



Commissioner for
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Mr John Krbaleski
Acting Head Resources
Department of Jobs, Precincts and Regions
1 Spring St,
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Dear Mr Krbaleski *John*

REGULATORY IMPACT STATEMENT FOR MINERALS RESOURCES (SUSTAINABLE DEVELOPMENT) (MINERALS INDUSTRIES) REGULATIONS 2019

I would like to thank your staff at the Department of Jobs, Precincts and Regions (DJPR), particularly Preethi Rupanagudi, James Golden and Peter Phillips for working with our team to prepare the Regulatory Impact Statement (RIS) for the Minerals Resources (Sustainable Development) (Minerals Industries) Regulations 2019 (the Regulations).

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria according to the *Victorian Guide to Regulation* (the Guide). To be adequate, the Guide requires that a RIS be logical, draw on relevant evidence, be transparent about any assumptions made, and be proportionate to the proposal's expected effects.

I am pleased to advise that the final version of the RIS received by us on 15 March 2019 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

Background

The principal Act for the Regulations is the *Minerals Resources (Sustainable Development) 1990* (the Act). In the RIS, the Department notes that the purpose of the Act is to encourage mineral exploration and economically viable mining and extractive industries which make the best use of, and extract the value from, earth resources in a way that is compatible with the economic, social and environmental objectives of the State.

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.

In the RIS, it is noted that the Victorian Government is engaged in a major program of reform for earth resources regulation informed by my *Getting the Groundwork Right* report and the reports of the Hazelwood Mine Fire Inquiry. In response to these reports, in August 2018, the Government released its *State of Discovery: Minerals Strategy for 2018–2023*. The Department explains in the RIS that the proposed Regulations include improvements to the regulatory framework in response to these reports.

It is noted in the RIS that the Government also plans to amend the Act. The Mineral Resources (Sustainable Development) Amendment Bill 2018 was introduced into the Victorian Parliament in August 2018, but lapsed owing to the November 2018 election. This legislative proposal sought to establish a Mine Land Rehabilitation Authority, clarify rehabilitation, and post-closure obligations, and set up a post-closure fund. The Government intends to re-introduce the Bill into Parliament in 2019.

Because the Government is engaged in a major program of reform and plans to amend the Act, the scope of proposed changes to the Regulations (and the RIS) is limited.

Scope of the RIS

The regulations cover the minerals sector which in Victoria includes gold, base metals (including copper), gypsum, and mineral sands. The regulations cover five areas that operationalise the Act, the RIS focuses on these areas, and presents options that consider the regulatory burden on business and the objectives of the Act:

- application processes and information requirements for exploration, prospecting mining and retention licences;
- work plans, which detail the precise works which a licensee will undertake and how risks will be eliminated or minimised as far as practical;
- rehabilitation plan requirements (a rehabilitation plan forms part of a work plan);
- advertising requirements for licence applicants, which are designed to inform the community about an applicant's intentions and enable the community to object; and
- reporting requirements, which require licensees to supply information about their operations, expenditure, risk and compliance, and ensure regular reporting. This information is used by the Department in regulating the sector.

The RIS does not assess the current level of fees, rents, royalties or levies. Fees will continue at current rates (subject to annual indexation) for at least two years. It is noted in the RIS that this is consistent with the recommendation from the *Getting the Groundwork Right* report.

Options considered and assessed

The RIS considers options for the five areas the Department identified as imposing burdens on business.

Licence applications

For licence applications, two options are considered: the status quo; and the proposed amendments (preferred option). The Department argues that the proposed amendments are similar to the status quo but will increase flexibility by only requiring mining and retention licence applications to include a survey when the Department head is satisfied it is necessary. The Department also argues that the proposed amendments will simplify the Regulations by prescribing the information requirements for licence applications directly in the Regulations rather than schedules and giving the Department head the power to issue application forms including the information prescribed in the Regulations.

Work plans

For work plans, two options are considered: the status quo; and the proposed amendments. The Department states that the proposed amendments will: clarify that risk management plans should include performance standards (e.g. maximum allowable noise or dust generated by a mining operation); allow parties to meet requirements contained in a new Code of Practice; and support these changes by developing Ministerial guidelines (similar to the extractives regulations). Information requirements will be moved from schedules into the Regulations, which will simplify the Regulations.

Rehabilitation

For rehabilitation, two options are considered: the status quo; and proposed amendments. The Department states that the proposed amendments are designed to give further clarity to existing rehabilitation requirements, and that these amendments are consistent with recommendations from the Hazelwood Mine Fire Inquiry.

Advertising

For advertising, three options are considered: the status quo; proposed amendments; and government advertising itself rather than licence applicants.

Under the status quo, the Regulations prescribe the form of advertisements and media used. Licence applicants must advertise in a Wednesday edition of a daily newspaper circulating in Victoria, a local newspaper (if applicable) and have information on their website for 21 days.

The Department explains that under the proposed amendments applicants would be able to advertise using the method prescribed in the current Regulations (status quo) or an alternative method, which the Department head would publish in guidelines. These guidelines would include forms of media other than newspapers, such as radio and social media. Guidelines could be updated more easily than the Regulations to reflect new technologies.

Reporting requirements

For reporting requirements, two options are considered: the status quo; and proposed amendments. The Department notes that the proposed amendments include: streamlining reporting requirements and moving them from schedules into the Regulations; updating rehabilitation reporting requirements to reflect new definitions of “progressive rehabilitation” and “rehabilitation milestones”; and changing the reporting date to the anniversary of the grant of licence from the date elected by the licensee.

Implementation and Evaluation

The Department notes in the RIS that the proposed Regulations will be subject to ongoing evaluation to assess the costs and benefits of the Regulations. The key components of the evaluation strategy are outlined in the RIS and discussed in turn below.

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.

Framework for the evaluation

The Department will develop a framework to assess the efficiency and effectiveness of the outcomes sought.

Key information that will be collected

The Department will use the following key performance indicators to measure the effect of the Regulations:

- incidents, reports and complaints;
- investigations; and
- enforcement actions (infringements, court etc).

Baseline data and information collected will cover the five areas discussed in the RIS.

Responsibility for collecting, analysing and reporting on data and information

The Department will collect and analyse key performance indicator data. Complaints to the Department from stakeholders will also be assessed.

Timing of the evaluation

Given that the proposed regulations impose a significant burden on stakeholders, the Department proposes to conduct a mid-term review of the Regulations (after 5 years of operation). Hence, this mid-term review would occur before December 2024. In line with the recommendations of the *Getting the Groundwork Right* report, a review of fees and royalties will occur after 1 July 2020.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin