

SUBMISSION FROM JIM LEGGATE – ENVIRONMENTAL SCIENTIST AND WHISTLEBLOWER

TO - SENATE SELECT COMMITTEE INQUIRING INTO

MINE SITE REHABILITATION. March 2017

In short, my new submission to this inquiry states that

- Warnings that govts , both state and Federal, were losing control of the Aust mining industry during one of its most enormous booms, were not heeded.
 - During the period 2000 – 2016 it appears the fluctuating price obtained for Aust coal has had more influence on the way mining has proceeded than legal constraints imposed by approved plans and env authorities. There is no way the current debacle could have eventuated if the laws and regulations had prevailed over mine owners wanting max flexibility to respond to different coal prices.
 - I think it now unlikely any serious rehab will be undertaken by mine owners who will prefer to abandon their leases and forfeit any money tied up in securities/bonds or Financial assurance. That has always been the cheapest rehab option. It raises legal questions though about unfunded liabilities and breaches of the companies Act.
 - State govts will be left to organise rehab as best they can with the money available from the above.
 - The standard of rehab attained by the above , I suspect will fall far short of current community expectation; but will indeed provide for some useful employment in some regions. The Code of Practice for the rehab of coal mines in Central Qld (prepared at the Minister’s request in 1991 by myself and two other authors) , now gathering dust in the Qld mines dept library as a rejected draft, may still have some relevance, even at this very late stage.
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PART 2 - References of previous Leggate submissions on mining .

1. The public Interest revisited – A Report of the Senate Select Committee on unresolved Whistleblower Cases - October 1995. Ref pages 35 and 36, and pages 109 to 114 and also the Hansard transcript of my appearance before the committee.
2. 13.11.97 --Treasury inquiry into Black Coal Industry-----JL (Jim Leggate) made a submission but was told an examination of possible env costs was not necessary. Ref
www.pc.gov.au/inquiries/completed/black-coal/report/coal2.pdf
3. 30.7.02 - Senate inquiry into uranium mining ---pdf sub 79 (2)

---. As Australia debates its energy future and inevitably will have to resurrect the debate over uranium mining and nuclear power, it is a pity this submission that I made was not taken seriously. Regulatory capture and failed rehab has, apparently, largely destroyed the community’s ability to coexist with coal mining. Unless regulatory capture is addressed and

eliminated there can be no serious consideration of nuclear power. The risks would be enormous. My faith in the Supervising scientist, and in the federal environment regulators, had in 2002 been seriously diminished since my term at Ranger mine; and I warned of that in my submission. **I for one could not now support uranium mining in Australia.**

3. - 7/2002 – Submission to Review of ACCC and Trade Practices Acts.
Ref--pdf ---submission 180 tpareview.treasury.gov.au/submissions.asp 2002
Submission 180 to the Review of **ACCC** and and Trade Practices Act.

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--JIM LEGGATE Submission re Murray Darling Catchment, and The Impact of Mining ---sent to the Committee Secretary, Senate Standing Committee on Rural Affairs and Transport, www.aph.gov.au/~media/wopapub/senate/committee/rrat_ctte/.../report.ashx

[\[PDF\]PDF 21KB](#)

- www.aph.gov.au/DocumentStore.ashx?id=35a1268b-b391-4315-b9fa...
www.aph.gov.au/~media/wopapub/senate/committee/rrat_ctte/.../report.ashx

6.

11.10.12 - Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill ... Submission from Jim Leggate sent to
Huge new mining projects are being approved in Queensland and elsewhere, and approval is given mostly on the promise that mine sites will be rehabilitated; at least to a point where mining wastes are contained, and invariably to a standard where sequential land use may occur. The mining industry does not have the credentials to make these promises and they should be viewed with considerable scepticism, given the legacy of past performance. The mining industry is very secretive about this past performance. There are no independent audits and mine owners refuse to be interviewed about the rehabilitation of their sites -----
.etc etc ----11.10.12

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[\[PDF\]Major Project Development Assessment Processes - Productivity ...](#)
www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf *submission from J.Leggate*

