



MINERALS COUNCIL OF AUSTRALIA VICTORIAN DIVISION

PROPOSED MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) REGULATIONS AND REGULATORY IMPACT STATEMENT

APRIL 23 2019

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1 EXECUTIVE SUMMARY

The Minerals Council of Australia (MCA), incorporating the Minerals Council of Australia Victorian Division (MCA VIC), welcomes the opportunity to provide feedback and comment on the proposed Mineral Resources (Sustainable Development) Regulations 2019 (MR(SD) regulations)¹ and associated Regulatory Impact Statement (RIS)².

The MCA understands that the RIS summarises the major changes to the regulations and the impacts of the change across six main areas:

1. Information Requirements: licence applications, licence renewals, work plan approvals, annual reporting
2. Work Plan – Risk Management Plan
3. Rehabilitation plan
4. Licence Advertising/Notice Requirements
5. Reporting Requirements
6. Infringements

The proposed draft regulations have been reviewed in conjunction with the RIS and the Consultation Outline for a Code of Practice for Risk Management Plans³.

This submission provides feedback on each of the six key areas outlined in the RIS, the Consultation Outline and the draft regulations.

The MCA supports the intention to move towards regulations that are outcome focussed noting the constraints imposed by the Mineral Resources (Sustainable Development) Act. Efforts to reduce prescriptive requirements, for example removing mandatory survey requirements, and to increase flexibility, such as the ability for the Department Head to adjust forms, advertising methods and reporting requirements, demonstrate this intent.

The MCA notes that responding to the draft regulations in the absence of the development of supplementary Ministerial guidelines (including rehabilitation) or Codes of Practice (potentially risk management) makes the provision of feedback that is appropriate and fully considered difficult.

In light of this, the MCA recommends that the development of any of these supporting documents be undertaken as soon as possible. Consultation with industry throughout the development process is considered critical.

The MCA wishes to discuss the contents of the submission with those undertaking the remake of the regulations at the earliest possible opportunity.

¹ Victoria State Government, proposed draft [Mineral Resources \(Sustainable Development\) \(Mineral Industries\) Regulations 2019](#), March 2019

² Victoria State Government, [Regulatory Impact Statement Proposed Mineral Resources \(Sustainable Development\) \(Mineral Industries\) Regulations 2019](#), March 2019

³ Victoria State Government, [Consultation Outline for a Code of Practice](#), March 2019

2 MCA ADVOCACY

About the MCA

The Minerals Council of Australia (MCA) is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally and socially responsible and attuned to its communities' needs and expectations.

MCA VIC is part of the MCA and represents the interests of member companies operating, exploring and providing services to the minerals industry within the state of Victoria.

MCA member companies are signatories to Enduring Value – The Australian Minerals Industry Framework for Sustainable Development.⁴ Enduring Value articulates the mineral industry's commitment to sustainable development, and is based on the globally recognised International Council on Mining and Metals 10 Principles for Sustainable Development.⁵

⁴ Minerals Council of Australia, [Enduring Value Framework](#), 2015

⁵ International Council on Mining and Metals, [ICMM 10 Principles](#), ICMM, London May 2003

3 PROPOSED LICENCE APPLICATION REQUIREMENTS

Engage Victoria survey questions⁶:

Are the proposed amendments to information requirements for licence applications likely to be effective? If not, what changes would you suggest and why?

Schedule consolidation and incorporation into regulations

The MCA notes that many requirements relating to licence applications have been moved from Schedules into the draft regulations. These changes are considered of minimal consequence to the mining industry. However, if the information is easier to change when contained in Schedules, the MCA would recommend retaining information in Schedules rather than regulations.

