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Section 2: Emerging forms of corporate and industry governance in the Australian mining industry

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Emerging forms of corporate and industry governance in the Australian mining industry

Abstract

In recent years the Australian mining industry, in line with trends internationally, has been subjected to an increasing level of external control and scrutiny. The industry has responded to this changing environment by adopting a range of self-regulatory mechanisms at the industry and firm level that are broadly directed towards improving corporate social and environmental performance. This paper describes the new forms of corporate and industry governance that are emerging within the industry, and assesses the impact, effectiveness and likely durability of these measures.

Introduction

In line with international developments, the Australian mining industry has taken some significant steps in recent years to improve its environmental and social performance. This has largely been a response to changes in the organisational, financial and regulatory context in which the industry operates, but strategic decisions taken by industry leaders have also played a part. This paper describes the new forms of corporate and industry governance that are emerging within the industry, and considers the effectiveness and likely durability of these mechanisms. The focus is primarily on companies operating, or based, within Australia, but the international context is also addressed where relevant.

The changing context of the mining industry

There has been a lot of merger and takeover activity in the global mining industry over the last decade or so, mainly in response to low commodity prices and poor returns amongst many of the bigger players (IIEC 2002: 61). In Australia, the industry is now dominated by a small number of large transnational corporations, such as BHP-Billiton, Rio Tinto, Alcoa, Anglo-American, Newmont, and Placer Dome. With the exception of BHP-Billiton, the corporate headquarters of all of these companies are located outside of Australia. These large corporate players tend to be more risk averse, and more concerned about their reputation, than their smaller counterparts. They are also highly sensitive to international stakeholder concerns, as well as being influenced by the norms of the countries in which their head offices are based (Sheehy & Dickie 2002: 29).

The external environment in which the industry operates has likewise changed markedly since the 1980s. The environmental and social performance of the sector is coming under increased scrutiny from non-government organisations (NGOs); there is a growing world-wide push for the corporate sector to embrace the principles of 'corporate social responsibility' and 'sustainable development' (Parker 2002); and financial institutions and financial markets are becoming increasingly sensitised to how companies — particularly those in the resources sector — manage environmental and social issues (Zemek 2002: Richardson 2002).

Extractive Industries Review 2003). Governments in Australia and elsewhere have also become more active in regulating the industry, particularly in the areas of health and safety and environmental management. In Australia specifically, the Native Title legislation has had a significant impact on power relations between mining companies and Aboriginal peoples (Satchwell 2002; Howitt 2001).

These contextual changes have occurred at a time when the mining industry has been struggling to retain public support. Highly publicised environmental mishaps, such as occurred at Ok Tedi in PNG, Freeport in Irian Jaya, Marcopole in the Philippines and Baia Mare in Romania, have contributed to a perception that sections of the industry are environmentally irresponsible (MSMD 2002:17). Within Australia, the industry has also been embroiled in controversy around issues such as uranium mining and land rights. The industry has endeavoured to counter these negative public perceptions by highlighting the macro-economic and social benefits of mining to Australia and the world more generally, but has struggled to get this message across (for example Hooke 2002).

In short, the external constraints on the industry and the range of actors seeking to influence its conduct have grown at the same time as the industry’s capacity to resist or circumvent these attempts at control has diminished. The situation, as described by one recent report, is that mining companies:

'[...]like other parts of the corporate world [...] are now more routinely expected to perform to ever higher standards of behaviour, going well beyond achieving the best rate of return for shareholders. They are also increasingly being asked to be more transparent and subject to third-party audit or review.' (IIEC 2002: 4)

The following section describes how the industry has endeavoured to deal with this changing environment.

