



Victorian
Farmers
Federation

SUBMISSION

**Regulatory Impact Statement: Proposed Mineral
Resources (Sustainable Development) (Minerals
Industries) Regulations 2019**

April 2019

INTRODUCTION

The Victorian Farmers Federation

Victoria's agricultural production accounts for over \$13 billion of Victoria's economy and over 25 per cent of the State's exports per annum. Victoria's farmers produce high quality food and fibre, produced to high standards of safety, with little taxpayer support, and to some of the strictest environmental and highest animal welfare controls in the world.

The Victorian Farmers Federation (VFF) represents a farming community which creates a profitable, sustainable and socially responsible agriculture sector connecting with consumers.

We have a proud history representing Victoria's farm businesses since 1979 – primarily family farms that produce the eggs, grain, fruit and vegetables, meat, and milk that help to feed Victoria's six million people, and the bigger global community, every day.

The VFF consists of commodity groups: dairy (United Dairyfarmers of Victoria), grains, horticulture (including Flowers Victoria), intensives (chicken meat, eggs and pigs), and livestock – and expert committees representing; water, land management, agricultural and veterinarian chemicals, farm business and rural development, and workplace relations.

Our purpose is to make Victorian farmer's lives better; enhancing Victoria's future.

Our mission is to ensure a community of farmers creating a profitable, sustainable and socially responsible agricultural industry connecting with all Victorians.

OUR POSITION

Overview

The VFF is a key stakeholder in earth resources as many mine sites and exploration activities impact on freehold land which is actively farmed. We acknowledge the efforts of the Policy and Legislation team to seek the views of the Federation and to support our understanding of the key elements of interest given the short response time frame.

Traditionally the VFF has focused on ensuring that:

- The rights of landholders are protected in minerals legislation and connected policies;
- Landowners receive appropriate compensation & payments for all mining activities on their land;
- There is no permanent adverse off-site impacts from minerals development on farmland;
- Farmland is rehabilitated to its previous productive use at the end of the life of a mining development;
- Information on mining issues is made freely available to VFF members; and
- Farmers hold the right of veto over mining activities on their land.

Currently the organisation is also focusing on ensuring that there is industry guidance so that all parties understand what is meant by these points and that the regulatory regime delivers a fair and transparent process to discuss these issues.

We welcome the opportunity to comment on the Regulatory Impact Statement and other opportunities to facilitate better conversations to lead to thriving primary industries in Victoria.

The Regulations

The elements of the minerals exploration and mining process which most impact on our members relate to land access agreements (at all stages) and rehabilitation of land.

Many of the changes sought by the Federation in relation to land access will either require amendments to the Mineral Resources (Sustainable Development) Act (the Act) or would be better addressed through industry guidance in regards to best practice.

The VFF supports the changes in relation to staged rehabilitation.

The VFF seeks an amendment to Regulation 43 to ensure that the owner of the land is formally recognised in the consideration of 'land uses' to be rehabilitated to. We believe specifying that the landholders views are required will be more transparent to industry and better deliver the intent of the Act.

Presently at Regulation 43 (a) '*proposed land uses for the affected land after it has been rehabilitated, that considers community views expressed during consultation*'. There is no equivalent statement for the owner of the land whose views should be given meaningful weight in rehabilitation. The Act does state that there must be consultation with the owner but not if that consultation is in relation to s79(iv) in relation to '*the desirability or otherwise of*

returning agricultural land to a state that is as close as is reasonably possible to its state before the mining licence, prospecting licence or extractive industry work authority was granted’.

Opportunities for Industry Guidance

For the past decades the Minerals Council of Australia and the Victorian Farmers Federation have worked in partnership to provide information to landholders and the community on land access and mining.

Where an open, transparent and co-operative discussion is facilitated between ‘miner’ and ‘landholder’ the greater the likelihood of successful projects being delivered.

Best Practice guidelines should be developed on consulting on land access and rehabilitation agreements to assist in providing conditions where each party understands each other’s needs and works towards a mutually agreeable outcome.

For example – biosecurity. This often underpins landholders concerns and tensions over things as simple as not closing gates, cleaning vehicles, or giving notice of access. When operators understand that not only is it a concern regarding the spread of weeds or disease but may impact on the ability to sell livestock they understand what is motivating the concern.

Or in relation to rehabilitation, discussing the future agricultural uses could lead to a rehabilitation plan that costs no more than returning to the site to its pre development form (including soil profile) but provides a soil profile or topography better suited to production.

Opportunities for Legislative Changes

To implement this mining policy the VFF has identified specific changes to the Mineral Resources (Sustainable Development) Act.

Land access – right to choose

- Landholders be given a the right to control land access

We consider landholders have a right to determine what their land is used for, and this right should be enshrined in minerals legislation. While the Crown undoubtedly owns the minerals, the land, including the top 15 metres of soil, is often privately owned.