PART 3 - Key Points

1. What is the Current situation ?

I refer to recent reports as follows:- “The dark side of the boom” – by Rod Campbell (Australian Institute); and also the report “Ground truths “ by Minerals Policy Institute, and also reports prepared by Rick Humphreys for the Lock the Gate Alliance. There is obviously a sizable area of mining waste around Australia that still requires rehabilitation. Progressive rehab appears to have been minimal. Successful rehab around Australia appears also to be very limited and not well documented, and Scientists from the Centre for Mined Land Rehab, Univ of Qld , should be asked to appear to clarify the technical challenge. **The whole rehab challenge must first be measured reliably before govt attempts to instigate any new work.** I can suggest potential witnesses. Re the technical matters – both engineering , geomorphological and also biological – it is significant to advise that ----- in Qld the rehab code that I drafted in 1991 was rejected, the two key professional institutions AUSIMM and Institution of Engineers , and also the Centre of excellence for Mined Land Rehab all failed to act on my warnings; Qld govt failed in 1992 to develop technical standards (and despite the false utterings of the mine owners wanting certainty it was they who were to blame for that failing) ; and it also failed to set clear unambiguous success criteria for rehab (and again the draft code of practice 1981 could still assist this) . Without agreed technical standards - the costing will never be agreed.

2. What Mistakes has Federal Govt made? –

I think the Federal government must try to regain more control of mining via foreign investment and exports . The Environmental Impact of Proposals legislation was unwisely rescinded by Senator Parer and the Howard govt., in the late 1990s. In March 1998 the Australian newspaper said about Senator Parer - “The Australian learned that Senator Parer had presided over the abolition of coal export licences which had required environmental controls to be met, despite the coal exporting mine in which his family trust holds shares being named in a pollution inquiry and a Senate committee as being in breach of environmental laws“. Earlier in 1992 a Labor govt agreed to rescind the Customs Tariff (Coal Export Duty Act)1975 in exchange for enhanced rehab by BHP Utah Ltd; and appears to have got nothing in return.

3. Corrective action recommended

(a) - review Financial Assurance(FA) approach of govts and replace it with strict compliance rules - otherwise the forfeiting of the FA just continues to be the preferred option for mine owners. In Australia, for decades, forfeiting of bonds, securities and financial assurance has been the preferred option, and it tells us a lot! I prefer to see strict enforcement of mining

plans to ensure closure is planned at all times and that rehab as per that plan is progressed. Show cause notices should be used wherever rehab is not happening to the required standard. This is a State matter but new Fed legislation as per (2) above may need to be enacted to give it a chance to oversee its happening.

(b) - Secret Executive contracts must be made public, and must be made unlawful if they impinge on regulation and due process.

(c) - Annual compliance reports are required from large mining projects as already recommended by the Productivity Commission.

(d) - ASIC must investigate the extent of unfunded liability wrt mine rehab. Agreement must be reached amongst all stakeholders, at each mine site, as a matter of urgency, as to the details of each rehab program - and then there can be accurate costing and provisions made. ASIC has been warned about the possibility of unfunded liability but does not appear to have acted in the interests of shareholders who are now exposed to the cost of a massive backlog of rehab.

(e) - Misconduct must be exposed in govt and in mining companies - ? via a new federal ICAC and via encouragement of genuine whistleblowers.

(f) - All governments must retrieve the political will to assert proper authority over mine owners exploiting the public's mineral assets.

(g) - Effective Regulation solutions- Despite all the propaganda and bluff from the mine owners (particularly their threats to invest somewhere else because of sovereign risk) their status under the law on mining leases **as tenants not owners**, should make regulation quite straightforward in Australia. Sure – mine owners own their companies but they never actually own the mineral resource – they rent it or lease it – and there are conditions attached to such tenancy. Public servants who do not enforce those conditions are committing official misconduct. Insisting on compliance will always be something of an arm wrestle between regulator and mine owner and that has been totally lacking. Mining that is not in compliance is unlawful. **It is very likely that secret executive contracts entered into by state and Federal cabinets with mining proponents, if they exist, have and will compromise and corrupt the intent of parliament wrt regulation.** (Please refer to a Lucke/Leggate submission discussing contracts which was recently addressed to various senators). The Fed govt must not make the same mistake they made over the failed super profits tax – they should not ask the industry how it should be regulated. In the past that has not produced results. However, I do recommend that the Senate request (? demand) that industry leaders appear before the committee to answer questions. This rehab debacle has been perpetrated by various stakeholders whose behaviour may have been irregular/unethical/corrupt. At a federal level clearly the ACA and ASIC should answer some questions and also some mine owners. I recommend we start by asking questions of the biggest of all miners with the biggest area apparently not rehabilitated. That is BHP.

CONCLUSION

In the great contest of ideas that is public debate in Australia the mine owners have never attempted to argue their case for minimal rehab and for leaving behind a moon scape of polluting mining waste. Such a belated attempt to abandon most of their rehab responsibility smacks of a strategy of pursuing fait-accomplit. The Federal government must act quickly to avert such a disaster.

JIM LEGGATE March 2017.