Australian Sustainable Business Group

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Financial Assurance Review
Queensland Treasury
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The Australian Sustainable Business Group (ASBG) is pleased to comment on the Review of Queensland's Financial Assurance (FA) Framework and the Better Mine Rehabilitation for Queensland discussion paper.

The Australian Sustainable Business Group (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 120 members comprising of Australia's largest manufacturing companies and resource companies. Members were involved in the development of this submission and ASBG thanks them for their contribution.

ASBG supports the use of financial assurances and a rehabilitation policy for the resource sector.

The following points are made to assist in the development of Treasury's policy and Financial Assurance arrangements for the resource sector.

Resource Area is not the Industrial Area

ASBG largely represents industrial members with a smaller number from the resources sector. As a consequence, it is stressed that a different approach to financial assurance and rehabilitation if required would be applicable to industrial sites. As the industrial sector has differing risks and generally smaller land area impacts, transference of this scheme to the industrial sector would be not be appropriate and would require its own considerations especially for financial assurances.

ASBG supports the use of environmental insurance contracts as an alternative or part alternative to traditional sureties such as bank guarantees and bonds provided they prove a cost advantage. Feedback from the insurance sector reveals that there is low appetite for such insurance contracts for the resources sector. In contrast industrial sites are considered by insurers to have a lower risk by the insurance sector, consequently a Treasury lead funding process may not prove as cost effective due to such competition.

Overseas Lessons

Treasury's tailored approach is an interesting one and is not too dissimilar to the United States Superfund scheme. The Superfund is largely focused on abandoned or orphan contaminated sites and was initially funded from industry but it is now funded more from taxpayers funds. Historically it came from the petroleum and chemicals industries, but this has dropped considerably with the tax payer footing most of the missing funds, about $1.26b annually. Nevertheless, about 70% of the fund is paid for by the parties responsible for the site contamination.

There are substantial lessons which can be learned from the Superfund scheme. For example, in the 1980's around 80% of the funds money was spent on legal argument rather than remediation and rehabilitation. This is in part due to poor legislation and means to seek legal clarification on who is responsible for the contamination, problem exacerbated when multiple occupiers use the same site for similar activities.

Queensland Treasury has an opportunity to learn from the mistakes from the US Superfund and other orphan site rehabilitation schemes to ensure legal clarity, minimise legal argument and where necessary focus resources on physical remediation.

Tailored Fund Issues

A few issues arise over the proposed tailored fund which includes:

- *Use of credit ratings for measurement of risk of mine abandonment*: Is the financial credit rating measure quick and accurate enough measure to ensure on-going viability of a resource activity? Perhaps additional measures may be required that can signal financial stress. Additional forecasting methods could be developed. Where red flags are seen, increased scrutiny of progressive rehabilitation, by the regulator could lead to more efficient use of resources and other methods discussed below.
- *Requirement of good oversight on the requirement of progressive rehabilitation:* The scheme requires a large resource requirement on the Department of Environment and Heritage Protection (DEHP) to ensure that agreed progressive rehabilitation is properly enforced. A level playing field will require a good fair and firm umpire. Poor enforcement has been a common issue for environmental regulation, which tends to rely on heavy penalties rather than good oversight. Consequently the DEHP will require adequate resources in which to reduce the risk of fund drawn down. Though good site and financial assessment should identify the problem sites.
- *Use of the fund moneys:* The purpose of the funds is to provide an assurance that where a mine and or the mining company becomes insolvent the fund can assist in rehabilitation work. Incentives could be offered for mining companies that flag in advance of difficulties such as being provided with fund money to undertake rehabilitation prior to liquidation action. Perhaps this could be in the form of a loan for rehabilitation work, especially if the financial stress is considered a short term matter. Final rehabilitation undertaken by the mine operator should be more cost effective than if the task was allocated to external contractors. Regardless such incentives would be a complex issue. Consequently having a mechanism to consider such applications on a case by case basis, rather than a structured process, is worth consideration.

Should further details and explanation of the above points be required please contact ASBG.

Yours Sincerely

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