The industry response

The industry’s initial response to increased external scrutiny and control was to adopt a defensive posture, but in the latter part of the 1990s industry leaders in Australia and internationally began to address these challenges in a more proactive manner. This response has had three key elements: increased engagement with the critics of the industry, particularly through the Global Mining Initiative (GMI); promotion of voluntary industry codes as an alternative to more intrusive regulation by governments; and implementation of organisational change programs within individual companies. Each of these aspects will be discussed below under the headings of international developments, industry-level initiatives within Australia and company specific responses. The section concludes by considering some issues relating to the junior sector in particular.
International developments

Traditionally, the global mining industry showed little capacity for collective action. This reflected the historical weakness of industry associations, particularly at the international level, the narrow focus on production-related issues, and the lack of perceived common interests amongst companies.

In a major shift in direction, 10 major mining companies belonging to the World Business Council on Sustainable Development’s Mining and Minerals Working Group launched the GMI in 1999. A priority of this group was to ensure that the mining industry was able to present a coherent and defensible position at the World Summit on Sustainable Development in Johannesburg in September 2002.

One of the first actions of the GMI was to commission a London-based NGO, the International Institute for Environment and Development (IIEED), to undertake the Mining, Minerals and Sustainable Development (MMSD) project. This project involved consultations around the globe with a large range of stakeholders, numerous meetings and conferences, and a comprehensive research program. Ultimately it generated over 100 research reports, four regional reports (including one for Australia), and several volumes of conference proceedings, plus a final report, entitled *Breaking new ground* (IIEED 2002). The main report, which was published in mid-2002, provided a frank and well-documented assessment of the industry’s strengths and failings and a comprehensive blueprint for its future reform.

In addition to sponsoring the MMSD project, the GMI moved to establish a new international peak association that would provide more effective representation for the industry at the international level and follow up on the outcomes of the MMSD exercise. In May 2001, the International Council on Metals and the Environment agreed to broaden its mandate and to be reconstituted as the International Council on Mining and Metals (ICMM). The new Council was given a broad charter to promote a sustainable development agenda within the industry and to perform a broader ongoing advisory and capacity building role for the sector.

The MMSD process culminated in the GMI conference in Toronto in May 2002, which was a major event attended by 550 people, including CEOs/chairpersons of 20 major companies, and representatives from 74 NGOs (many of which had traditionally been highly critical of the industry), 25 governments and several key international agencies. At the conclusion of the Conference, the ICMM issued a declaration outlining the actions that the Council would take to address the issues raised at the Conference and in the MMSD report.

A key stated priority was to strengthen the ICMM’s existing Sustainable Development Charter to create a ‘credible global sustainable development framework that provides the basis for ICMM members to demonstrate and verify improved performance in the achievement of their respective economic, environmental and social development goals’ (ICMM 2002). In May 2003, the ICMM delivered on this undertaking by releasing a sustainable development framework setting out 10 broad operating principles for the industry (ICMM 2003). These principles commit the industry to a process of continuous improvement in the areas of occupational health and safety, environmental management, community relations and corporate. To date, 15 companies have formally committed to measuring corporate performance against these principles.

Industry-level initiatives in Australia

Within Australia a voluntary Code of Environmental Management has been in force since 1996. The Code, which is administered through the Minerals Council of Australia (MCA), was launched in large part as a strategic move by the industry to head off the threat of further regulatory intervention by governments. Signatories commit to: application of the Code wherever the signatory operates; progressive implementation of seven broad principles; production of an annual public environment report; completion of an annual code implementation survey to assess progress against implementation of Code principles; and verification of the survey results, by an accredited auditor, at least once every three years (MCA 2000).

Currently 38 companies are signatories to the Code, representing about 92 per cent of Australia’s minerals production. Since 1 January 2002, adherence to the Code has been made a requirement of Minerals Council of Australia (MCA) membership, which leaves open the possibility that non-complying companies could in the future be expelled from the Council.

In 2003 the MCA commenced work on developing a broader Sustainable Development Code, which would be aligned with the ICMM framework. An External Sustainable Development Advisory Group has also been established to provide input into the development and roll-out of the Code.

