

MINING FOR TRANSPARENCY: CORRUPTION RISKS IN AUSTRALIAN MINING APPROVALS

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Legal Briefings - By **Leon Chung** and **Christine Wong**

A report published by Transparency International Australia in October 2017 outlines a number of vulnerabilities in the Western Australian and Queensland mining approvals processes that may enable corruption to occur.

The report was published as part of Phase 1 of Transparency International's Mining for Sustainable Development Programme. Research was conducted in 20 resource rich countries to understand the nature and source of corruption risks in mining approvals processes.

HOW DOES CORRUPTION MANIFEST IN THIS PART OF THE MINING CYCLE?

The report notes that corruption at the approvals process stage can have a "domino effect", undermining good governance in the rest of the mining cycle.

Corruption at this stage can emerge in a number of ways, such as a senior official soliciting facilitation payments for processing a licence application, a member of a tender bid review panel favouring an applicant because of personal interest in the company, or a company committing to licence conditions that it has no intention or ability to fulfil.

The focus of the research undertaken for the report was on processes in Western Australia and Queensland as states with large resources sectors.

WHAT ARE THE STRENGTHS OF THE CURRENT PROCESSES?

The report concludes that approvals systems for exploration licences and mining leases in Western Australia and for mining leases in Queensland have a high level of transparency and accountability. Public interest in large mining projects, an active civil society, robust media and a competitive and entrepreneurial mining industry are factors that deter corruption in approvals processes.

WHAT ARE SOME RISKS OF THE CURRENT PROCESSES?

Notwithstanding the strengths in the current approvals processes, the report highlights the following risks:

- **Inadequate due diligence** which can result in companies or principals with a history of non-compliance, criminal or corrupt behaviour, environmental damage, or other poor business conduct, operating in Australia. The report notes that current processes focus on financial capacity and environmental records, but do not adequately examine character, integrity, a company's track record (both in Australia and overseas) or beneficial ownership.
- **Inadequate verification of Environmental Impact Statements (EIS)** for large infrastructure projects evaluated through the Coordinated Projects process in Queensland. This can lead to significant environmental impacts. The report concludes that current review mechanisms are not effective to ensure independent scientific verification of the accuracy of an EIS.
- **Lower levels of transparency and accountability for large mining infrastructure project approvals (such as railways or ports).** Ministers and senior government representatives have considerable discretionary powers to make approvals and recommendations, particularly in Queensland.
- **Inadequate protection of whistle-blowers.** The lack of protections for private sector whistle-blowers was identified as a matter impeding disclosure of issues in the mining industry. We note in this regard that the Commonwealth government released draft legislation in October 2017 which proposes significant reforms to whistleblower protection regimes, including to cover the corporate sectors.
- **The opportunity for industry to influence the policy and political agenda of government in the development of major resource projects.** Factors that enable inappropriate influence include inadequate regulation of political donations and lobbyists, personnel movement between government and industry and a culture of

mateship. The report notes previous convictions and imprisonment arising from corruption in mining approvals processes in Australia where politicians have had close ties to industry.

- **Low levels of transparency in agreement-making between mining companies and native title holders** enabling corrupt practices by service providers, private agents and applicants and a failure for negotiated benefits to be shared with the wider community of beneficiaries.

WHAT ARE THE IMPLICATIONS?

Transparency International will commence Phase II of its work in 2018. The focus of Phase II is the development and implementation of action plans to prevent corruption risks identified in Phase I, working with government, civil society, local communities and the mining industry.

For mining companies, the risks highlighted in the current report signal areas of potential future reform and likely increased public scrutiny to which they will need to respond. Transparency International Australia has already indicated that it will be focusing on improved due diligence and disclosure requirements, continuing its calls for a public register of beneficial ownership, the establishment of a national anti-corruption agency and more robust whistleblower protection legislation.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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