

RESPONSE TO REGULATORY IMPACT STATEMENT

The Department noted that the objectives of the proposed Regulations are to create an efficient framework for the collection of information to allow for the efficient and effective management of economic and environmental risks and to increase public confidence in mining activities in Victoria. The Regulations seek to do this by prescribing information to operationalise the Act.

Objectives of the evaluation

The evaluation will assess the Regulations against its objectives, which are to encourage mineral exploration and economically viable mining while ensuring the economic, social and environmental objectives of the State are met.

Economic benefit

There is a multitude of formulae to calculate economic benefit however most are based on immediate and/or short term durations and typically do not include hidden costs such as impacts with long latency periods, and lost alternate industry opportunity costs. Therefore the economic benefit evaluation should be determined over a defined period of at least 50 years from commencement of mining in order to factor in hidden costs.

Further economic analysis and assessment should include a comparison between 2 scenarios on economic benefit to the local community

- if the mine does not proceed plus 50 years, and
- if the mine does proceed + 50 years.

Social objectives

The social objectives need to be stipulated and should include meeting socially acceptable behaviours and obeying the law. Behaviours such as bullying, intimidation, harassment, misrepresentation, deception, unreliability (in timely communication of regulatory matters), and submission of misleading reports (having bona fide reports that are not in the mining company's best interests amended to be less contentious) to the TRG and relevant other bodies ARE. NOT. ACCEPTABLE.

Relevant KPIs

KPIs should include a separate clause for stakeholders; currently non-mining company stakeholder inputs are unilaterally dismissed. There is no clear definition of stakeholders – this term needs to be clarified as some may interpret stakeholders as being the mining companies only, whilst others interpret stakeholders as those who are impacted directly and indirectly by mining in their local area.

KPIs should also include mining impacts on social parameters for the duration of the mine plus an extended duration of at least 10 years after mine closure, such as

- **Change in employment status of the local community.** Mining is becoming more mechanised with most employment increasingly being specialist skills. That local communities can support the specialist skill sets required by the mining sector are highly unlikely. What is the change in employment status of the local community as a consequence of the mine?
- **Change in viability status of local industries.** Mines are associated with contamination (air, water, soil) and therefore likely to impact on industries relating to food production and tourism in particular as well as many others. What is the change in status of local industries, especially, but not only related to food production and tourism, as a consequence of the mine?
- **Change in contamination status of the wider community.** Mines typically generate water and/or soil and/or air contamination that are likely to be associated with significant health impacts – birth

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defects, cancers, neurodegenerative disorders, respiratory, etc. – many have long latencies until expression. What is the change in health status of the local and wider community as a consequence of the mine and for an extended duration post mine closure of 50 years?

- **Change in socio-economic status of the local community.** Mining legacies include breakdown of local communities, loss of local employment, loss of health, etc. What is the change in socioeconomic status of the local community as a consequence of the mine and for an extended duration post mine closure of 50 years post closure?
- **Change in local community status if the mine had not proceeded.** Mining companies seem to “go broke” before they meet their commitments and the local community and the tax payer are left to meet the unpaid commitments – this is an enormous, undeserved, unwarranted subsidy for the mining sector. Would the community and region have been better off socio-economically if the mine had not proceeded?

Ultimately the KPIs should be addressing the question - will the proposed mine compromise current local prosperity and quality of life? and how can we measure that compromise?

Interim evaluations

Timing of interim evaluation of the proposed changes to the regulations. Given the intention of this regulatory review is to make it easier for the mining companies, there should be a regulatory review every 3 years so that non-mining stakeholders can have regulatory issues addressed in a timely manner.

Entity integrity and performance

Given the longstanding general lack of integrity and ethics demonstrated by the mining sector any opportunity to abuse regulatory compliance is maximised therefore regulatory compliance needs to be very prescriptive and non-compliance penalised to the level that abuse is not worthwhile. Ultimately most government departments refuse to conduct business with any entity that does not have a track record of high quality performance and integrity – examples include education, health, aged care, child care, etc, etc; ultimately non-compliance is punished. Therefore why is the ERR, a government department so different? Why does the ERR support entities with long track records of dismal integrity, poor business management skills, and demonstrated non-compliance with regulations? The mining sector has a long history of grabbing as much money as it can, and then either “caretaking” the mine, or going bankrupt – both of which mean the community and the tax payer carry the burden of their wilful, unethical, behaviours – why is this permissible for this sector?