It is hard to determine whether — and to what extent — Australian mining companies have improved their environmental practices as a consequence of becoming Code signatories (Greene 2002: 12). The broad language in which the Code’s principles are couched makes it difficult to set a benchmark against which to track year-to-year changes in performance (Rae & Rouse 2001). Even if measurable improvements in performance could be documented, it would be very hard to determine whether these were attributable to the influence of the Code or to some other set of factors. There is little doubt, though, that the Code has added to the pressure being applied on mining companies from different quarters to give greater priority to environmental issues. Specifically:
1. The Code has required signatories to publicly commit to upholding key environmental values.

2. The Code processes have facilitated better communication between companies about what constitutes good practice in environmental management.

3. Corporate environmental managers have been able to use Code commitments to leverage improved management and reporting practices, and raise the profile of environmental issues within their own companies.

4. The requirement for regular public reporting has contributed to increased transparency in the industry. The proposed requirement for independent verification of code implementation surveys would create an added level of external scrutiny.

The Code’s credibility depends heavily on companies being willing to comply voluntarily with its requirements. While the MCA has the ability to expel or suspend under-performing members, there would have to be sustained and flagrant breaches of organisational standards before the Council would be willing to exercise this power, particularly against a larger company. (In any event, a company would almost certainly withdraw voluntarily before this situation arose). Suspending or expelling a company would cause some reputational harm, but its ability to carry on business would not be seriously affected. As discussed in more detail below, the reach of the Code is also limited by the fact that most companies in the junior sector are neither members of the MCA or Code signatories (Sheehy & Dickie 2002: 44).

Another significant industry-level initiative currently under way in Australia is the World Wide Fund for Nature (WWF) certification trial. The key driver of this initiative is an NGO, but the trial has also received support from major companies such as Placer Dome Asia Pacific, BHP-Billiton, Western Mining Corporation, Newmont and Rio Tinto, plus the MCA. The trial is modelled on similar schemes that have been developed for the forestry and fisheries industries, particularly the Forest Stewardship Council. The object of the trial is to determine whether independent certification of on-ground social and environmental performance can be applied to the mining industry more generally (for an overview see Rae, Rouse & Solomon 2002).

The proposed scheme differs from the existing Code of Environmental Management in some important respects: the focus is on the site, rather than the corporate level; it has a much broader focus, addressing a range of issues relating to community relations, social impacts and workforce management as well as environmental performance; and the concept of external auditing and verification is central. However, efforts are being made to align the scheme with other initiatives in place or being developed in the industry. For example, the draft certification criteria that have been developed take as their starting point the ICMM’s Sustainable Development principles.

There are a number of obstacles to developing a workable certification scheme for the mining industry, including the difficulty of defining universally applicable certification criteria and setting a workable threshold for certification, establishing and maintaining the necessary institutional arrangements, and developing workable mechanisms for tracking minerals through the supply chain. Even if these design issues can be adequately addressed, companies may still be reluctant to participate in the scheme, especially if there are substantial compliance costs. It is doubtful whether industry purchasers would be prepared to pay a premium for certified minerals, so there may not be any clear financial — as distinct from reputational — benefit from being certified (Shinya 2002). Also, unless certification ‘takes off’ and becomes an industry-wide standard, uncertified producers are unlikely to have their access to markets significantly reduced. Hopefully the WWF trial will provide an opportunity to address these and related issues in a ‘real world’ setting.

Company-specific initiatives

In addition to participating in industry-wide initiatives, most of the larger mining companies — and some smaller ones — are in the process of developing fairly comprehensive internal governance systems to improve their management of environmental and, increasingly, community issues (see Harvey 2002 for a useful overview of Rio Tinto’s internal management framework). These systems typically include the following elements:

1. A set of formal policy documents, usually including a Code of Corporate Conduct and policies addressing Health, Safety, Environment and Community (HSEC) issues. In some cases, companies have adopted omnibus sustainable development policies that incorporate all HSEC policies into the one document.

