How Does Australian Legislation Compare to Other Jurisdictions?

AMEC Mining and the Environment Conference 2017

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Introduction

- The Australian environmental legislative regime.
- How different is it internationally?
- Enforcement v's compliance.
- Regulation v's self-regulation?
- Risk management and social licence to operate!

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Australian Legislative Regime

The central paradigm for our environmental legal system is ecologically sustainable development.

The environmental legal system in Australia is structured in four levels:

- International law;
- Commonwealth (Federal or Australian) law;
- State/Territory law; and
- Common Law.

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Legal Obligations in Australia

Broadly, our environmental legal system requires all people conducting activities that affect the environment to do three things:

- obtain and comply with any necessary licence or government approval;
- comply with any relevant standard imposed by the law, including taking all reasonable and practicable measures to prevent or minimise environmental harm; and
- if unlawful, material or serious environmental harm occurs or may occur, notify the relevant regulator.

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International Legislative Regime

Varies depending on the jurisdiction but developing countries that have established environmental laws generally have many similarities to Australian law including:
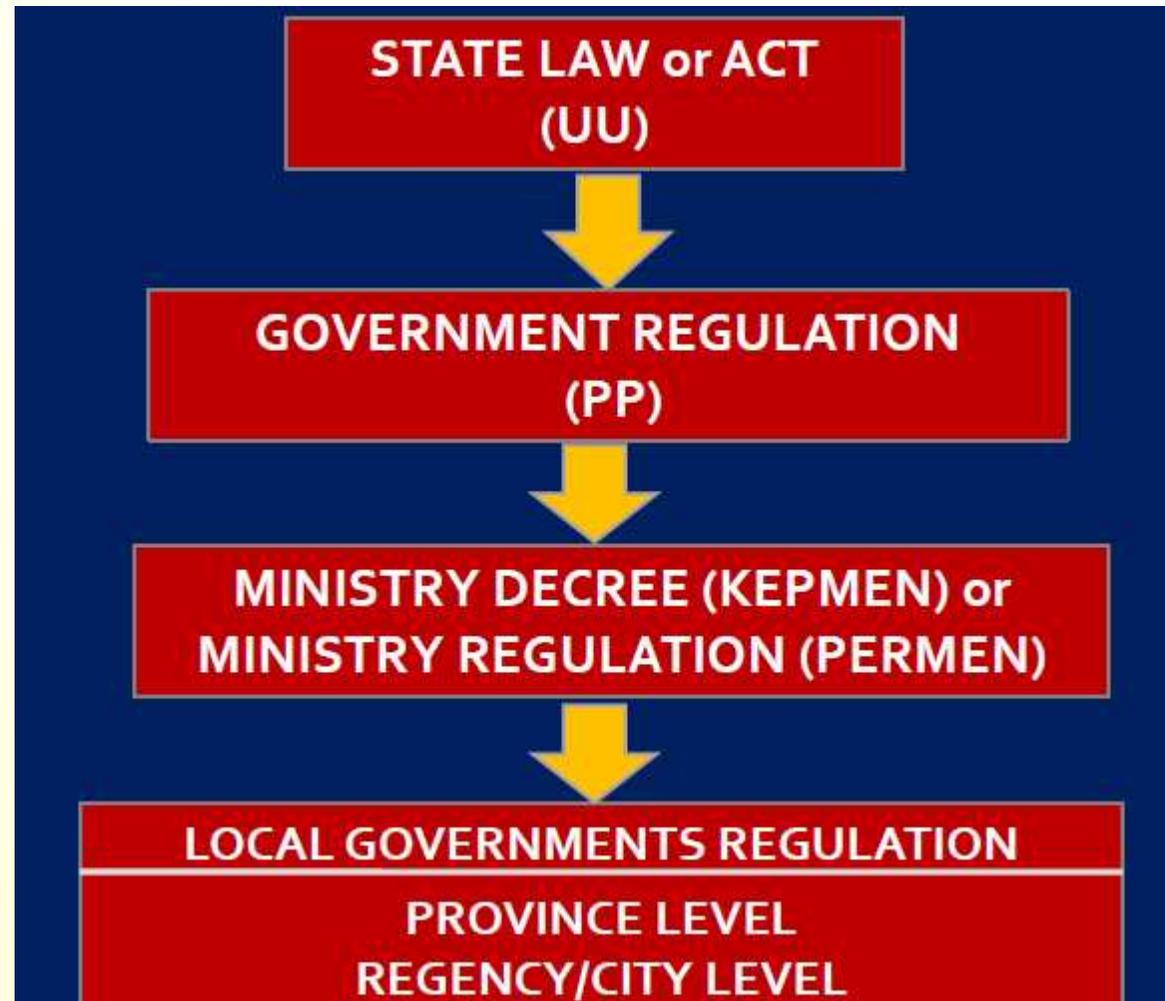
- Based on principle of sustainable development.

- Similar definition of environment;

- Require some form of EIA;

- Preparation of an EMP; and

- Penalties for corporations and personal liability provisions for company directors and officers.

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Indonesian Legislative Regimes

INDONESIA

- First Environmental Law in 1982; updated in 1987 and again in 2009.

- Many environmental regulations; including laws, regulations, decrees etc. issued by different Ministries.

- National, provincial and regency/city government agencies all administer environmental regulations with extensive reporting requirements in each case.

- One site had 24 environmental compliance documents and over 400 in total.

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Hierarchy of Indonesian Regulations

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- Environmental Protection Law 1999 updated in 2012.
- Water Law Forestry Law, Land Law.
- Mining, Exploration and Production Agreement.
- EIA for major projects.
- IEE for minor projects.
- Environmental Management and Monitoring Plan (requires updating every three years).

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Is this the result of inadequate legislation?

SAMARCO

OK TEDI

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Compliance v's Enforcement

COMPLIANCE

- *'the state of conformity with obligations, imposed by a State, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements in permits, licences and authorizations.'*

ENFORCEMENT

- *'the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations, can be brought or returned into compliance and/or punished through civil, administrative or criminal action.'*

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Self-regulation

- IFC Performance Standards on Environmental and Social Sustainability

- ISO 14001 – Environmental management Systems Standard

- International Cyanide Management Code

- ICMM - 10 Sustainable Development Principles

- GRI – Global Reporting Initiative

- E3 Plus – Framework for Responsible Exploration

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Managing compliance

- Experienced and competent personnel
- Stakeholder engagement program
- Adequate resourcing
- Robust management systems
- Risk management processes
- Compliance/ Obligations register
- Monitoring programs and data management systems
- Corrective action systems
- Inspections and audit programs
- Robust information and records management processes

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Conclusion

- Overseas regulatory regimes generally follow the principles of developed countries.

- Performance relates to level of compliance.

- Compliance is driven by enforcement but also by self-regulation.

- Good CSR practices equals good risk management.

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