Survey requirements

The MCA supports the proposed changes to survey requirements in broad terms, but seeks clarity regarding the following items:

Issue	Detail	Proposed Regulation	Recommendation
Process to establish survey inclusion	The process to establish inclusion of a survey is currently unclear. Should applications be made assuming no survey is required, and the Department Head will notify an applicant that a survey must be conducted after the initial application is made?	24	Draft regulations amended to clarify process
Survey requirement on land covered under existing licence	If an application is made for ground that is already subject to an existing Exploration Licence, a survey is warranted to ensure existing licence holder and other stakeholders are properly informed when making decision regarding granting of licence	24	Draft regulations amended to clarify requirement
Survey not required for Retention Licence application	Retention licence applications are unlikely to ever warrant a survey	24	ERR to consider requirement and amend draft regulations

Miscellaneous

Two other changes to Licence Application Requirements contained within the proposed regulations have the potential to impact adversely on the minerals industry in Victoria:

Issue	Detail	Proposed Regulation	Recommendation
Competent Person – definition	The proposed regulations remove the clause that notes coal seam gas – this has the potential to restrict new entrants in future (note: understand that this aligns with current moratorium banning coal seam gas exploration in Victoria)	12 1 (b)	ERR to consider retaining current regulation wording for competent person
Application Forms	Forms no longer in Schedules. No forms or procedures available for review (for new applications or renewals). Difficult to assess and provide feedback regarding whether or not proposed changes are workable without information to respond to	18 33	ERR to provide information on forms and processes to ensure any proposed changes are workable prior to release of final regulations

⁶ Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

4 PROPOSED WORK PLAN REQUIREMENTS

Engage Victoria survey questions ⁷:

Are the proposed amendments to work plans and work plan variations effective? If not, what changes would you suggest and why?

Should there be an option for regulated parties to apply the risk management approach, contained within a Code of Practice for risk management issued by the Minister under Part 8A of the Principal Act? Yes or No?

Do you have any comments on the proposed Code of Practice (refer to attachment C)?

Work plan and work plan variation requirements

The MCA notes that a range of amendments are proposed relating to work plans and work plan variations. The MCA recommends the following items be amended as necessary:

Issue	Detail	Proposed Regulation	Recommendation
Information required in work plans – rehabilitation	Draft regulations specify that proposed land uses are identified (43 (a)), but restricts the work plan to ‘a land form that will be achieved to complete rehabilitation which must be capable of supporting the proposed land use’. Multiple land uses should be possible, particularly in early stages of mine life, and final rehabilitation may require multiple land forms (e.g. a pit compared to a tailings dam)	43 (b) (ii)	Draft regulations be amended to allow multiple land forms Draft regulations be amended to clarify process for varying post-land use options (may be addressed in Application for variation to work plan draft regulations)
	RIS specifies that ‘a post-mining land use’ be identified and that ‘a ... final land form’ be developed to ‘support that future use’ (Option C.2, page 42) – RIS is inconsistent with draft regulations and causes confusion Draft regulations do not specify the process to vary options or timeframes relating to proposed land uses		
	Draft regulations include a new requirement to undertake post-rehabilitation risk assessments and cost projections. Future estimations are inherently difficult to predict accurately and are likely to be unrepresentative of future costs (for example community expectations change, organisation requirements may alter, technological advances change current practices)	43 (f)	ERR to clarify their intent regarding how cost projections will be used and what implications there may be for projections that date. ERR to confirm if projections will impact on existing bond provisioning requirements, and if so, how.
Information required in work plans – identification of hazards and risks	Draft regulations include a new requirement making explicit the requirement to identify hazards associated with rehabilitation	44 (c)	Draft regulations be amended to clarify that this refers to current rehabilitation, not post-rehabilitation as outlined in 43 (f)

⁷ Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

Issue	Detail	Proposed Regulation	Recommendation
Information required in application for variation of work plan	Draft regulations include new requirements to explicitly consider rehabilitation impacts from any new or changed hazards resulting from exploration or mining work, and to update rehabilitation plan It is imperative that the regulator does not trigger all existing rehabilitation plans to be varied when the new regulations are released – grandfathering provisions must be honoured	48 (c) 48 (d) 48 (e)	Draft regulations to align with Work plan and Work plan variations guidance ^{8,9} so that only changes that result in a residual risk of high or very high require a work plan variation including changes to rehabilitation plan

Proposed Code of Practice – Risk Management

The MCA notes that the draft regulations refer to a Code of Practice for Risk Management Plans, and that a Consultation Outline for such a code has been provided for public comment.