Conflict of interest

Conflict of interest relates to both mining company and regulatory department aspects.

1. **Mining companies.** The mining company is required to fund reports and studies that are likely to have findings that are not in their best interests;
2. **ERR aka The Mines Department.** The ERR, a pro-mine government department, is required to make objective decisions regarding suitability of mining applications.

Until a body (perhaps auspiced by the Auditor Generals department) is established to conduct relevant research, a body that is independent of both the Mines department and mining companies, decisions will continue to be made on the basis of flawed information and the community will continue to miss out on good governance.

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TRG flaws

A further flaw in the mining approvals process is that the Technical Reference Group (TRG) does not necessarily include expertise relevant to the particular project. For example with regard to the proposed mineral sands mine at Glenaladale, there are no representatives from horticulture, agriculture, hydrology, geology, climatology, tourism, the Chief Medical Officer, or a soils scientist. Dependence upon reports from experts is based on the flawed assumption that the readers will understand the concepts. How can the TRG make appropriate decisions when significant, relevant expertise is excluded from the process?

Further, the identity and qualifications of the members of the TRG are not publicly available, so how can the public have confidence in people whose identity and qualifications are not known? – there is already a perception of incompetence and “jobs for the boys” that should be addressed.

Recent NSW Land and Environment Court judgment

Justice Brian Preston of the NSW Land and Environment Court did not approve the coal mine in the NSW Hunter "A consent authority cannot rationally approve a development that is likely to have some identified environmental impact on the theoretical possibility that the environmental impact will be mitigated or offset by some unspecified and uncertain action at some unspecified and uncertain time in the future," he said. Aside from its GHG emissions, Justice Preston also pointed to the visual impacts the mine would have on the local community, the noise and dust it would create, and said these issues outweighed the economic and other public benefits of the coal mine.

A similar argument could be made about most mining proposals regarding visual aesthetic, dust impacts, contaminated water and dust impacts, long term loss of productivity and prosperity to the local community, and "... the theoretical possibility that the environmental impact will be mitigated or offset by some unspecified and uncertain action at some unspecified and uncertain time in the future."

Environmental compliance

Nowhere in the documents is there any increased requirement for compliance with environmental standards, and given the Victorian Governments track record of poor environmental compliance, there is no perceived need to comply (by the mining sector). The ADG's report clearly highlight a sustained disregard for meeting environmental regulatory requirements by the Victorian Government, regardless of the party in power, which indicates the environmental disregard is entrenched in the ERR. How can the public have confidence in regulatory compliance and ERR oversight when the track record is not there to support the claim.

The environmental consequences should be measured against realistic, and world Best Practice models rather than locally ie within country/national figures that may be manipulated by so-called credible authorities.

The continued findings of the State Auditor General with regard to State govt performance on meeting environmental objectives can only be described as disturbing.

Contamination

There is nothing in the regulatory requirements that stipulate the mining sector decontaminate (air, soil, water) during mining and post mine closure. This is a significant oversight. Important income generating industries such as agriculture, horticulture and tourism, all of which have fewer contaminants and negative consequences than mining, need to be prioritised and contamination addressed if mining is to continue in

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regional Victoria. There is a very strong argument, based on contamination alone, that mining not proceed in Victoria.

Currently heavy metal and radio-active contamination is in perpetuity as it deposits into water and soil, and can also be airborne, therefore industries such as food production and tourism are unable to be developed post mine closure; tailings dams are required to remain in situ for at least 1,000 years – a profound and significant ongoing contaminant that can cause irrevocable environmental damage when they fail.

