INTRODUCTION

The proposed changes are clearly underpinned by the assumption that mining is beneficial and appropriate. NO sector wide, long term social and economic analysis, or a lifetime complete social and economic analysis of an individual mine has ever been undertaken to support this point of view. Decisions regarding the "worth" of the mining sector are being made without meaningful long term data.

The current legislation is clearly not fit for purpose, as evidenced by the mining sector's consistently poor record. Community confidence in both the mining sector and the regulatory body is extremely low. The intent of the legislative change is to "... further the Government's commitment to a modern, fit-for-purpose regulatory regime built around increased investment and community confidence." However the measures suggested will **reduce** the level of oversight of the mining sector and will result in a deepening of distrust in the government and its public sector.

The proposed changes fail to address key shortfalls within the current regulations, including, but not limited to effective and appropriate community consultation, landholder protection and rights (including the right to protect their homes and businesses) and penalties for inappropriate behaviour by mining companies.

The supposed economic and employment benefits of mining are pushed by the mining industry and the government. In reality the economic and social damage imposed by the mining sector outweighs any advantage.

Realistic costing of the mining sector must include **increased** public health costs (issues from increased stress, dust, heavy metals, contaminated water...), the loss of social cohesion within communities directly and indirectly affected by mining, long term loss of agricultural production, reduction in tourism, impacts on indirectly affected businesses, loss of amenity, loss of employment and housing of impacted landholders and increased stress levels within local communities. In the cases of the Douglas mine and the proposed Fingerboards projects a long-term lifetime costing would definitely show a net deficit.

The RIS consistently uses the phrase "...and impose the lowest possible burden on businesses ..." to assist the mining industry. In other industry regulated sectors businesses are expected to either comply or get out. There are no discussions about reducing the regulatory compliance burdens in aged care, education or agriculture. Businesses in these sectors are deemed to be unviable if they cannot comply.

If the mining sector cannot economically meet essential stringent requirements covering human health, rehabilitation and the environment, then mining should not proceed.

How serious is this review when submissions close on the 23rd of April and regulations are finalised on the 31st of May? This smacks of lip-service. There won't

be sufficient time to read submissions, let alone take them seriously. This issue is too important to ram it through willy-nilly and make an already bad situation far, far worse.

Where in the review is the much-needed recognition that it is inappropriate and unethical that the same body responsible for issuing mining licences also has oversight of the mining industry?

Sadly the term “stakeholder” is being applied to the mining industry and not to those impacted by mining proposals, nor the local and wider community.

Use of a multi-criteria assessment tool is a dangerous method of assessing impact. The weighting given to the various criteria is purely dependent on the bias of the person undertaking the assessment, and is therefore not transparent, fair nor accurate. It is extremely easy to create a result that shows a “benefit” for proposed changes regardless of what the actual impact will be.

The focus on providing flexibility to support small businesses is misplaced. In many instances the “small businesses” consist of speculative entities (sometimes indirectly funded by major corporations) whose sole objective is to “develop” a resource and then sell the proposal – land speculators rather than miners.

These “small businesses” have no long term interest in the communities surrounding the supposed resource, and no regulatory requirements that they operate ethically or professionally. Local communities are told outright lies, land is trespassed on, landholders bullied and arrangements are made which will not be enforceable once the resource proposal is sold. These small businesses should be subject to more stringent probity and conduct oversight, not less.

In many instances small businesses do not have the skills or capital to operate effectively. This means the need for risk assessment is higher as there is more scope for judgemental, economic and professional errors to occur without the business having the financial reserves to either repair or compensate for consequent negative impacts. Reducing the regulatory requirements on small businesses is dangerous and will result in a net increase in the number of unprofessional, unethical and under-funded land speculators into the sector.

Providing the Department Head with the discretion to prescribe forms and processes reduces the level of transparency, consultation and oversight of due process and is the first step towards institutionalised corruption. Forms and processes need to be clearly outlined in the regulations and NOT left to an individual’s discretion.

The current public consultation is not in a form suitable for many stakeholders. Many members of our community have commented that it is “too hard” or “too complex”. Public workshops in areas where mining is proposed or likely should be held. There should have been widespread advertising of the RIS; as it is very few people know it is happening.