The MCA has reservations supporting the option for regulated parties to apply a risk management approach contained within a Code of Practice for risk management issued by the Minister under Part 8A of the Principal Act. The reasons for this reservation and other comments on the proposed Code of Practice are outlined below:

Issue	Detail	Proposed Regulation	Recommendation
Information required in work plans – risk management plan	Draft regulations include new requirements regarding adherence to a Code of Practice for Risk Management Plans Existing guidelines for work plans and work plan variations contain sample risk management plans that can adequately provide guidance – a Code of Practice is not needed Voluntary nature of adherence with the Code of Practice must be explicit. Use of Code of Practice must not be prescriptive Concern exists that if proponents are either not following a Code of Practice, or are partially following a Code of Practice, that the regulator will assume that hazards are not being controlled effectively (per 45 (1)). Proponents often have to defend chosen risk management approaches due to a lack of regulator understanding	45 (2) 45 (3)	Do not develop a Code of Practice If Code of Practice is developed: Draft regulations must be amended under 45 (1) to explicitly reflect that use of Code of Practice is voluntary Wording in regulations and Code of Practice must be aligned Regulator must ensure internal capacity and skills reflects this understanding when assessing and approving work plans
Consultation Outline for a Code of Practice for Risk Management Plans	<i>Utilisation of existing guidelines for work plans and work plan variations</i> An opportunity exists to utilise the risk assessment and management templates developed as part of the Work Plan and Work Plan Variations guidelines for Exploration and Mining rather than develop a new Code of		Do not develop a Code of Practice Utilise existing guidelines for work plans and work plan variations to provide risk management

⁸ Victorian State Government, Earth Resources Regulator, [Work plan and work plan variations for mining](#) guidelines, January 2019

⁹ Victorian State Government, Earth Resources Regulator, [Work plan and work plan variations for exploration](#) guidelines, January 2019

Issue	Detail	Proposed Regulation	Recommendation
	<p>Practice. These guidelines have already been reviewed by industry and released by ERR</p> <p>Development of standardised approaches that can be applied to all Victorian operations has proven in the past to be extremely difficult. This is illustrated by the significant time and resources invested by both Jacobs and ERRV in recent years to develop a suite of standard controls that could be applied to manage risk. The diversity of Victoria's operations and multitude of site-specific variables made successful application of a 'one size fits all' set of standard controls nearly impossible. This is further illustrated by the limited application of the Code of Practice for Low Risk Mines in Victoria, whereby only a handful of small scale mines actually operated under this code</p>		<p>guidance rather than develop a new Code of Practice</p>
	<p><i>Development of Code of Practice and Guidelines</i></p> <p>If a Code of Practice is progressed, development of the Code of Practice and Ministerial Guidelines will require industry consultation</p> <p>What process will be adopted for this given the tight timeframes involved (due for release on 1 January 2020)?</p> <p>What will happen between commencement of the regulations and release of Code 6 months later?</p> <p>Will the risk assessment and management templates developed as part of the Work Plan guidelines form the basis of the Code of Practice? If so, most members will have these versions of these plans in place already, and the templates may not be relevant</p> <p>What provisions are there for inclusion/grandfathering of existing risk management documentation in the proposed regulations?</p> <p>What process will be taken to ensure that the risk frameworks and associated requirements are consistent with other agencies, including DELWP and requirements under the Environmental Effects Statement process? Must avoid the situation where two different versions of a work plan are required to meet approval requirements of different regulators</p> <p>How will performance standards be incorporated into the Code of Practice? These should not be enforceable</p>		<p>If Code of Practice is developed:</p> <p>Commence industry consultation as soon as possible</p> <p>Commence liaison with referral agencies to ensure consistent risk frameworks and associated requirements are developed and incorporated</p> <p>Progress MOU between ERR and DELWP</p>
	<p><i>Voluntary, not Prescriptive</i></p> <p>While the development of a Code of Practice may benefit some proponents with a less mature approach to risk, no players, regardless of size or maturity, should be adversely impacted by the introduction of a Code of Practice that becomes a default mandatory requirement</p> <p>The Consultation Outline for a Code of Practice needs to be explicit that adherence is voluntary.</p>		<p>If Code of Practice is developed:</p> <p>Code of Practice must be voluntary</p> <p>Inconsistencies between regulations and Code of Practice must be addressed</p>

