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BACKGROUND TO THIS PAPER

On 20 April 2017, the TJ Ryan Foundation co-hosted a “hackathon” together with the Sustainable Minerals Institute of the University of Queensland to examine new approaches to mine site rehabilitation.

Approximately 38 content-rich policy officers, scholars and practitioners from several departments, the mining industry, academe and civil society attended and deliberated in structured brainstorming format under Chatham House rules on the remedies needed for Queensland’s mining oversight regime. A strength of the event was the frank interchange across disciplinary, portfolio and sectoral silos. Unfortunately, despite invitations, Queensland Treasury did not register.

The event focused not on the technical – scientific and engineering – aspects of mine rehabilitation, but rather on the governance, policy and financial aspects.

The provisional findings of the event are embedded in this submission. Many of these findings are relevant to the Discussion Paper *Better Mine Rehabilitation for Queensland*, which was not available at the date of the hackathon.

FINDINGS OF THE HACKATHON

Priority

1. The greatest priority at present is to move operating mines to satisfactory closure. The abandoned mines will remain to be tackled but we need to ensure that the number of them doesn't accumulate in the meantime.

Champion required – government

2. The current system is deficient at several levels, from the accounting standards that allow companies to defer undertaking progressive rehabilitation, through to enforcement action at the end of life. The Queensland Government has the primary responsibility for establishing the statutory and administrative framework for a better model and for coordinating necessary action by public and private sector stakeholders.
3. It is not lack of technical knowledge in natural sciences or geo engineering that is hindering progress, but socio-political and economic structures that are uncondusive to self-managing the problems and do not establish adequate incentives.
4. However, there is visibly a lack of technical and regulatory capacity within the two main departments administering leases. Slowness in assessing applications (a disservice to the industry) and overly cautious conditions are a sign of inadequately resourced regulators.
5. The inadequacy of funds to remediate abandoned mines is a proximate driver of our present predicament, but more fundamental causes are the absence of an appropriate model of governance that properly allocates responsibility; and a shortfall in capacity of government to manage sites without a current operator.
6. The division of responsibilities between the two departments (Environment and Heritage Protection; and Natural Resources and Mines) has had both advantages and disadvantages. The separation requires a strong coordinator supra to the two departments. At present, this is missing.
7. There is an inherent tendency of companies to prioritise generating profit where opportunities are available to defer remediation, such as by transitioning to "care and maintenance". Only government can rein in this tendency which is inherent in the contemporary model of corporate structure.

Champions required – industry

8. Companies' temptation to sell liabilities to underpowered operators requires the industry to stop this practice as State governments cannot easily monitor shareholdings within companies.
9. Companies should structure their executives' performance indicators to embrace responsible remediation practice. Again, industry must take the lead in this improvement.
10. The aim of an industry representative body should include championing best practice as part of its role in advocating on behalf of the industry, rather than the more usual approach of lobbying for favourable treatment and criticising organisations not aligned with the industry such as some environmental groups and farmers.
11. Despite the conclusion that industry must take the lead on industry corporate behaviour, and respecting the role of the Australian Government in administering corporations law, the Queensland Government can quite justifiably include appropriate conditions relating to corporate governance within the conditions of an exploration permit or mining lease.

Industry needs to know what is expected of it

12. Industry clearly wants more certainty in clarifying government's expectations. It is not automatically obvious in each case what standard of finish is required or what post-closure land use is to be achieved.
13. A closure plan must be built into the statutory operating conditions of every operating mine. It is possible that a legislative amendment may help enforce this, but arguably the current legislation provides a sufficient statutory mandate and in any case, improvements need not await legislative review. The Minister has a strong 'prerogative power' to include any condition that is reasonable and relevant in order to achieve the public interest. Sections 267, 269 of the Mineral Resources Act 1989 for example itemise matters that are to be drawn to the Minister's attention. Subsection (m) of section 269 in particular would provide an adequate statutory foundation for requiring a life of mine plan:
“(m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land-use”.

Departmental incapacity

14. Treasury, sensitised to the long-term fiscal liability, should fund the two departments' deliberative and technical capacity generously.

Involve communities

15. Local communities which can be severely affected by mine abandonment should be more involved in framing conditions and determining long-term land use – and in contributing towards remediation.
16. Communities expect industry to fulfil their contractual obligations (and to pay their taxes). Antagonism arises if contractual obligations are inadequately described at the outset or key community stakeholders are omitted from consultation.

Cross sectoral forum

17. There does not appear to be any ongoing coordinating forum that crosses sectors and disciplines and allows frank dialogue leading to solutions to what are common problems.

Feasible path missing

18. The meeting was presented with a model explaining why function such as mine oversight tend to break down. To discharge a function, five capacities are required at one locus of activity:
 - *Coordination* (champion mandate);
 - *Legislation* (statutory mandate);
 - *Knowledge* (data, translated information);
 - *Skilled personnel* (in key relevant positions); and
 - *Budget* (operational capacity).

All capacities are semi-independent: adequacy in one does not guarantee adequacy in any other, except for the coordinating power, which can muster other capacities. At present, some of these capacities are available, but they are patchy and scattered through different agencies. This would not be so important if there were a champion able to steer the activities of the other parties and in particular, to ensure that the line agencies are adequately funded. No such coordinator is in sight.

The challenges were identified as:

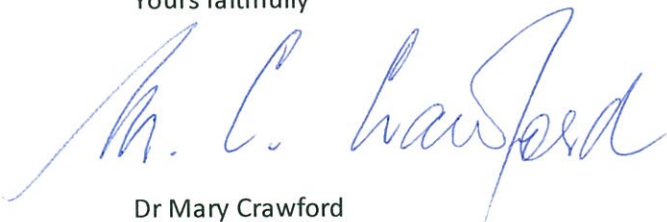
- Identify a champion/coordinating agent on the government side
- Identify a champion/coordinating agent on the business side
- Instruct those agents to assign accountability
- Fund the agents adequately on a continuing not project basis.

SUMMARY

Given compartmentalisation of knowledge and responsibilities, the TJ Ryan Foundation is conditionally prepared to reconvene the group that met successfully on 20 April to workshop the issues raised in the Discussion Paper. Dialogue between a range of different stakeholders in a concurrent session can bring to the surface and depth of insight that can't be achieved by isolated consideration of written submissions.

The Foundation commends the Queensland Government for taking the steps to date in reviewing the mining oversight regime and as Queensland's home-grown think tank, looks forward to continuing involvement.

Yours faithfully



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