matthewson
Director – Sustainable Development
Minerals Council of Australia
pm.matthewson@minerals.org.au

Attachment A

BOX 14-1 THE AUSTRALIAN MINERALS INDUSTRY CODE FOR ENVIRONMENTAL MANAGEMENT

The Australian Minerals Industry Code for Environmental Management is the centrepiece of a continual improvement program which assists minerals companies, wherever they operate, to implement effective environmental strategies for each phase of the mine operation from early exploration to final closure and mine rehabilitation.

Launched in 1996, the Code is the culmination of extensive negotiation with relevant stakeholders – mining companies, industry bodies, federal and state government authorities and non-government organisations with an interest in the environment and industry operations. It set new benchmarks, not just for environmental management but also for community engagement and public reporting, presenting companies with considerable challenges when it was first introduced.

The Code does not attempt to replace regulation but to provide a framework of principles and processes aimed at enhancing the management of environmental and related social matters beyond compliance with regulatory obligations. It provides a pathway to continual improvement and for periodic reviews to meet changing community and government expectations. The Code also is complementary to management systems approaches such as ISO14001.

Recognising that the conditions and requirements of companies can differ from site to site, the Code provides flexibility to signatories in fulfilling their environmental management responsibilities. The Code principles allow signatories to improve their performance progressively and to develop innovative solutions to their own environmental issues. This flexibility enables companies to build upon their past and current programs rather than develop a compliance mentality in response to prescriptive requirements.

While it is voluntary, the Code requires signatory companies to meet a range of obligations that include the publishing of annual public environment reports, completion of an annual self-assessment survey to measure progress in implementation of the Code, and triennial verification of the survey results.

The Code has taken much of the learning from the development of the 'Responsible Care' program which has been successful in improving performance in the plastics and chemicals industry. It is generally accepted that the Code has reached a more advanced stage of acceptance and implementation, after four years, than had been achieved by Responsible Care.

The legal implications associated with the Code were explored during its development. It was determined that the Code did not significantly increase the legislative rigour to which businesses were exposed. Legal advice noted that actions by third parties could probably not be taken solely on the ground of non-conformance with the Code and that there would need to

be other conduct in issue before the question of non-conformance could be properly challenged by a third party in proceedings before a court.

After three years of operation the Code in 1999 underwent the first of its regular reviews, involving further consultation with all interested parties. The operation of the Code was streamlined and its environmental management focus was placed within a broader sustainable development context. The revised Code, launched in 2000, emphasises the importance of verification of Code performance and includes a self-assessment protocol to monitor and analyse industry implementation of the Code.

Another result of the review was the establishment of the Australian Minerals Industry External Environmental Advisory Group. The EEAG is a forum through which the industry seeks independent advice on community perceptions of its environmental performance and progress in implementation of Code principles.

The next review of the Code will commence in late 2002 and involve an extensive consultation process. A key element of the review will be the development of enhanced governance structures, including entry criteria and sanctions for non-compliance, as well as a strengthened approach to external verification of Code implementation. The Code will also be evolved to incorporate the social dimension. Following the outcomes of this review signatories will be invited to recommit to the Code.

The Code is a working model that provides a basis for a similar framework on a global scale. The use of a principles-based framework as a global model would provide the flexibility and variation required to reflect the unique circumstances encountered at the regional and national levels. The Code already has been used as a model for a codified framework in Ghana and similar interest has been expressed by a number of other countries.

Major companies such as Rio Tinto, BHP Billiton and WMC are applying the Code to their operations worldwide and have integrated Code reporting requirements with other environmental management systems such as ISO14001. Other signatories are yet to fully implement the Code to cover all operations and have signed on as their Australian or Asia Pacific operations.