Issue	Detail	Proposed Regulation	Recommendation
	<p>The second last sentence on page one of the outline states that 'its use would be voluntary, as an alternative to developing a case-specific RMP'</p> <p>However on page v, the extract from the draft regulations states that:</p> <p style="padding-left: 40px;">45 (2) Requirements in subregulations (1)(a) and (b) are taken to be met in relation to risks that may be posed by a particular hazards under regulation 44, if -</p> <p style="padding-left: 80px;">(a) the hazard is covered by a Code of Practice made under Part 8A of the Act relating to the requirement in section 40(3)(c) of the Act; and</p> <p style="padding-left: 80px;">(b) the provisions of the Code of Practice relating to the hazard are incorporated in the risk management plan.</p> <p>This illustrates that the proposed regulations and Code of Practice are not aligned – this must be addressed.</p> <p>In addition, the extract within the proposed Regulations reads like the Code of Practice is a Compliance Code – the intent must be clear. Words like “must” and “will” cannot be used above and beyond the requirements under the MR(SD) Act</p>		<p>Code of Practice must not prescribe actions above and beyond the Principal Act</p>

5 PROPOSED REHABILITATION REQUIREMENTS

Engage Victoria survey questions ¹⁰:

Do the proposed changes to rehabilitation plans and progressive rehabilitation milestones sufficiently clarify the legal obligations to ‘rehabilitate land in accordance with [a] rehabilitation plan’ and to ‘rehabilitate land in the course of doing work’? Yes or no? If not, what changes would you suggest and why?

Do you support the move to a more flexible, proportionate, outcomes-based rehabilitation plan approach (as outlined in the proposed regulations and the preferred option in the RIS)? Yes or no? If not, please provide further comment.

Do the rehabilitation proposals meet the expectations of the community? Yes or no?

The MCA notes that a range of amendments are proposed relating to rehabilitation requirements. The MCA recommends the following items be amended as necessary:

Issue	Detail	Proposed Regulation	Recommendation
Definition: Safe, stable and sustainable	<p>It is important the new definition of “safe, stable and sustainable” in the proposed regulations is interpreted in accordance with the Act which specifies that “the authority holder must rehabilitate land in the course of doing work under the authority and must, as far as practicable, complete the rehabilitation of the land before the authority or any renewed authority ceases to apply to that land”.¹¹ The wording “as far as practicable” is important</p> <p>The following examples are provided to highlight why this is important:</p> <p>Example 1: licensees cannot be held responsible for the actions of third parties which compromise “safe, stable and sustainable” outcomes (for example, building a road that negatively impacts the stability of a batter)</p> <p>Example 2: the definition refers to ‘does not cause, and is not likely to cause, injury or illness’. It is important to ensure that regulator interpretation of definition does not result in prohibitive requirements being enforced that go beyond naturally occurring levels of injury or illness</p> <p>Example 3: Rehabilitation may require retention of physical infrastructure for cultural heritage purposes, for example old mine shaft headframes. Once relinquished, the licence holder has no influence over how this infrastructure is managed. If not managed appropriately post-relinquishment, and these structures deteriorate over time to become unsafe or unstable, the licence holder should not be held to account for the change in “safe, stable and sustainable”</p>	4, page 3	<p>Draft regulations amended to ensure “as far as practicable” is incorporated</p> <p>Assessment and approval of rehabilitation work plans to reflect “as far as practicable” wording in the Act</p>
Definition: domain	Draft regulations include a new requirement to define objectives and criteria for meeting objectives for <i>distinct domains</i> . RIS also refers to	4 (page 2)	Amend draft regulations to ensure definition

¹⁰ Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

¹¹ Victorian Government, Mineral Resources (Sustainable Development) Act 1990, Part 7 – Rehabilitation, Clause 81 (1), page 198