Summary of Major Changes

Information Requirements

Table 2 refers to Stakeholder and Regulator feedback. There has been no feedback sought from landholders or communities impacted by mining. The data on which these assumptions are made is fundamentally flawed. The process for determining the changes to the act should recommence following an active process of seeking feedback from ALL stakeholders – not just mining proponents.

Work Plan – Risk Management Plan

Expecting compliance through a Code of Practice is unrealistic. The mining sector has a history of unethical conduct, and has only been held to comply with legislation when local concerned communities have generated sufficient political tension to gain action. Clearer legislation is certainly required, but it needs to increase the level of scrutiny under which the mining sector operates.

Risk based approaches are flawed. Who determines the risk? It is in the proponent's interest to trivialise risks. What happens when a local community identifies a risk, but is ignored by the regulator? Why is it virtually impossible for community identified risks to be brought to the notice or the regulator? What happens when a risk becomes apparent after the fact?

A risk based approach can only ever be partially effective, and then only if the risks are assessed by an extremely competent, independent and highly ethical entity.

There is no comment in Table 2 about the current lack of consultation in the development of work plans. At present the community and impacted landholders have no input into, and never get to see the work plans. These work plans can also be changed with no community consultation, resulting in processes which are highly unethical at best and quite likely corrupt in extreme cases.

Rehabilitation Plan

Certainly the rehabilitation aspects of the current regulations require significant changes, as evidenced by the mining sector's almost total lack of effective rehabilitation. At this stage ERR can only state that one mine has ever been rehabilitated in Victoria's entire mining history.

Table 2 states that the changes set out objectives and completion criteria for rehabilitation. The local communities and landholder's knowledge, experience and expectations must be incorporated into the objectives and completion criteria for individual projects.

Each project will be in different terrain, landforms and usages, all with differing completion criteria. The length of time for post rehabilitation issues to become apparent will also vary with each site and soil type. Incorporation of the local

communities and landholder's knowledge and expectations must be carried out by a competent, independent and highly ethical entity – not the mining proponent or the regulator.

Work plans which will result in "...a rehabilitated land form that will not be self-sustaining" are totally unacceptable. No mining can be considered viable which results in this circumstance. Should this circumstance become known prior to commencement (at any stage) or once mining has commenced then mining must cease until the land forms are completely repaired and sufficient time has elapsed to prove the issue has been resolved.

Reporting Requirements

There is no comment about reporting to the local communities - all the comments are about required reporting to the regulator. As significantly impacted stakeholders the local communities and landholders should be consulted with and reported to, especially with regard to supposed rehabilitation progress and liabilities (bond).

Infringements

It is encouraging to see reform in this area as it is badly needed. The culture within the regulator also needs reform to ensure infringements are prosecuted and to ensure the regulator exercises its **duty of care** to report infringements outside its jurisdiction to the appropriate body, e.g. reporting deliberate dissemination of false information to the appropriate fraud regulator.

At this time the mining sector seems to flaunt regulations with impunity and minimal consequences. Impropriety currently may earn a "talking to" rather than being penalised – which rewards the improper behaviour if the original objective is gained without material consequence.

1 Background

1.1 Regulatory Impact Statement process

"Before new regulations are made, the *Subordinate Legislation Act 1994* requires:

- Preliminary consultation to inform development of proposed Regulations..."

No preliminary consultation has been undertaken with potentially impacted communities or landholders to inform the development of the proposed regulations. Mining proponents are not the only stakeholders impacted by changes to the regulations. It would appear the department's "targeted consultation process" was highly selective, and completely failed to involve the stakeholders most directly impacted.

“While the proposed Regulations have been streamlined and simplified where possible, analysis prepared by ACIL Allen Consulting confirms that the Regulations impose a ‘significant burden’ overall.”

ACIL Allen Consulting undertake significant work within the mining sector – their analysis is not independent as their cash-flow is reliant on increased mining exploration and development.

1.2 Victoria’s earth resources

The mining sector extols the supposed economic and employment benefits of mining, particularly for regional areas. In reality the economic and social damage imposed by the mining sector outweighs any advantage. There is NO recognition of:

- Economic damage caused by the long term damage to productive agricultural land
- Long-term health impacts from toxic residues contaminating dust and water
- Fragmentation of communities by the inrush, and then departure of either fly-in fly-out employees, or those who know their stay in a region is limited.