Biosecurity is a major issue for the sector. Recent changes to regulations make controlled land access essential to the ability to sell livestock – especially interstate or overseas. Current ‘compensation’ arrangements often do not understand the potential economic impact of an activity on the viability of the farm business.

Having a clear financial stake in the proposal coupled with the legislated right to control access will ensure that the minerals sector undertakes full and proper consultation and fully considers the impact on the farm business in devising their program if they want to ensure access.

Land access – standards of agreements

- All land access agreements must be in writing and address minimum standards
Envisaging verbal agreements demonstrates systemic failure to understand the significance of land access. Clearly determining type of access, access routes, notification, payment, conditions of access is critical to ensuring not only farm safety but demonstration of compliance with biosecurity requirements. Having these agreements in writing reduces potential conflict and ensures all parties know where they stand.

Land access – provision of information

- Landholders be given all information / assistance required to make informed decision
There is a wide disparity between the consultation / information processes by different companies. There should be a minimum standard of information to be provided – not only on the activities proposed but on the potential impact on existing beneficial land uses and how this will be managed.

There should also be payments up to a determined amount to allow for the landholder to seek legal and technical advice on the proposal and to draw up any access / compensation or royalty share agreements.

- Any 'consultation' process to have a specific requirement in regards to affected landholders. – objectives 2(1)(b)(ii), 2(1)(b)(iv), 2(1)(b)(vi).
The legislation in regards to consultation refers to the community. There also needs to be specific reference to landholder consultation and minimum standards for how this will be undertaken.

Land access – from compensation to commercial consent

- Landholders be given a clear right to negotiate a commercial agreement for access to mineral extraction from the land
- That there be some wider community benefit for landholders in relation to granting access for mineral exploration on the land
Anecdotal evidence shows that some landholders deal with serial exploration that impacts on the landholder and the community but for which there is little benefit to the community.
- Remove the 10 per cent cap on solatium payments – compensation for intangible values of land or assets
The 10 per cent cap on solatium fails to recognise different land ownership circumstances.

Land access – certainty and influence over rehabilitation

- Landholders be given the right to sign off on rehabilitation plans
Despite being the major stakeholder in the rehabilitation of land, mining companies do not need to seek agreement from landholders to rehabilitation plans. Rather, rehabilitation plans must be developed ‘in consultation’ with landholders. Requiring landholder sign off on rehabilitation plans would ensure genuine input from farmers, and ensure that rehabilitation will suite the landholder’s preferences for future land use.
- Increase the period of time in which claims can be made following rehabilitation, from three years to ten years.
When land is rehabilitated following a mining development there can be on-going issues that need to be addressed. We are concerned that a three year limit on claims creates a potential liability for landholders for whom rehabilitation works prove insufficient. For example, land subsidence, lost productivity, and mineral leachates may take more than three years to become evident and longer still to fully address.

Land Access – potential minor drafting modifications

(additions in red text)

- 2(1)(b)(iv) just compensation is paid for **the access to or** use of private land for exploration or mining;
- 39A – should be a specific clause related to landholders with direct impact. Should also amend content for minimum standard for consultation (materials signed off on) and funding mechanism for landholder advice – access / compensation / royalty.
- 40(3)(d) should be a specific clause related to engagement with landholders with direct impact.
- 41 – landholder signoff on any variation to work plan
- 41A(4) – should seek comment from landholder
- 42(3) & 43(2) – delete. Titles search should provide information on landholder. If it remains needs a much higher test to demonstrate all attempts have been exhausted to contact the landholder.
- 45(1)(a) – change from 100m to 200m

- 77G(3)(e) - need a similar clause relating to impacted landholders.
- 78(4) – Replace “The owner of land may request the licensee to enter into a written agreement as to the rehabilitation plan” to “The licensee must enter into a written agreement with the owner of the land as to the rehabilitation plan.”
- 79A – needs to mandate landholder engagement in the plan.
- 80(2)(b) – change from ‘consult’ to ‘gain approval’
- 85(1) add words in red – “Compensation is payable by the licensee to the owner or occupier of private land that is land affected for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including **but in no way limited to**”
 - (a) deprivation of possession **or use** of the whole or any part of the surface of the land; and
 - (b) damage to the surface of the land; and
 - (c) damage to any improvements on the land; and
 - (d) severance of the land from other land of the owner or occupier; and
 - (e) loss of amenity, including recreation and conservation values; and
 - (f) loss of opportunity to make any planned improvement on the land; and
 - (g) any decrease in the market value of the owner or occupier's interest in the land; and
 - (h) loss of opportunity to use tailings disposed of with the consent of the Minister under section 14(2). **And**
 - (i) loss of market or inability to sell produce (ie biosecurity statements or industry contractual standards)**
- 85(2)(b) remove the % limit
- 86 - extend from 3 years to 5 years.
- 112 (1) and (5) – compensation should be payable for any unforeseen consequence of the ‘use of land’ for a survey – such as a loss of ability to market goods due to biosecurity plan breach by surveyor.

Gerald Leach
Chair Land Management Committee
Victorian Farmers Federation