Is it time to talk about Voluntary Industry Standards Schemes?

The rise of self-regulation in the global mining industry

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Over the past three decades there has been a rapid proliferation of voluntary industry standards schemes in the mining sector. Such schemes are increasingly used as a means by which corporations can demonstrate their ambitions to promote social and environmental sustainability. Even though the effectiveness of such schemes remains controversial, as more jurisdictions move to legislate their use, it seems the status of industry standards schemes is only set to increase.

Concerned about its poor reputation, in the late 1990s and early 2000s the mining industry began to develop voluntary standards schemes (sometimes called multi-stakeholder initiatives) aimed at promoting sustainable development, broadly conceived as economic growth, environmental protection and social responsibility. This promotion of sustainable development was seen as an important requirement of their ongoing 'Social Licence to Operate' (SLO).

Many of the early founders of standards schemes were based in advanced industrial nations (e.g. Canada, U.S., U.K.), and were coming under increased pressure from NGOs and other civil society organizations to address their poor environmental track record. In addition to improving the domestic and international reputation of the mining industry, the development of applicable standards also served to provide a degree of stability for companies that had operations in different countries with very different jurisdictional requirements. A single set of performance standards applicable to the entirety of a company's operations would make planning easier and development more predictable (Dashwood 2014; Potts *et al.* 2018).

Two of the most influential outcomes of this process were the creation of the ICMM Sustainable Development Principles in 2003 and the Mining Association of Canada (MAC)'s Towards Sustainable Mining (TSM) initiative in 2004, both of which focused on self-reporting and verification (as opposed to the independent certification of particular sites). The TSM initiative has since been adopted in at least nine more countries including Australia, Finland, Norway and Brazil.

The evolving role of industry standards schemes was given further impetus by the release of the UN's Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs place an onus on industry actors to operationalize the protection of human rights as defined by the various international instruments, including the UN's Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principle of Free, Prior and Informed Consent (FPIC). As a result, industry standards schemes in the extractive sector increasingly now make direct reference to their role in helping companies meet their responsibilities as detailed in the UNGPs.

Since their conception, the number of voluntary industry standards schemes in the mining sector has increased exponentially. A 2018 analysis of such schemes started out with a list of 158 potentially relevant

industry initiatives (Potts *et al*. 2018). Unsurprisingly there have been moves by industry actors and scheme owners to try and consolidate different initiatives. There has also been a move towards a focus on assessing compliance at a facility level and through third-party verification where possible (Mori Junior *et al*. 2015). The most recent and notable examples of this are:

➤ the new Consolidated Mining Standards Initiative (CMSI), which brings together the ICMM, The Copper Mark, MAC's TSM, and the World Gold Council, and

➤ the Initiative for Responsible Mining Association (IRMA) Standard for Responsible Mining (launched in 2018 with v2.0 currently in consultation), which describes itself as "[a] true independent assessment against a comprehensive standard for all mined materials that provides 'one-stop coverage' of the full range of issues related to the impacts of industrial-scale mines."

Both CMSI and the IRMA v2.0 have had recent public consultation periods with their finalized standards set for release in 2026. Interestingly, the more recent use of the term responsible (as evidenced in the IRMA title), as opposed to the previously preferred sustainable, reflects the growing move towards 'responsible' mining. This not only situates these standards within the dialogue around Corporate Social Responsibility (CSR) but is also a tacit recognition that mining (probably) can never be 'sustainable' (Bilham 2021).

Despite the apparently inexorable rise of industry standards schemes, concerns about their effectiveness have been raised by a number of academic commentators, NGOs and civil society observers (e.g. Kemp and Owen 2022). The reliance on industry standards schemes has been sometimes described as a 'race to the bottom' by providing the minimum levels of due diligence proponents can get away with whilst allowing them to hide behind the smoke screen of being a member of some vague or unenforceable standard. Regular criticisms include a lack of enforceability, a lack of transparency, a lack of genuine multi-stakeholder leadership, and the promotion of industry practices that simply fall below the expectations of affected communities and Traditional Owners. In Australia, these concerns were borne out in the 2020 destruction of Juukan Gorge in the Pilbara by mining giant Rio Tinto. Rio is a member of the ICMM and the processes that led to the destruction (carried out under Section 18 of the *Aboriginal Heritage Act 1972*) would not have contravened the relevant guidelines in the standard.

Nevertheless, if these weaknesses can be addressed, the growing importance of industry standards schemes presents extra-judicial opportunities for Traditional Owners. In countries in which there is an identifiable regulatory gap between state legislation and international human rights or environmental protections (e.g. Australia), industry standards schemes can be used to encourage proponents to address negative impacts on human rights or the environment. Unlike domestic state legislation, industry standards also have the benefit of encouraging due diligence across multiple jurisdictions, thereby making it harder for multi-nationals to "outsource" their human rights abuses to other countries.

Finally, not all industry standards schemes are created equally. As Table 1 below demonstrates, some schemes endorse higher standards than others. IRMA, for example, regularly receives better feedback than many of the others. In recent months, the National Native Title Council became an IRMA member along with the Karri Karak Aboriginal Corporation and a number of other indigenous organizations from across the globe.

As well as assessing current performance, standards also often provide guidance and incentives to new members on how to improve performance over time. Under the CMSI standard, for example, members are given one of three levels of certification. Table 1 provides a comparison of key provisions relating to the

protection of Indigenous rights for *entry* (i.e. the minimum requirements) into the new IRMA v2.0 standard, the new CMSI standard, and the First Nations led Dhawura Ngilan Guidance for Businesses and Investors.

Table 1:

	IRMA	CMSI	DNBII
FPIC & Engagement			
Free	Required	Not required	Required
Prior	Required	Required	Required
Informed	Required	Required	Required
Consent	Required	Not required	Required
State legislation does not meet the Standard	Standard level is required	State level is required	Standard level is required
Indigenous Peoples are supported to engage	Required	Recommended	Recommended
Indigenous Peoples identify their own representatives	Required	Not required	Required
Culturally appropriate grievance mechanisms	Required	Not required	Required
Cultural Heritage			
Remediation of current & future impacts	Required	Required	Required
Remediation of historical impacts	Required	Recommended	Required
Indigenous Peoples identification of cultural heritage	Required in consultation	Required in consultation	
Cultural heritage management plan	Required	Not required	Required
Cultural heritage destruction	Only with consent	Only when unavoidable	Only when unavoidable
Ongoing monitoring	Required	Not required	
Human Rights			
Risk & impact assessments informed by Indigenous Peoples	Required in consultation	Not required	Required in consultation
Remediation	Required	Not required	

For Traditional Owners, the effectiveness of industry standards schemes in protecting their rights and interests will likely depend on how well they incorporate the principles of the UNDRIP and the associated concept of FPIC. This in turn will likely depend on how much influence Traditional Owners have in the making and governance of industry standards at all levels of decision making and auditing and compliance.

The use of industry standards schemes is most effective when combined with progressive legislative reform. While efforts to achieve the latter must be continued, whatever reservations those working within the human rights, Indigenous rights or environmental sectors may have about voluntary standards schemes, for the moment at least, it appears they are here to stay. They can no longer be ignored. It is time to talk about industry standards schemes.

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