Victoria’s history is littered with examples of mines destroying productive agricultural land and local communities - and then going into indefinite “care and maintenance” (e.g. Douglas Mine at Balmoral). The costs of the long term social and economic damage are seldom incorporated into the “benefits” of the mining sector.

The figures on mining sector activity quoted are grossly inflated.

- Many of the licences listed are unlikely to proceed due to the marginal nature of the resource and/or the proposed mine’s environmental impact.
    - Two clear examples of this are Eastern Iron’s proposal, which includes mining within a Ramsar listed wetland, and
    - Kalbar’s Fingerboards proposal which consists a marginal resource with likely extensive human health and environmental impacts (including a Ramsar listed wetland).

1.3 Legislative framework

“Further, the Act and regulations manage risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under a licence or extractive industry work authority, so those risks are identified and are eliminated or minimised as far as reasonably practicable, and land is rehabilitated. This is chiefly regulated through ‘work plans’, which detail the precise

works a licensee will undertake and how risks will be eliminated or minimised as far as reasonably practicable."

Reasonably practicable is not an acceptable regulatory term. Who defines "reasonably practicable"? Mining proponents will always argue that any measure costs too much and is "not reasonably practicable". If risks cannot be eliminated then the mining proposal is not viable and must not be undertaken.

Relying on the work plans as the main regulatory instrument is fundamentally flawed. Work plans are developed without any community consultation and are maintained as commercially confidential documents. Work plans are also varied without stakeholder and community consultation. This means that the mining proponent can deviate from the work plan knowing that local stakeholders cannot report their infringement, as the local stakeholders are not permitted to know what is in the work plan. The work plan is thus a meaningless document.

Expecting compliance through a Code of Practice is unrealistic. The mining sector has a history of unethical conduct, and has only been held to comply with legislation when local concerned communities have generated sufficient political tension to gain action.

Clearer legislation is certainly required, but it needs to increase the level of scrutiny under which the mining sector operates. There are many instances of "low impact exploration" being undertaken in unsuitable areas according to the Code of Practice – with no prosecutions or material consequences. Who will be involved in the development of Codes of Practice for the mining sector? Impacted communities and landholders invariably are removed from the "consultation processes".

"ERR operates under several Acts and regulatory instruments and has the following responsibilities:

- allocating rights to explore and mine for minerals through licensing and tenders;
- authorising mining exploration, production and other activities (e.g. retention);
- assessing and approving licensee operations works and rehabilitation (through work plans);
- compliance and enforcement activities; and
- other functions such as stakeholder engagement and education."

ERR does not have the skills and knowledge to successfully assess rehabilitation. Currently this responsibility sits with the Mines Inspector, who has no agronomic, horticultural or agricultural skills or qualifications – in short no idea whether land has been successfully rehabilitated or not. "It looks ok" is NOT an acceptable, useful or legal means of evaluation.

ERR's corporate culture needs to change to extend the definition of stakeholder. At this stage ERR seems to regard mining proponents as their only stakeholders. Impacted communities and landholders are also stakeholders who require active engagement by ERR.

“The regulations also seek to ensure a high level of probity among public officers who administer the Act.” Apparently the declaration of interest of public officers does not include alliances and influences from mining proponents.

Many of the public officers have undertaken extensive work for mining proponents and actively maintain their “contacts”. This covert level of interaction with the mining sector compromises public perception of the regulator’s probity.

1.4 Analysis of base-line regulatory costs

Regulatory costs are not an area which should be considered in revising legislation and regulations. Businesses in other regulated industries such as aged care, health, education or agriculture are regarded as unviable if they cannot meet their regulatory costs.

Regulations and legislation are formed to establish minimum standards and requirements (health, environment, rehabilitation, operational, reporting, probity, integrity ...) with which business must comply in order to protect the public and future generations. Those standards and requirements must not be compromised merely to reduce the compliance costs for an industry sector.

