

Submission for the Proposed Changes to the MRSDA

The proposed changes to the MRSDA regulations have been designed around assumption that mining is good and has a positive impact. There has been no evidence to support this assumption as there have been no sector wide, long term social and economic analyses, or any lifetime complete social and economic analysis of an individual mine. As there is no data to validate this assumption, decisions regarding the worth or benefit of the mining sector are being made without any meaningful data.

The realistic and actual costs of a mine and the mining sector should include increased public health costs (issues from dust, increased stress, heavy metals, contaminated water, vibration, ...), loss of social cohesion, long term loss of agricultural production, severe reduction in tourism, indirect impacts on businesses, loss of amenity, loss of employment and housing of impacted landholders and increased stress levels within local communities. A long-term lifetime costing of both the Douglas mine and the proposed Fingerboards project would clearly show a net deficit as opposed to the assumed benefit through the unsubstantiated claim that mining is good.

Changing the legislation aims to "... further the Government's commitment to a modern, fit-for-purpose regulatory regime built around increased investment and community confidence". The current legislation is clearly not sufficient to achieve this goal given the sector's consistently abysmal record. Community confidence in the mining sector and the regulator is extremely low and any efforts to reduce the level of oversight of this sector will further increase the public's distrust of mining and the government.

The mining sector as a whole consistently emphasises the apparent benefits (economic and employment) of mining, particularly in regional areas. The reality is that the damages imposed by the mines in these areas – both economic and social – far outweigh any potential advantages. There is no acknowledgement of the economic damage to existing businesses through extensive and long term damage to agricultural land, health impacts from toxic contamination of water and dust, or the damage to communities from fly-in fly-out workers.

"...and impose the lowest possible burden on businesses ..." is consistently used throughout the RIS. This makes no sense. Other regulated industries must either comply with regulations or not practice. 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 stringent requirements covering human health, rehabilitation and the environment then mining should not proceed as it is clearly not viable.

A multi-criteria assessment tool is an incredibly biased method of assessing impact as the weighting given to each criteria is dependent on the person undertaking the assessment. This therefore is not a transparent, fair, or accurate process. It would be incredibly easy to create a

result that shows a net benefit for proposed changes regardless of the actual impact through unjust weighting of factors in the assessment tool.

There is significant focus of providing support and flexibility to the small mining 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. There is no interest in the communities on and around the desired 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 mining businesses do not have the skills or capital to operate effectively. Therefore the requirement 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 tantamount to unleashing a horde of unprofessional, unethical, and underfunded money makers 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 – not left to an individual’s discretion.

The current public consultation is not in a form suitable for many stakeholders. Many members of communities have commented that it is “too hard” or “too complicated” for their voice to be heard. Public workshops in areas where mining is proposed or likely to occur should be held. Advertising of the changes to the RIS should have been more widespread to allow further comment from those who will be truly affected by the lack of oversight of the mining sector.

The Key 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 as they are determined by whomever 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? 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. Such entities do not appear to exist in either the mining sector or the public service.

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 don't see the work plans. These work plans can also be changed without community consultation, resulting in processes which are highly unethical at best and likely corrupt in extreme cases.

Rehabilitation Plan

Certainly the rehabilitation aspects of the current regulations require massive changes, as evidenced by the mining sector's almost total lack of effective rehabilitation. At this stage ERR can only state that one single mine has 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 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.

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, such as reporting deliberate distribution of false information to the appropriate fraud regulator. At this time the mining sector seems to be able 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.