



31 December 2019

Dr Bruno Oberle  
Chair  
Global Tailings Review

Via email: [consultation@globaltailingsreview.org](mailto:consultation@globaltailingsreview.org)

Dear Dr Oberle

### **Feedback on the Global Tailings Standard - Consultation Draft**

The Minerals Council of Australia (MCA) welcomes the opportunity to provide comment on the Global Tailings Review (GTR) Draft Standard (the Standard). The MCA has also appreciated the opportunity to engage directly with the GTR through recent workshops in Australia.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible and attuned to its communities' needs and expectations.

MCA members are signatories of *Enduring Value, the Australian minerals industry framework for sustainable development*. Core commitments of *Enduring Value* include continual improvement in health, safety and environmental performance, the implementation of science and risk based management approaches and effective and transparent engagement with communities. Effective tailings management is central to these commitments.

Sound tailings management is a critical issue for minerals sector globally. Accordingly, the MCA supports the work of the GTR and the development of the Standard to enhance tailings management practices internationally.

While recognising this and the need to respond promptly to the tragic Feijão Dam incident in January 2019, MCA cautions the GTR and its co-convenors on hurriedly developing the Standard. The Standard represents an important step change in the way the industry collectively approaches tailings management and it should be developed in a careful, considered manner.

The regulation and guidance around tailings management in Australia is mature. The 2015 Golder Associates review of existing standards commissioned by the International Council on Mining and Metals (ICMM) found the Australian National Committee on Large Dams (ANCOLD) guidelines which underpin tailings management in Australia meet the requirements of 'good practice'. Accordingly, the risk management requirements and other processes contained in the draft Standard largely reflect contemporary Australian requirements and practice.

General comments on the Standard are provided below.

### **Purpose and coverage of the Standard**

The Standard has been established to cover risks specific to tailings storage facilities, particularly risks to safety, health and the environment in the event of catastrophic failure. Given this, the MCA recommends the Standard have clearly defined boundaries and define the specific risks and types of tailings structures it covers. Non-unique risks, such as dust or potential impacts on water quality can

be referenced but should be excluded as these are more appropriately dealt with under regulation and/or guidance that apply to whole-of-site issues. For example, the Australian Government's Leading Practice Sustainable Development Guidance.<sup>1</sup> Otherwise, covering the range of generic issues may only serve to distract efforts away from addressing the critical risks that drove the development of the Standard.

### **Equivalency**

The industry is required to meet a multitude of performance and reporting requirements across all aspects of its operations. These may be voluntary, regulatory, investor and community requirements and may be global in scope or regionally specific. There are also a range of tailings specific guidance and regulation. The Standard should be implemented as efficiently as possible, recognising equivalency with existing standards, guidance and approaches.

It is understood work is underway to determine equivalency of the Standard with existing standards and guidelines. The MCA recommends this document be released for consultation and industry input prior to finalisation.

### **Terms and language of the Standard**

The MCA recommends the Standard be modified to address:

- Subjective language that may make auditing against those requirements challenging
- Overly prescriptive terms (e.g. Responsible Tailings Facility Engineer) that hinder the ability to adapt the Standard across different company structures and jurisdictions
- The use of terms inconsistent with common risk language such as managing risk 'as low as reasonably practicable' (ALARP), not 'to the extent possible'.

### **Implementation of the Standard**

The implementation of the Standard and how this is communicated to industry stakeholders, including investors, governments and mine affected communities should be carefully considered.

Without appropriate framing on how the Standard should be applied across different jurisdictions and companies of different sizes and levels of maturity will invariably be misinterpreted by both companies and those holding companies to account.

For example, in a highly regulated jurisdiction where the bulk of the Standard's requirements may already be met through regulation, the Standard may not need to be strictly 'applied' or operations specifically accredited. In cases such as these, the failure to have an operation specifically accredited against the Standard may inadvertently undermine community confidence, despite the operator's safe and generally aligned management practices.

Implementation of the Standard across industry globally will take significant time – potentially a decade or more – regardless of the implementation and governance model adopted. There are significant constraints on tailings expertise internationally which will act as a barrier to uptake regardless of company commitment to implement the Standard. During the uptake period, there will be companies that have overcome these and other barriers to adopting the Standard and those that have not.

Given these constraints, it is important companies that face these and other barriers to implementation are not unfairly disadvantaged in terms of reputation, access to finance or increased insurance costs. This may drive perverse outcomes, including potential divestment of tailings assets to companies not aligned with the Standard. Failure to acknowledge these barriers may also affect broader industry uptake of the standard.