“While the proposed Regulations have been streamlined and simplified where possible, analysis prepared by ACIL Allen Consulting confirms that the Regulations impose a ‘significant burden’ overall.” ACIL Allen Consulting undertake significant work within the mining sector – their analysis is not independent as they have a vested interest in increased mining exploration and development.

2 The nature and extent of the problem

2.1 Licence Applications

Detailed surveying of licence areas is required to eliminate any ambiguity as to the location of a licence. Mining proponents have been known to be extremely vague during community “consultations” as to the location of licence areas. Published survey data reduces the possibility of misunderstanding with stakeholders and allows the proponent to be held accountable for any misinformation.

The fit and proper requirements for licence applicants are minimal and unsatisfactory. Many of the small speculative operators are extremely unprofessional and incompetent in the way they undertake their activities. There appears to be no scope within the current legislation or regulations to control improper conduct within the mining sector which would not be accepted in any other sector.

Some areas of the state are totally unsuitable for any form of mining operations and should not have licences of any level issued. Situations where licences are inappropriate include near towns, near or in protected ecosystems (e.g. Ramsar listed wetlands), where soil types are unsuitable and in or near significant agricultural/horticultural/tourism areas.

2.2 Work plans

At present there is no consultation with stakeholders or community in the development of Work Plans. Local communities are not in a position to question dubious activities as the Work Plans are deemed to be commercially confidential, and not open to public scrutiny. The entire Work Plan process lacks transparency and as such provides grounds to question the probity of the regulator.

2.3 Rehabilitation plan

It is good to see that some of the issues with the current situation have been recognised. With only one mine ever being fully rehabilitated in Victoria's entire history – rehabilitation processes and requirements to date are a farce.

Progressive rehabilitation appears not to occur within many mines in Victoria. Instead the mining proponents delay the rehabilitation until the resource is mined out and then put the site into "care and maintenance", effectively deferring the rehabilitation indefinitely.

The regulator does not have the skills, knowledge or expertise to assess the success of rehabilitation. Extensive understanding of animal husbandry, agronomy, horticulture, hydrology, soil science and local terrain are required.

3 Objectives of the regulations

3.1 Legislative purpose and objectives

Reasonably practicable is not an acceptable regulatory term. Who defines "reasonably practicable"? Mining proponents will always argue that any measure costs too much and is "not reasonably practicable". If risks cannot be eliminated then the mining proposal is not viable and must not be undertaken.

3.2 Government policy

The statements "The strategy provides settings to underpin the long-term development of socially and environmentally responsible mineral exploration and mining in regional Victoria" and "...**the reduction of costs and red-tape for the minerals sector** ..." are contradictory.

Either mineral development is socially and environmentally responsible and public safety ensured OR costs for the minerals sector are reduced. The minerals sector has an appalling social, public health and environmental record and requires clear and strict oversight.

It is good to see that further review of rehabilitation and post-closure management are planned, however these are crucial issues and need repair now – not at some indefinite time in the future.

ERR's "*Statement of Operating Change: Our New Approach to Earth Resources Regulation"* has so far failed; community expectations have not been met, confidence in the regulatory system has dropped and there are no signs that ERR has any focus on eliminating or minimising risks to people, the environment or infrastructure.

3.3 Objectives of the proposed Regulations

Option A.1 – Status quo

Survey data for licence applications is required to inform the public, local community and impacted landholders as to the specific area included in the application. Eliminating this requirement would allow mining proponents to be deliberately vague and provide misleading information as to the location of the area for which a licence is being applied.

Option A.2 – Proposed amendments

Mining proponents deliberately provide misleading information to the local communities about the nature, extent and location of their proposed activities. Published specific and detailed information about the proposal location is the only means to ensure the public and impacted stakeholders have access to reliable indisputable information.

B. Options for work plan requirements

Option B.1 – Status quo

Community engagement under the current regulations is a farce. The proponents undertake meaningless activities in order to be able to claim they have "consulted with the community", with no intent to address the concerns of the community.

Risk management is ESSENTIAL. It is unacceptable that an industry be allowed to have a "proportionate response" to risks. Risks must be either eliminated or the proposal is not viable. "Reasonably practicable" is not an appropriate term in regulation – it allows too many excuses for non-compliance and too many options for

interpretation. Other major regulated industries do not have “reasonably practicable” escape clauses; neither should the mining sector.