2. Requirements for contractors to conform to these standards while undertaking work for the company.

3. Designated organisational units and specialist positions with responsibility for managing different HSEC components.

4. A process for assessing social and environmental, as well as economic and technical, risks when approving new projects.

5. An auditing regime (mostly internal, but sometimes managed externally) for monitoring site level compliance with corporate policies.
6. Regular public reports on corporate HSEC performance. These reports are increasingly being issued for individual mine sites as well as for the organisation as a whole.

7. External advisory/consultative mechanisms at the corporate level, and sometimes also at individual sites.

8. An internal awards scheme for recognising good practice by sites and individuals.

Several of the larger companies have also made formal commitments to comply with a range of voluntary schemes administered by international agencies and NGOs, such as: the UN Global Compact, the OECD Guidelines for Multinational Enterprises and the OECD Principles for Corporate Governance; the UN Universal Declaration of Human Rights; Amnesty International's Business Principles; the Global Reporting Initiative; Social Accountability International (SA 8000); the Institute of Social and Ethical Accountability (AccountAbility) AA1000; and the ISO Environmental Management Standards.

To date, very little research has been done on how HSEC governance systems actually operate in the 'real world' company environment. For logistical and other reasons it has not been easy for academic researchers to obtain first-hand information about site-level practices and processes in the industry, or about such matters as how individual companies handle breaches of internal rules and policies. It is apparent, however, that even in the most progressive companies there continues to be a tension between the stated commitment to improving environmental and social performance and the traditional focus on production, profit and cost minimisation. Senior management may talk about the need to embrace environmental and social objectives, but the day-to-day emphasis, particularly at the level of individual sites and business units, still tends to be very much on increasing production and reducing costs — the 'dig and deliver' model. Change advocates within and outside the industry have tried to reconcile these apparently divergent imperatives by arguing that there is a strong business case for companies to improve their social and environmental performance, but many within the industry remain unconvinced on this point. Many established sites are captives of their history, in the sense that they are often 'locked-in' to particular technologies, and have entrenched patterns of working and ways of relating with local communities. More generally, the knowledge base about how to deal with broader social responsibility issues is still relatively poorly developed, even within the larger companies, and many corporate personnel, particularly at site level, are not comfortable in dealing with these issues (Gilmour 2002; Sheehy & Dickie 2002: 46).

In order for companies to overcome these barriers, they will need to embed new practices and ways of thinking at the operational level and change the key drivers of behaviour, particularly at site level. Amongst other things, this will entail developing new decision-making processes and reporting frameworks; re-aligning incentive and reward systems; providing operational personnel with new analytical tools and skills; building up a knowledge base about 'what works'; devising new indicators and metrics; and, most importantly, providing ongoing, top-down reinforcement to company personnel of the importance of focusing on sustainability issues. Some companies are making substantial progress in this regard, but maintaining the momentum over the longer term may prove difficult for some players in the industry, particularly if cost pressures intensify, or the attention of senior management is diverted to other issues (such as fending off or initiating corporate takeovers).

The junior sector
As highlighted by the above discussion, the larger companies have been at the forefront of moves to improve corporate social and environmental performance in the mining industry. By contrast, many of the smaller companies — the 'junior miners', as they are usually referred to — perceive sustainable development and corporate social responsibility as 'big end of town' issues, and often struggle to comply with minimum regulatory standards. These operations, because of their small size, low levels of capitalisation, and shorter time horizons, generally have much less developed internal governance processes and support systems than the larger players in the industry. Few are MCA members or signatories to the Code of Environmental Management and few appear to have signed up to other voluntary initiatives. This is a significant point of vulnerability for the industry: while juniors account for only a small proportion of total minerals production in Australia, they are still in a position to do significant environmental harm, as well as damage to the industry's reputation.

