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Transparency is hard to see

Transparency International Australia (TIA) has shown it is easier to conjure sources of potential corruption, even when the chances of it happening are tiny, than to see transparency when it exists.



Transparency International Australia is wrong to discard practices within public company administrative structures

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A recent *Mining Journal* Tweet quoting TIA as saying 'Australia's friendly culture poses corruption risks' alerted me. Other news sources also reported TIA comments about corruption risks. One metropolitan Australian daily newspaper led with an exaggerated reference to "deep-seated bribery and corruption".

Sure enough, in a report entitled 'Corruption Risks: Mining Approvals in Australia' this month, TIA criticised Australia's so-called culture of mateship as a source of corruption vulnerability.

Mateship was not the most significant risk in the eyes of the TIA. In her forward to the report, TIA chief executive Serena Lilleywhite cited inadequate due diligence into the character and integrity of applicants for mining approvals as the risk with which she was most concerned.

The most important conclusion in the body of the TIA report went generally unreported and uncited by Lilleywhite.

The TIA report's primary finding was that "the approvals systems for exploration licences and mining leases in Western Australia, and for mining leases in Queensland, have a high level of transparency and accountability that can act as a corruption deterrent for many of the vulnerabilities identified in the approval processes".



Transparency comes from having multiple points of disclosure and scrutiny

The report acknowledged that the competitive and entrepreneurial nature of the mining industry also mitigates against corruption risk. Litigation would be likely if decisions unfairly treated one party in favour of another.

All the risks categorised by the TIA as being 'Very High' related to how native title agreements are negotiated, not corruption risks within government or among industry personnel.

Native title negotiations have been removed from public scrutiny frequently at the insistence of vested interests outside industry.

Despite Australia's broadly sound corruption record, TIA wants to see more done to identify the beneficial owners of mining developments.

Without more effective tracking of beneficial ownership, TIA contends, companies will import bad behaviours from elsewhere when given mining rights in Australia especially as "the landscape has changed significantly with the entry of companies from China".

The possibility of Chinese misbehaviour aside, there are no examples cited of this having been a problem. In any event, Australia needs to attract capital from the world's largest repository of savings to sustain its living standards rather than impose new hurdles.

Taxation, money laundering, foreign investment and corporations laws as well as, possibly, intelligence agency mandates already allow tracking of beneficial interests where that may be worthwhile.

Whatever their prior records might have been, asset confiscation or export bans, in the event companies break Australian rules, should be sufficiently potent threats by which to enforce standards if doubts persist.

The TIA assessment also contains a fashionable but ultimately counterproductive bias against ministerial discretion.

Australian governments of all political persuasions have established a plethora of statutorily independent policy agencies over the past three decades. Sometimes, they have appealed as ways to ensure sound governance. On other occasions, they have been welcomed by ministers keen to avoid politically unattractive decisions.

Taken as a whole, these bodies have left ministers with considerably less day to day policy influence. While some might cheer the shift in power, removal of ministerial discretions comes with a debilitating effect on the role of parliament and broader public scrutiny.

The transfer of ministerial powers to specialised commissions risks those bodies being captured by special interests who frequently resent and even oppose parliamentary oversight.

If ministers can avoid accountability, parliamentary scrutiny is neutered. Members become increasingly preoccupied with personalities and electoral politicking. Investigatory skills, such as those on daily show in US congressional oversight committees, wither.

TIA is fouling its own transparency agenda by agitating to cull ministerial discretions. In any event, the TIA report found the risk of external influence in the awarding of approvals was low as "the checks and balances in the approvals system mitigate against the injudicious application of ministerial discretion".

The TIA analytical framework is not specific to Australia. Its 'Mining Awards Corruption Risk Assessment' tool is being applied across multiple mining jurisdictions by Transparency International.

Since hundreds of companies engaged in minerals exploration and project development in Australia at any one time are listed on public exchanges, a proper assessment of corruption potential within Australia cannot be undertaken without recognising, for example, the roles of the Australian Securities and Investments Commission (ASIC), ASX, and the professional associations at the heart of the JORC compliance regime.

Many of the risks highlighted by the TIA framework are blocked by institutional arrangements peculiar to the structure of business and government in Australia.

Ironically, the roles of some of the organisations with the greatest influence on the behaviour of corporate miners are largely neglected by TIA despite their decisions being among the least transparent along the industry's value chain.

Complainants to ASIC or ASX are routinely kept in the dark about what action is being taken to rectify even egregious departures from statutory disclosure practices.

Earlier 'From the Capital' columns (see, for [example, May 25, 2016](#)) have referred to this problem as well as how professional bodies have a vested interest in not finding fault with their members who, as designated competent persons, are the fulcrum for information transfer into the public domain.

In a vibrant liberal democracy, transparency comes from having multiple points of disclosure and scrutiny. Narrowly defining how transparency can occur by relying on highly prescriptive rules driven by unaccountable officials risks damaging some essential safeguards characterising liberal democratic societies.

By using a framework based on non-Australian institutional arrangements, the TIA analysis is in danger of losing perspective. The same would be true if a framework based on Australian institutions were applied to Mozambique or Brazil.

Analytical economies of scale from applying a global framework across multiple jurisdictions might ease the workload of report writers. Global frameworks might help foster brand awareness for authoring bodies. The downside, though, is a tendency to unreliable conclusions.

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