Option B.2 – Proposed amendments

Management through Codes of Practice has been demonstrated in many sectors to be unsuccessful.

Who will determine what “performance standards” are appropriate? Will the local community be involved in assessing risks and relevant “performance standards”?

Unless independent and competent entities are involved, risk management plans prepared by proponents trivialise the risks and overstate their management abilities.

The variability in terrain, soil types, rainfall patterns, population density, land use, etc. between mining sites precludes a suite of “standard measures” to risks. Proponents invariably minimise their declaration of risks in order to minimise future costs. Tick and Flick risk management plans are not acceptable.

Should a Code of Practice be proposed, it would require input from ALL stakeholders, not just mining proponents. This includes impacted communities, landholders and representatives of industries indirectly impacted by mining activities.

C. Rehabilitation requirements

Option C.2 – Proposed amendments

Neither the Minister nor member of the regulator are qualified or have experience to allow them to set rehabilitation outcomes. There is nothing in the RIS which allows for community or landholder input into appropriate rehabilitation objectives and completion criteria.

Rehabilitation outcome supported by objectives and completion criteria
Allowing licensees to set their own rehabilitation objectives and completion criteria is in complete opposition with improving rehabilitation requirements. Licensees will invariably set the absolute minimum rehabilitation standards they can get away with, rather than those appropriate for the land and its proposed future use.

Progressive rehabilitation
Progressive rehabilitation under the current regulations is not effective. There is nothing in the RIS which will change this situation. Progressive rehabilitation will only become effective when failure to meet progressive rehabilitation milestones results in significant penalties, i.e. the cost of the rehabilitation is less than the cost of the penalty.

Post-closure liability planning
Issues associated with the disturbance of dispersible soils take many years to become apparent. Significant bonds need to be in place for periods up to 20 years

to ensure the State or the landholder is not responsible for costs created by the mining sector.

It is not acceptable that a project proceed once identification of a risk that rehabilitation may lead to a land-form that is not self-sustaining has occurred. The mining sector can only be considered "sustainable" if it can completely rehabilitate land to a functional and self-sustaining state – otherwise the sector is relying of the State or landholder to subsidise it and mining is therefore unviable.

D. Advertising requirements

Option D.1 – Status quo

Alternative methods of advertising

Should the mining proponent be motivated to act with integrity, there is nothing preventing them from using alternative methods of advertising as well as those specified in the regulations.

Objections

The limited options the Minister has to reject licence application - regardless of the number of objections - indicates that the legislation is intrinsically biased in favour of the licence applicants over the objectors. ERR's observation that objections "reflect concerns over risks which are not realistic given the protections afforded to landowners and the community by the Act or other legislation" suggests that ERR has more faith in the protections than are evidenced, and that the community has little faith in the regulator.

It also demonstrates the lack of respect for the level of knowledge and understanding that many objectors have. All objectors appear to the be regarded as "radical greenies" rather than intelligent, educated knowledgeable people with a genuine understanding of the issues and problems. In many cases the objectors have superior knowledge and understanding of the regulators and the mining company.

E. Reporting requirements

Option E.2 – Proposed amendments

Activities return – rehabilitation reporting

Having the licensee report on the rehabilitation liability is unacceptable – clearly they will report to minimise their liability. Rehabilitation liabilities must be assessed by a competent independent entity.

5 Assessment of Options

The RIS consistently uses the phrase "...and impose the lowest possible burden on businesses ...". Why? In other industry regulated sectors businesses are expected to either comply or get out. There are no discussions about reducing the regulatory compliance burdens in health, aged care, education or agriculture – businesses in these sectors are deemed to be unviable if they cannot comply. If the mining sector cannot economically meet stringent requirements covering human health, rehabilitation and the environment then mining should not proceed as it is clearly not viable.

Use of a multi-criteria assessment tool is a dangerous method of assessing impact. The weighting given to the various criteria is purely dependent on the bias of the person undertaking the assessment, and is therefore not transparent, fair nor accurate. It is extremely easy to create a result that shows a "benefit" for proposed changes regardless of what the actual impact will be. Without extensive input from ALL stakeholders (not just the mining proponents) the analysis and scoring is merely propaganda not data.

