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Dr Fiona Solomon
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Dear Fiona,

Thank you very much for the opportunity to provide feedback on *Working Paper 1 – Principles and Criteria for Certification*. The paper presents a very comprehensive approach to certification principles and criteria that reflects the thinking of the working group over the past few months. The harder part for the working group will be to work out what this means in practice.

I have provided below;

- some general comments on the paper,
- a series of specific comments on the criteria, and
- some general comments on aspects of the certification process.

1. General comments

One of my main concerns is about the repetitive reference to indigenous issues in many of the criteria which has the potential for this project to be perceived as very Australian-centric. This certainly could limit buy-in to the project from Rio Tinto businesses overseas, and possibly from other international companies and groups such as the ICMM. This would have a large impact upon the success of the project. For example, principles 3d) i and ii and 3f)ii, iii, and iv would not translate very well outside of Australia in places like the United States and Europe. The MCEP would benefit from having issues concerning indigenous peoples dealt with as an overarching principle up-front in the document. This would in no way detract from its importance as a key principle but help to make the document more globally relevant.

There are elements of the criteria which identify specific practices that would preclude an operation for certification. This certification project could provide more of an incentive for those operations to improve, or change the way they do business, by promoting a risk-based approach to assessing impacts using environmental, social and economic criteria. This would also provide a more rigorous and consistent methodology to be used to judge each mining operation's impacts.

There is also a need to learn from lessons from the Cyanide Code if we are to make sure that this project is a success. The Cyanide Code still has no administrative home and also has very limited uptake from companies. Part of the reason for the limited uptake of the Cyanide Code could be because of the perceived onerous audit process.

There is a need to ensure the certification project has the right balance in its criteria between being specific for what is required but not being overly prescriptive.

2. Specific feedback on principles and criteria below.

Principle 1

1a) ii

It is not clear what the change management practices are for in this criteria.

Principle 2

d) ii

I think this criteria would be strengthened by an 'as appropriate / relevant'. An extreme interpretation of this criteria suggests that that supply chain partners are currently doing nothing and MCEP participants have a responsibility to lead the way. I think this is presumptuous and is not supported by Rio Tinto's experience. Instead, a number of our business partners are heavily engaged in the sustainable development agenda and we are the ones learning from their efforts as much as the other way around.

Principle 3

3a)iii

Replace 'commensurate.....' with 'equitable and transparent'

3b)i

I do not understand the meaning of the second sentence after 'collectively'. I suggest that this be removed.

3b)ii

Remove the qualification 'within reasonable limits' instead use 'appropriate'.

3d) i and ii

Given the MCEP stated intent to be as universally applicable as possible, I wonder how well this principle would translate in places like the United States and Europe.

3e)i

I read this with some discomfort. On the one hand, MCEP needs to be aspirational and set a clear ethical direction. However, the existence of compulsory purchase orders suggests that there are many situations where 'free, prior and informed consent' is somehow not required. I'm not sure how this is going to be resolved.

3f)ii, iii, and iv

I don't expect anyone is arguing with this. However, I do still wonder how this will translate outside Australia?

Principle 4

4)a

A blanket requirement to 'consult with interested... parties' may be worthy of clarification. Hopefully common sense in interpretation will prevail, and the spirit of this will be taken to mean that operators consult as widely as possible with genuine and legitimate stakeholders.

Principle 5

5b)i

The inclusion of training here is then repeated at 5c)

5b)i

Reword to say "the MSO has an active Fitness for Work program, or equivalent, that addresses both the potential for work to impact employee health and safety, and the potential for worker health to impact workplace safety. The scope of the program should address substance abuseetc"

5b)iv

Should say "The MSO has identified major major hazard aspects of its operations and implemented appropriate controls according to risk level."

5d)iv

It would be hard to monitor employees/.contractors 'beyond the term of their employment or the life of the mine'. May be better to say "The names of past employees who have been exposed to significant occupational health risk are placed on a medical register to be retained for 30 years from cessation of employment with the company." This is then consistent with most law for retention of medical records.

5d)v

Should read 'individual medical records are kept confidential with the employee and only authorized persons having full access'.

5b)i

This criteria is too broad in scope and requires some clarification. The MSO cannot be expected to protect the health and safety of the families of its employees and contractors beyond where there are impacts associated with the activities of the operation. The criteria needs to include reference to this.

Principle 6

6d)iii

The criteria about the MSO to eliminate or manage effects of ARD – this is difficult to define because don't know acceptable levels of ARD.

6e)i

Provision to cover the full cost of rehabilitation after closure. What does provision mean – a budget or cash allowance? This definition requires clarification to keep the definition broad referring to a budget – not cash in the bank.

Principle 7

7c) ii.

This may require some clarification. It may be preferable for a site to integrate a land management strategy into existing operating plans instead of having a separate plan for land management.

Principle 10

10a)i

This text appears unchanged from the previous report and my concerns haven't really changed. No matter how much one embraces the concept of public reporting and no matter how valuable an engagement tool it is, it is still a lot of work to report. And this criteria is suggesting to report on all aspects of the MCEP principles and criteria. Surely globally accepted programmes such as the GRI Mining Supplement has to be the basis for public performance reporting?

3. Comments on reconciliation and community consent processes

Reconciliation processes

The criteria by which a reviewer might judge the efficacy of a reconciliation process would need careful definition. Such issues are invariably deeply politicised and often exploited by some for partisan motives - personal, political, or simply corrupt. The review process would need to ensure that a reviewer was enabled to form a balanced and politically neutral perspective. This might require, for example, the commissioning of an independent report.

The criteria would need to acknowledge that no reconciliation process can resolve all issues to the satisfaction of all stakeholders. It is characterised by the balancing of competing interests with the aim of achieving a fair and reasonable outcome. The existence of an appropriate reconciliation process should have considerable weight in the review criteria, particularly given that such processes sometimes require very considerable time frames - even years.

Other community relations initiatives should also be taken into account by a reviewer, including mine closure committees, mine/community partnerships and other initiatives which evidence a genuine and transparent relationship between the site and the community.

Community consent processes from page 27

The present draft may be unduly restrictive. The fact is that communities may not necessarily have precedent for the consideration of a proposed mining development. (This comment of course relates to any community, not only indigenous communities) The issues are complex and technical. A series of meetings between the company and the community will be necessary in order that the details and implications of the proposal are properly understood - a critical precondition to the effective operation of informed consent.

In some cases new community processes will need to be established, and the experience of a company in other places may be important. Where there is good faith and the involvement of appropriately qualified third parties, there is no reason why a new process should not be developed in partnership between a community and a company. The point is that it is not necessarily in the interests of the community or the proper consideration of a proposal to require that the company effectively absent itself from the internal processes of a community.

Please let me know if you require any clarification on any aspects of this feedback.

Best regards,

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