19 December 2019

Via email: consultation@globaltailingsreview.org

Dear Dr Bruno Oberle (Chair) and Expert Panel Members,

TRANSPARENCY INTERNATIONAL AUSTRALIA SUBMISSION TO GLOBAL TAILINGS REVIEW CONSULTATION

Transparency International Australia is pleased to submit some brief comments on the Global Tailings Standard draft for public consultation, in addition to our participation at the public consultation in Brisbane, Australia on 13 December 2019.

TRANSPARENCY INTERNATIONAL AUSTRALIA

Transparency International (TI) works together with governments, businesses and citizens to stop the abuse of power, bribery and secret deals. As a global movement with one vision, we want a world free of corruption. Through chapters in more than 100 countries and an International Secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

TI Australia (TIA) is the national chapter of TI, and fully supports TI's Vision, Objectives and Guiding Principles and Mission and Strategy.

TIA is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

TRANSPARENCY INTERNATIONAL'S MINING FOR SUSTAINABLE DEVELOPMENT GLOBAL PROGRAMME

Transparency International's Mining for Sustainable Development (M4SD) programme aims to enhance transparency and accountability in mining sector licensing and approvals processes in order to reduce corruption risks. The programme is coordinated globally by TIA and led in-country by local partners (TI Chapters) in 20 resource-rich countries, including Australia. This work is funded by the BHP Foundation and DFAT.

To combat corruption risks, the programme leads evidence-based, multi-stakeholder engagement at the national, regional and global levels to create change in laws, policy and the practices of key stakeholders and institutions in government, industry, civil society and communities.

The global report and a global snapshot (including case studies) provides an overview of the research conducted by TI to identify and assess corruption vulnerabilities.

GLOBAL TAILINGS DRAFT STANDARD: STRENGTHS

From our research globally and in Australia we know that good governance and accountability mechanisms are key to reducing corruption risks. Mechanisms that remove or reduce potential or actual conflicts of interest and increase

transparency strengthen the overall mechanism. For that reason, we welcome the inclusion of the following requirements and principles.

- **Reducing or removing conflicts of interest** by requiring operators to engage an Independent Tailings Review Board (IRTB) with no conflicts of interest to assess and review the alternatives analysis for site and technology reviews,[1] as well as the requirement that subsequent Dam Safety Reviews cannot be carried out by the same contractor on the same facility.[2]
- **Accountability measures** that incentivise integrity and safety measures such as implementing a performance incentive program that is linked to the integrity of tailings facilities[3] and the requirement for internal audits to verify consistent implementation of procedures, guidelines and governance requirements.[4]
- We strongly support the principles of **developing a culture of openness and transparency** that promotes learning and early problem recognition,[5] and ensuring operators respond promptly to concerns, complaints and grievances.[6]
- A key part of any transparency measures should be **public access to information** so we support the principle to provide public access to information on tailings facility decisions, risks and impacts, management and mitigation plans, and performance monitoring.[7] We also welcome the requirement that under Dam Safety Reviews, Board or senior management shall mandate additional steps to minimize the consequences of a failure of a facility rated 'Very High' or 'Extreme' and to publish the reasons for its decision.[8]

GLOBAL TAILINGS STANDARD: AREAS FOR IMPOVEMENT

Whilst the Draft Standard contains a number of elements we would consider strengths, there are also a number of elements we would like to see strengthened. These can be grouped under issues of:
- community representation/stakeholder management
- measures to prevent conflicts of interest; and
- whistleblower protections.

Community representation/stakeholder management

REQUIREMENT 1.4: Identify stakeholders and how they are related to the tailings facility site, inundation area and impacted area; collect land, livelihood and demographic data for groups most at risk from a tailings facility failure.

REQUIREMENT 2.4: Update the assessment of the social, economic and environmental impact and update stakeholder identification and information for any material change to the tailings facility, the social or environmental context or conditions. If new data indicates that the impacts from the tailings facility differ from those assumed in the original assessments, the management of the facility shall be adjusted to reflect the new data using adaptive management best practices.

---

[1] Requirement 2.2.
[2] Requirement 11.4
[3] Requirement 10.4
[4] Requirement 11.2
[5] Principle 13.
[6] Principle 14.
[7] Principle 17.
[8] Requirement 9.2.

Requirement 1.4 would be strengthened by making the following changes to the wording in **blue**:

> Identify stakeholders and how they are related to **and impacted by** the tailings facility site, inundation area and **affected** ~~impacted~~ area; collect land, livelihood and demographic data for groups most at risk from a tailings facility failure.

Requirement 1.4 should also include how a tailings failure will adversely impact on men and women differently. Gender sensitivity is a missing requirement.

Requirements *1.4 and 2.4* would be strengthened by specifically articulating that identification of stakeholders should be comprehensive and include diverse members of the community with regard to gender, age and status within a community. It should be clear that this should not be limited to community leaders and/or dominant groups within the community in order to reduce the risk of elite capture or manipulation of the consultation process.

REQUIREMENT 15.2: Meaningfully engage employees and/or employee representatives, site contractors, public sector agencies, first responders and at-risk communities to participate in emergency planning and implementation, including development of specific ERPs for at-risk communities.