6 Preferred options

There is no evidence within the RIS that any of the preferred options will result in an improvement in public safety, the level of community engagement by mining proponents, the integrity with which mining proponents operate or the rigour with which the regulator will oversee mining activities. The preferred options generally make it easier for the mining proponents to increase the risks to the public and landholders by minimising risk assessments and reporting regimes.

The preferred options do not comply with the intent of the act: "The purpose of the Act is to encourage economically viable mining and extractive industries that make the best use of resources, **compatible with the economic, social and environmental objectives of the State**." (emphasis added).

The preferred options also do not provide landholders with any improved levels of security from the bullying of mining proponents or equity in negotiations. Other states provide varying but significant levels of protection for landholders of agricultural land, such as requiring mining proponents to pay landholders legal fees, or preventing mining proponents entering agricultural land without the landholders permission.

The only benefit of the preferred options is a possible marginal improvement in the rehabilitation requirements. Without significant stakeholder input these possible improvements are meaningless.

6.1 Expected impacts of the proposed regulations

Reliance on compliance with a Code of Practice containing generic solutions is a totally unviable option. The mining sector has blatantly disregarded existing Codes of Practice (such as that for low impact exploration) without any consequences. Generic solutions encourage a “tick and flick” approach without serious consideration of actual existing risks in given environment.

Rehabilitation plans that are developed based on meaningless Ministerial Guidelines, but without significant local input are rubbish. The regulator’s staff are not qualified to understand rehabilitation.

The preferred options do not include a clear financial penalty for not achieving progressive rehabilitation. As such there is no incentive for mining proponents to undertake progressive rehabilitation.

6.2 Small business impacts

The least ethical and most unprofessional performers within the mining sector are the small business speculators. These businesses require more stringent supervision in order to protect communities – not less. The small business speculators consistently bully landholders and deliberately provide misinformation to local communities. There is no reason to reduce regulation for these entities.

Effective risk management plans must be maintained within the mining sector. Business entities operating without risk assessments are likely to create irreparable damage due to operating without thought as to the consequences. Small businesses often lack the competence to identify risks, or the financial reserves to repair damage they have created. Maintaining the need for risk management is the only mechanism the regulator has to provide some level of safety from these entities.

7 Implementation and Compliance

7.1 Implementation

Major areas not addressed by the proposed legislative changes include:

- Community consultation. At present this is a farce. The regulator has received many complaints about mining proponents’ lack of effective consultation. It appears to do nothing as communities can see no change as a result of genuine complaints.
- Landholder protection. The regulator has received many complaints about mining proponents bullying landholders, unfairly using the Mining Warden as

a threat and deliberately providing false information. The regulator consistently states there is nothing in the MRSDA to allow them to take action.

- Basis for rejection of licence applications. It would appear the only basis for rejecting a licence application is if the applicant is not a bankrupt, doesn't have any money, or states in public that they do not intend to operate the mine. Their history of dubious ethical behaviour, morally ambiguous dealings or poor environmental record is not considered relevant.

7.2 Earth Resources Regulation – Compliance Strategy 2018-2020

ERR has been noticeable by its lack of meaningful action following numerous complaints regarding mining proponents. Local communities do not appear to be included in ERR's definition of "stakeholders".

A history of only one prosecution in the last five years and three in progress suggests that ERR has not been effective or enthusiastic in its pursuit of compliance. The number of warnings is a meaningless figure as there is no significant penalties connected with the warning, and hence are disregarded by the mining proponent.

8 Evaluation

With whom will the ongoing engagement of stakeholders occur? Communities and landholders have not been involved in any component (other than public comment) to date, but are the most significantly impacted by lack of compliance by the mining sector.

Objectives of the evaluation

The objectives of the changes claim to "...allowing government and the community to make well informed decisions". There is nothing in the proposed changes to ensure the community is provided with any more accurate or detailed information.

9 Consultation

Only one agricultural body was consulted, as opposed to many mining sector agencies during the development of the proposed changes. There was no consultation with communities impacted by existing or proposed mining activity. The consultation process is fundamentally flawed.

Mining affects EVERYONE and EVERYONE needs to be involved. Where was the advertising to tell people that the review was happening?