



Commissioner for
Better Regulation
Red Tape Commissioner

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3 September 2019

Ms Beth Jones
Deputy Secretary, Rural and Regional Victoria
Chief Executive of Regional Development Victoria
Department of Jobs, Precincts and Regions
111 Armstrong St North,
BALLARAT VIC 3000

Dear Ms Jones

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

I would like to thank staff at the Department of Jobs, Precincts and Regions (the Department) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 30 August 2019 meets the adequacy requirements of the SLA.

Background

The proposed Regulations are made under the *Mineral Resources (Sustainable Development) Act 1990* (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 economic, social and environmental objectives.

The proposed Regulations are about the extractives resources industry. The industry produces hard rock, clay, sand and gravel by quarries, which is mostly used for constructing houses, public and private infrastructure, and other developments.

In the RIS, the Department notes that the objectives of the proposed Regulations are to create a framework for the collection of information to allow for the management of the economic and environmental risks, and to increase public confidence in extractive activities in Victoria. The Department notes that the proposed Regulations do this by prescribing information to operationalise the Act including:

- procedures relating to work plans and work authorities;
- matters relating to royalties;

- fees, forms and other matters authorised by the Act; and
- infringeable offences.

Options and analysis

In the RIS, the Department analyses options for three issues:

1. Work plans;
2. Rehabilitation plans; and
3. Reporting requirements.

The Department assesses options for these three issues against the following criteria:

- **Effectiveness:** the extent to which the option encourages economically viable mining that is compatible with economic, social and environmental objectives (the purpose of the Act). This criterion is weighted at 50 per cent.
- **Costs to industry:** the administrative, compliance, and delay costs for industry. This criterion is weighted 35 per cent.
- **Costs to government:** the cost to government of administering the regulations not including activities where it directly recovers costs from regulated parties. This criterion is weighted 15 per cent.

The Department does not assess the level of fees, rents, royalties or levies in the RIS. It notes that the level of fees units will continue at current rates (subject to annual indexation) until at least 1 July 2020. This is consistent with the *Getting the Groundwork Right* report, which recommended that the Department begin to increase cost recovery no earlier than 1 July 2020 to allow the Department to embed improvements to the regulatory system that were being implemented, consult with industry and other stakeholders on the right model for cost recovery and establish a clear baseline for efficient costs.

Work Plans

The Act requires that a person or company to obtain a work authority before conducting extraction activities in a certain area. To be granted a work authority, the applicant must have a 'work plan' approved by the Department, which is a plan containing information prescribed in the Regulations. In the current Regulations, this information includes maps, the types of stone to be extracted and the estimated stone resources and reserves, identification of quarrying hazards, a risk management plan and a community engagement plan.

In the RIS, the Department notes that the proposed Regulations make changes to make risk management requirements more outcomes-focused. The Department explains that these changes will better align the requirements with the objectives of the Act and hence increase the effectiveness of work plans. The Department explains that because these changes will provide greater clarity to industry, costs to industry will fall slightly and costs to government will also fall because it will take less time to approve work plans.

Rehabilitation plan requirements

The Act requires holders of work authorities to rehabilitate land in accordance with an approved rehabilitation plan (which forms part of the work plan discussed above) and enter into a rehabilitation bond prior to starting work. A rehabilitation bond acts as a financial security that ensures that the Department can rehabilitate the quarry site if the is unable to meet its rehabilitation obligations.

The Act enables regulations to detail requirements for rehabilitation plans. The current Regulations require a rehabilitation plan to include concepts for the proposed end use of the quarry site as well as proposals for how the quarry site will be progressively rehabilitated, landscaped and closed.

In the RIS, the Department notes that, in addition to the current requirements, the proposed Regulations will require rehabilitation plans to:

- identify proposed post-quarrying land uses;
- include measurable rehabilitation objectives;
- include criteria for measuring whether rehabilitation objectives have been met;
- include a description of, and schedule for, rehabilitation milestones; and
- include an identification and assessment of any relevant risks that the rehabilitated land may pose.

The Department explains that these additional requirements will

- improve effectiveness because rehabilitation plans will be better aligned with the objectives of the Act;
- increase costs to industry of preparing rehabilitation plans; and
- reduce costs to government. The time spent reviewing rehabilitation plans is likely to increase but this is expected to be outweighed by a decrease in financial risk to government because the Department will be better able to estimate rehabilitation costs and set rehabilitation bonds accordingly.

The Department explains that improved effectiveness and reduced costs to government outweigh the increase in costs to industry. The Department explains that costs to industry will be mitigated by exemptions for small operators and a 12-month transition for these requirements. Changes will only apply to new or varied work plans.

Reporting requirements

The Act requires a work authority holder to provide prescribed information about work undertaken to the Minister. This information is prescribed in regulations. Without regulations, no reportable events would be specified.

The current Regulations require authority holders to provide annual reports on the quantity and value of stone that has been extracted or sold and any injuries arising from work done. The current Regulations also list 'reportable events', which authority holders must inform the Department of immediately. These include any event that may have a significant impact on public safety, the environment or infrastructure.

The Department notes in the RIS that the proposed Regulations maintain current requirements for annual reports as well as introduce an additional requirement to include resource estimates. The Department also notes that while the same information on injuries arising from work done will be required, the requirement to provide a statutory declaration with this information will be removed.

The Department explains that the additional requirement to include resource estimates in annual reports will increase effectiveness by enabling the future supply of resources to be more accurately estimated, reducing the risk of shortages. The Department explains that these benefits outweigh increased costs to industry.

Compliance

In the RIS, the Department notes that it uses a range of measures to achieve compliance in the sector. The Department notes that it reviewed existing penalties and infringement notices as part of preparing the RIS and identified areas where enforcement would be strengthened by making more offences infringeable. It explains that because some offences can only be enforced through courts processes, enforcement can be discouraged because of lengthy and expensive processes, and that there are certain infringement offences that carry penalties which do not necessarily meet the severity of the offence. Several new infringement offences are included in the proposed Regulations.

Implementation and evaluation

In the RIS, the Department notes that its primary goal in the implementation phase will be to communicate the changes in the proposed Regulations to industry. The Department explains that this will be done through updating websites, guidelines and standard operating procedures, as well as re-designing application and reporting forms. It notes that there will be transition periods for reporting on resource reserves and for introduction of new requirements for new or varied rehabilitation plans to give time for the Department to develop guidelines and for industry to adapt.

The Department notes in the RIS that evaluation of the proposed Regulations against objectives will be ongoing. Evaluation will involve finalising an evaluation framework, collecting data to measure performance and stakeholder consultation. The Department also discusses forthcoming reviews in the RIS. It notes that a mid-term review of the Regulations will be conducted within five years of commencement and that this review could be aligned with proposed reforms to the Act. It also notes that a review of fees 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

Commissioner for Better Regulation