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<sup>1</sup> Department of Industry, Innovation and Science, [Leading Practice Sustainable Development Program for the Minerals Industry](#), viewed 17 December 2019

## Guidance on the application of the Standard

To address the above concerns, the MCA recommends the Standard include an up-front contextual statement to guide industry users and set stakeholders expectations, including that of communities, investors and insurers. Key aspects should include:

- The purpose and battery limits for the Standard including articulating the specific risks covered (e.g. geotechnical/physical risks)
- The role of local regulation
- Adaption to companies of different sizes and capacities
- Application to new facilities and transitional arrangements for existing facilities
- Operational management and incorporation of tailings into whole-of-site management systems
- Note constraints (e.g. access to suitable expertise) facing the global industry may mean full implementation/accreditation may take several years
- Note the concept of equivalency and that failure to be specifically accredited under the Standard is not necessarily a sign of poor management practices
- Fit-for-purpose adaption of the standard including the potential to use components of the Standard to address specific risks posed by a facility/ where gaps exist.

It is recognised that some of the above aspects may be addressed in implementation guidance to be developed after the Standard is released. The MCA would encourage the GTR and the co-convenors of the Standard to consider broad industry engagement during the development of implementation guidance.

Detailed comments on the Standard are provided below.

### Topic I: Knowledge base

- **Principle 2:** 'Integrate social, economic, environmental and technical information to select the site and the technologies to minimize the risk of tailings facility failure'.
  - **Requirement 2.2** requires companies to engage an 'Independent Tailings Review Board or an independent senior technical reviewer' with no conflicts of interest to assess and review the *alternatives analysis* for site and technology selection.

Globally, there is a limited pool of senior reviewers available which may make securing an independent reviewer problematic. It is recommended that independence and/conflict of interest requirements be defined.

- **Requirement 2.5** – Financial assurance may have different meanings across different jurisdictions. In Australia, financial assurance is a specific regulatory requirement for most mining operations. Financial assurance is a security bond lodged by companies with government to be used in the event a company is unable to meet its rehabilitation obligations, thus safeguarding government from incurring unfunded liabilities. The bond is intended to cover the forward liabilities for a mine over a defined period.

Given it are the outcome sought and not the mechanism that is important, the MCA recommends this be revised to require companies to have adequate financial capacity to cover closure requirements and note this could be achieved through a range of different mechanisms including through security bonds (where the regulatory authority requires it) or provisioning on the balance sheet.

- **Requirement 2.6** – Appropriate ‘insurance’ may not always be obtainable. The intersection of insurance with other mechanisms such as financial assurance requirements should also be considered.

The MCA considers this requirement be modified to remove references to insurance. The MCA recommends this requirement be modified to require companies to have appropriate financial safeguards in place (e.g. financial assurance, insurance or other mechanism) that fully covers potential liabilities. This would provide companies with sufficient flexibility to select a financial mechanism that is fit-for-purpose and meets local regulatory requirements.

## TOPIC II: Affected communities

- **Principle 3:** ‘Respect the rights of project-affected people and meaningfully engage them at all stages of the tailings facility lifecycle’.
  - The requirements under this topic are relevant not only to tailings management but to broader project assessment processes. Accordingly, rather than a tailings facility specific data collection process, broader asset-level assessment and data collection activities should be viewed to satisfy these requirement where they have incorporated tailings facility failure risks
  - The differences between ‘potentially affected communities’ and ‘project affected people’ requires clarification
  - While many particularly larger companies may have mature human rights due diligence processes, other companies (particularly junior – mid-sized companies) may require additional guidance to support these assessments. Specifically, it would be useful to include an annex in the Standard that outlines what practical adherence involves across the tailings facility lifecycle.

## Topic III: Design, construction, operation and monitoring of the tailings facility

- **Principle 4:** ‘Design, construct, operate and manage the tailings facility on the presumption that the consequence of failure classification is ‘Extreme’, unless this presumption can be rebutted’

In line with earlier comments, the implications of the proposed approach outlined in this section on existing facilities and the need for transitional measures should be recognised in a guidance note/contextual statement at the front of the Standard. Constraints on the availability of senior independent experts, the use of which underpin this section, should also be recognised.

- **Requirements 4.1 and 4.2** – It is understood the motivation behind this approach is to encourage greater due diligence and elevate tailings management within an organisation. However, this approach appears inconsistent with other parts of the Standard which require specific actions to understand and manage risk. Furthermore, it does not align with risk based approaches widely accepted within the Australian mining industry.