The MCA has indicated that it is actively considering how to encourage more small and medium enterprises to embrace the Code, including by showcasing the achievements of successful small operators, to demonstrate that smaller companies can meet Code obligations cost-effectively. However, these efforts do not appear to have been very successful to date. Other suggestions for how the industry might assist and encourage the junior sector to improve its standards include: establishing an industry-funded advisory service to assist smaller companies to handle complex environmental and social issues when they arise; seconding experienced personnel from larger companies to assist with the development of appropriate policies and procedures; and making it a condition of partnering with junior companies in the development and management of projects that these companies become Code signatories. Whether such measures would be effective is, however, open to question, given that many in the junior sector perceive that the industry's sustainable development agenda is of only limited relevance to them.
Another possible strategy for encouraging the junior sector to lift its standards would be to establish a 'dual track' regulatory system, such as has been proposed for the area of occupational health and safety (Gunningham & Johnstone 1999). In this system, companies would be given the option of: (a) participating in — and being audited against — 'approved voluntary schemes' administered by industry associations or third parties; or (b) staying outside of these schemes and being subjected to vigorous direct regulation by the responsible State agencies. Such an arrangement, if it could be made to work, would provide a good incentive for companies to participate in 'voluntary' schemes, and would possibly also enable the more cost-effective use of regulatory resources. Governments could help to facilitate the take-up of the voluntary option by providing practical assistance and incentives for those smaller companies that show a willingness to voluntarily improve their performance (Gunningham & Sinclair 2000: 13–40).

There are a number of practical obstacles that would need to be overcome before a dual track system could be implemented on an industry-wide basis within the mining sector. These include: the difficulties posed by the complexities of a federal system; the challenge of defining minimum acceptable social and environmental performance standards for such a diverse industry as mining; and the limited expertise and narrow focus of existing regulatory agencies. Nonetheless, the option is certainly worth exploring — particularly in the absence of obvious alternatives.

Conclusion
As described above, the Australian mining industry, in line with international trends, has taken some significant steps in recent years to improve its environmental and social performance. To a large extent, this has come about in response to a changing external environment in which scrutiny of the industry's performance has increased; a growing number of actors (NGOs, governments, financial bodies, international organisations) are seeking to influence the conduct of the industry; mining has lost some of its traditional public support; and the corporate sector generally is coming under increased pressure to act in a socially responsible manner.

Internationally, a concerted effort has been made by industry leaders to engage with stakeholders and critics through the MMMS and GMI processes. Within Australia, the industry has developed a Code of Environmental Management which has been adopted by most of the larger companies in the sector, and is likely to be broadened to address sustainable development issues more generally. Key players in the industry have also been actively involved in the WWF certification trial. In addition, individual mining companies have invested substantial resources into strengthening their internal HSEC management systems.

Needless to say, progress has not been uniform. Most junior exploration and development companies have not been involved in the change processes under way in the industry. Finding a way to improve standards in this sector remains a major challenge and may well require some form of regulatory intervention. The larger companies, for their part, have experienced a range of difficulties in translating higher-level commitments into changed practices on the ground, and many within the industry remain skeptical about whether there is a good 'business case' for companies to improve voluntarily their social and environmental performance. It remains to be seen whether companies can overcome these barriers and embed new ways of thinking and acting at the operational level. The one thing which can be said with certainty is that returning to the old ways of doing business is no longer an option for the industry: the issue is no longer the direction of change, but the pace at which it occurs and the extent to which it will be driven internally or externally.

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1 This is a substantially revised and shortened version of a paper that was published in the August 2003 edition of the Environmental and planning law journal (Brenton 2003).
3 Parker (2002) makes the same point about the difficulty of studying corporate compliance systems generally.
References


Greene G 2002. Industry codes of practice and other voluntary initiatives: their applications to the mining and metals sector. MMSD research report no 26


Hooke M 2002. Where to from here? Keynote speech delivered to the MCAs sustainable development conference Newcastle 11 November


Satchwell I 2002. Agreements between mining companies and Indigenous communities. ACIL Consulting Research paper prepared for the Australian MMSD project