REQUIREMENT 15.4: Maintain a state of readiness at the mine site and within at-risk communities by training all appropriate personnel, public sector agencies, first responders and at-risk communities and by testing emergency response plans and procedures with all involved stakeholders.

REQUIREMENT 16.4: Enable the participation of affected people in restoration, disaster recovery works and ongoing monitoring activities. Design and implement plans that take an integrated approach to remediation, reclamation and the re-establishment of functional ecosystems.

Requirement 15.2: Whilst we recognise that the term ***meaningfully engage*** is defined in the glossary of terms, the definition would be strengthened by providing examples of addressing structural barriers, such as translating complex concepts into plain language, explaining the implications for certain decisions and approaches, and ensuring participatory decision making and design of the engagement process itself.

The definition would be further strengthened by specifically articulating that community participation be inclusive of gender, age, status and other factors. Additionally, it should be made clear that this should not be limited to community leaders and/or dominant groups. This suggestion to strengthen community participation also applies to requirement 15.4 and 16.4.

Furthermore, we recommend the standard references leading best practice documents to provide additional guidance on meaningful engagement, and when listing examples of diverse groups of people, include persons with a disability.

Requirements 15.2 and 16.4 would be strengthened to specifically refer to the inclusion of women (recommended changes in blue below)

> REQUIREMENT 15.2: Meaningfully engage employees and/or employee representatives, site contractors, public sector agencies, first responders and at-risk communities **(including women)** to participate in emergency planning and implementation, including development of specific ERPs for at-risk communities.

> REQUIREMENT 16.4: Enable the participation of **all** affected people **(including women)** in restoration, disaster recovery works and ongoing monitoring activities. Design and implement plans that take an integrated approach to remediation, reclamation and the re-establishment of functional ecosystems.

Measures to prevent conflicts of interests

We wish to comment on the following Requirements and Principles:

REQUIREMENT 2.2: Engage an Independent Tailings Review Board (ITRB) or an independent senior technical reviewer with no conflicts of interest to assess and review the alternatives analysis for site and technology selection.

REQUIREMENT 7.8: Independent senior technical reviewers, with qualifications and expertise in social and environmental sciences and performance management, shall carry out a full review of the ESMS and monitoring results every 3 years, with annual summary reports provided to relevant stakeholders.

REQUIREMENT 10.4: For employees who have a role in the TMS, consider implementing a performance incentive program to include a component linked to the integrity of tailings facilities.

PRINCIPLE 12: Appoint and empower an Engineer of Record.

Requirements 7.8 and 10.4, and principle 12 would be strengthened by adding a requirement to ensure that the relevant parties (independent senior technical reviewers, employees with a role in the TMS and engineer of record) do not have any conflicts of interest, and that this be made public.

Anywhere the standard references conflict of interest (for example requirement 2.2), it would be further strengthened by providing guidance around the term conflicts of interest and ways in which conflicts of interest can be prevented and managed. For example, performing due diligence checks on third parties (such as the Independent Tailings Review Board, independent senior technical reviewers, and the Engineer of Record) to ensure that they are truly independent. This may include investigating the beneficial owners of the companies[9] that employ them and whether they could be considered politically exposed persons. There should be measures in place to identify and prohibit politically engaged persons from influencing the decisions of independent reviewers. Similarly, to ensure employees do not have any conflicts of interest the company should employ measures such as clear policies and procedures that prohibit bribery and the making of facilitation payments, and clear policies and procedures on gifts, hospitality and other expenses.

Whistleblowing mechanisms

REQUIREMENT 14.2: Establish an effective pathway that guarantees anonymity for employees and contractors to express concerns about tailings facility safety.

This requirement would be strengthened by providing reference to ensure that the pathways to express concerns are in line with best practice global whistleblowing mechanisms[10], as in **Requirement 14.4** which also links to a footnote on an OECD study.

AUSTRALIA POSITION

We welcome this initiative from the United Nations Environment Program, Principles for Responsible Investment and International Council on Mining and Metals to develop a global standard for tailings management in order to prevent catastrophic failures which devastate the environment and destroy lives and livelihoods.

As an anti-corruption organisation, we have provided insights into specific sections of the draft standard which strengthen the standard by providing mechanisms to prevent corruption including reducing conflicts of interest,

---

[9] For additional information on beneficial ownership please refer to our factsheet and policy position paper.
[10] For example, recent changes to whistleblowing requirements in Australia under the Corporations Act 2001.

accountability measures, developing an organisational culture of openness and transparency, and providing public access to information.

We believe that the standard could be further strengthened by providing additional details and requirements around community participation and engagement, conflicts of interest, and whistleblowing protections. We would be happy to provide the expert panel with additional information about these recommendations including reference documents such as best practice guidelines. What might be of particular interest to the panel is our Responsible Mining Business Integrity tool we developed as part of the Mining for Sustainable Development programme. The tool aims to assist companies evaluate the robustness of their anti-corruption controls and procedures, and includes guidance around topics specifically relevant to the draft standard including community engagement risk management and business integrity risks both within the organisation and in relation to third parties.

I would be happy to discuss or further clarify any of our comments and suggestions.

Stephanie Ng
Acting National Project Coordinator (Australia)
Mining for Sustainable Development

TRANSPARENCY
INTERNATIONAL
AUSTRALIA

Transparency International Australia