Waleed Aly’s question

Broadcaster Waleed Aly asked the Leader of the National Party “What percentage of mining applications have been rejected in Victoria in the last 20 years?” and the Leader of the National Party was unable to answer the question. Therefore, as there is an inherent bias in the regulatory framework the question still stands - what percentage of mining applications have been rejected in Victoria in the last 20 years?

Mining’s contribution to Victoria’s economy – reality check

“In 2017-18, a total of \$102.3 million was payable from (the mining) industry in royalties and fees under the relevant Acts.” (Regulatory Impact Statement 2019, page 2). There is no indication that this money was actually paid - further this is a seriously insignificant income. As most of this potential revenue would be derived from brown coal I suggest mining income is miniscule and not a significant contributor to Victoria’s economy.

Various analyses support the concept that mining is the smallest contributor to the Victorian economy, and that it is also a very poor employer due to the combination of mechanisation and AI facilities.

Share of State Total by Industry 2016-17	GVA (%)	Employment (%)
Financial and insurance services	10.6	3.8
Professional, scientific and technical services	8.6	8.8
Construction	8.2	8.4
Health care & social assistance	7.8	13.1
Manufacturing	7.5	9.1
Education & training	6.0	8.4
Agriculture, forestry and fishing	2.7	3.0
Mining	0.9	0.4
<i>Tourism – Direct</i>	3.0	4.6
<i>Tourism – Total (direct & indirect)</i>	5.8	6.9

Note – Agriculture is direct and does not include the value-added processing beyond the farm which typically increases contribution by a factor of 4 ie Agriculture (direct and indirect) is closer to 10-11%

Further, the mining sector’s economic contribution does not include all their extra costs that are paid out of State revenue such as

- specific infrastructure including roads that are purpose-built for their heavy vehicles,
- tax breaks that are not available to other sectors,
- very low royalty payments as evidenced above and outlined in the Regulatory Impact Statement 2019 document,

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- the costs of community breakdown due to change in economic status,
- poor health due to contamination,
- no requirement to manage the contamination during mining or post mine closure,
- inadequate financial management resulting in unmet regulatory obligations,
- need more points be itemised?

Being continually advised that mining is a significant contributor to the Victorian economy is both misleading and a furphy – and is sustained by the mining sector itself, the mining regulator and various governments.

Royal Commission

Venerable institutions such as the faith-based, the banking sector, and the government regulators of the banking sector, betrayed societal trust with impunity, as found by relevant Royal Commissions. In fact the financial regulators have been remonstrated to the point they must increase oversight and compliance with regulatory requirements.

Given there are many aggrieved communities with stories of mining companies behaving badly, the regulatory framework should not be reviewed through the lens of making it easier for mining applications to be approved, but rather the integrity of the mining sector and its regulatory framework should be reviewed through the lens of a Royal Commission. Further I suggest the findings of a Mining Royal Commission would be similarly as newsworthy as the 2 recent Royal Commissions (child abuse and banking) and the current Royal Commission (elder care). I also suggest that similarly to the financial regulators the ERR's performance would be found wanting.

Conclusions

If the purpose of the regulatory review is to increase public confidence in mining activities in Victoria then it does not achieve that. None of the changes include improved community consultation, improved regulatory compliance, improved protection for non-mining stakeholders and especially landholders, improved environmental protection including contamination management. The intention of this review is to reduce costs to the mining sector – why reward a sector with a poor track record of social, environmental and financial compliance, with reduced costs and streamlined regulatory requirements to make it easier for them to continue their abuse?

In general the community has an increasing expectation of stringent environmental standards, and compliance with those standards which has been supported by the recent findings in the NSW Land and Environment Court judgement.

Further there is an increasing expectation of socially acceptable behaviours which are not addressed in the RIS 2019.

Regional communities have been severely impacted by the mining sector – community, health, socioeconomic status - their voice in the regulatory processes being minimised and trivialised. The mining sector has a demonstrated track record of non-compliance with regulatory requirements, and the regulator has been complicit in the mining sector's unethical and unacceptable behaviours (business, social, environmental). Rather than reviewing and streamlining the regulations, a Royal Commission is required to increase objectivity and compliance in the regulatory processes and framework.