The proposed approach may result in elevating large numbers of potentially low risk tailings facilities (for example, those within open cut voids). This may inadvertently dilute or divert company resources away from the management of high consequence facilities. The approach may also create unnecessary community concern (e.g. people unaffected by low-consequence facilities). Communicating a revised consequence classification is unlikely to allay these concerns.

A more instructive approach would be to modify the principle and subsequent requirement to require an appropriate assessment to inform the consequence classification and its response. This approach is consistent with leading practice risk management and aligns with other requirements within the Standard.

- **Annex 2** – Table 2 on page 32 ‘External loading criteria required by the Standard’ is inconsistent with ANCOLD and International Commission on Large Dams (ICOLD) criteria. The MCA recommends this table be removed to avoid confusion. This should instead be addressed in separate technical guidance.
- **Requirement 4.3** – This requires existing facilities that are unable to be upgraded to implement measures ‘to reduce the risks of a potential failure to the greatest extent possible’. It is recommended this requirement be modified to ‘reduce the likelihood and/or consequence of potential failure to the greatest extent practicable’.
- **Requirement 8.4** – To avoid confusion, it is recommended that all public disclosure requirements be consolidated under Topic VI - Public disclosure and access to information.

#### Topic IV: Management and governance

- **Principle 10:** ‘Establish roles, functions, accountabilities and remuneration systems to support the integrity of the tailings facility’.
  - **Annex 3 ‘Outline of the organizational structure’** – This diagram is restrictive and does not account for the varying nature of company structures and sizes, making it impractical to implement. Accordingly, the MCA recommends this Annex be removed, allowing the structure to instead be described within the text.
  - **Requirement 10.1** – This requires the ‘*Board of the parent corporation*’ to adopt and publish a policy on tailings management. Footnote 25 states ‘in the case of joint ventures (JV), all venture partners shall appoint an Accountable Executive and it shall be the responsibility of the partners to jointly implement this requirement’. This may create significant challenges and/or confusion for the asset operators, particularly where there are multiple JV partners. Accordingly, it is recommended the reporting line be streamlined whereby a single accountable executive within the JV operating company reports back to all JV partners.
  - **Requirement 10.3** – This requires the appointment of a *site-specific Responsible Tailings Facility Engineer*. To ensure appropriate personnel are captured by this requirement, the MCA recommends the Responsible Tailings Facility Engineer be replaced by ‘Responsible Tailings Facility Person’ (noting alignment with local regulatory requirements).
  - **Requirement 10.4** – Based on company experiences in managing operational safety, performance incentives for employees may drive perverse outcomes such as the reporting of ‘positive performance’, leaving potential issues unreported. The MCA therefore recommends this requirement be modified or removed.
- **Principle 14:** ‘Respond promptly to concerns, complaints and grievances’.
  - **Requirement 14.1** – This includes the establishment of a formal complaint process to be provided to the operator and the appropriate regulatory authority. Reporting aspects (environment, health and safety etc.) covered in this requirement generally forms part of regulatory requirements. Grievance/complaint mechanisms are used to manage operator and community relationships not that with the regulator, therefore the reference to sharing these mechanisms with the regulator should be removed.

#### Topic V: Emergency response and long-term recovery

- **Principle 16:** ‘Prepare for long-term recovery in the event of catastrophic failure’.
  - **Requirement 16.5** – The requirement to ‘re-establish functional ecosystems’ is ambiguous, may not be achievable or reflect pre-impacted conditions. This should be

replaced by 're-establish to pre-baseline conditions or to a standard agreed with stakeholders'.

#### **Topic VI: Public disclosure and access to information**

- **Principle 17:** 'Provide public access to information on tailings facility decisions, risks and impacts, management and mitigation plans, and performance monitoring'.
  - **Requirement 17.2** – The requirement to respond to stakeholder requests provides little guidance on the bounds of disclosure and may raise stakeholder expectations that all data, regardless of quality or materiality should be made publicly available. It is recommended this requirement be modified to 'all reasonable stakeholder requests for **relevant** information'.
  - Data should be made periodically available within reasonable timeframes. The reporting of raw 'real time' data should be discouraged as unverified data may be erroneous and create undue concern.

For further information regarding this submission, please contact me directly on +61 408 666 396 or via email [chris.mccombe@minerals.org.au](mailto:chris.mccombe@minerals.org.au).

Yours sincerely



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