Issue	Detail	Proposed Regulation	Recommendation
	<p><i>rehabilitation domains</i> (Option C.2, page 42)</p> <p>The definition for domain refers to volumes of rock with generally similar geotechnical rock mass properties. This definition does not make sense when applied to rehabilitation. A rehabilitation domain should relate to a discrete area or location within the lease that will be subject to rehabilitation, noting that different areas may result in different land forms, not just one</p> <p>Definition could be changed from domain to rehabilitation area, so that domain can be retained in a geological context for other sections of the regulations</p>		<p>refers to rehabilitation and not geology</p> <p>Opportunity to change the term to 'rehabilitation domain' or 'rehabilitation area'</p>
Rehabilitation Guidelines	<p>The RIS notes that supplementary Ministerial guidelines are required to support the proposed rehabilitation amendments (RIS, Option C – Proposed amendments page 25)</p> <p>Development of the Ministerial Guidelines will require industry consultation</p> <p>What process will be adopted for this? What is the anticipated timeframe for its release?</p> <p>What will happen between commencement of the regulations and release of the guidelines if they are not released together?</p>		<p>Commence industry consultation as soon as possible</p> <p>Commence liaison with referral agencies to ensure consistent rehabilitation frameworks and associated requirements are developed and incorporated</p>
Information required in work plans - rehabilitation	<p>Draft regulations include a new requirement to define objectives and criteria for meeting objectives for distinct domains</p> <p>The requirement for each unique rehabilitation domain to have its own rehabilitation objectives requires clarification. The objectives for rehabilitation should be the same for all domains – that is completion of “safe, stable and sustainable” rehabilitation. However the scenarios and activities needed to achieve these goals can vary by domain</p> <p>Completion criteria should reflect the activities on a domain-by-domain basis, in the context of the overall objectives</p>	<p>43 (c) 43 (d)</p>	<p>Draft regulations to clarify that actions needed to achieve objectives must be defined, and that completion criteria reflect the outcomes from these actions</p>
	<p>Draft regulations include a new requirement to describe and provide a timing schedule for rehabilitation milestones</p> <p>The RIS notes that these should be progressive rehabilitation milestones (C.2 page 42), and that they should be capable of adapting as mining and the rehabilitation plan develops over time to align with any adjustments to the final land form(s) (Option C.2 – Proposed Amendments, page 25)</p> <p>Milestones should be staged according to work plans (ie when mining operations on a certain structure are complete or when a tailings dam is full) and not be based solely on time frames or anniversaries</p> <p>The process and ability to change either the milestones or the timeframes is not outlined.</p>	<p>43 (e) 4 (page 3) RIS (pages 25, 42)</p>	<p>ERR to provide clarity regarding milestone requirements</p>

Issue	Detail	Proposed Regulation	Recommendation
	<p>Nor are consequences of not meeting the milestones. Will this be addressed in the supplementary Ministerial guidelines which are not yet developed (RIS, Option C – Proposed amendments page 25)?</p> <p>Industry preference is that changes to the milestones can be made without triggering the full change to work plan process</p>		
Progressive rehabilitation	<p>How will the concept of progressive rehabilitation be applied to pits and voids? It is preferred that this be dealt with on a case-by-case basis, for example if large, progressive rehabilitation of the void itself is difficult, whereas a series of smaller pits may be able to be progressively backfilled</p> <p>Progressive rehabilitation should be stage-based rather than only time-related, and milestones should be reflective of this approach</p> <p>Will further guidance regarding progressive rehabilitation be addressed in the supplementary Ministerial guidelines which are not yet developed (RIS, Option C – Proposed amendments page 25)?</p>	4, page 3	ERR to provide clarity regarding interpretation of the definition of progressive rehabilitation and how this applies to rehabilitation milestones

6 PROPOSED ADVERTISING REQUIREMENTS

Engage Victoria survey questions¹²:

Are the proposed amendments to advertising requirements likely to be effective? If not, what changes would you suggest and why?

What alternative forms of advertising could be used to ensure interested parties are informed of proposed licences?

The MCA has no concerns with proposed amendments to advertising requirements, and provides information on the following opportunity for ERR's consideration:

Issue	Detail	Proposed Regulation	Recommendation
Government hosting of advertising requirements	<p>The Statement of Adequacy from the Commissioner for Better Regulation (Appendix D on Engage Victoria¹³) notes that three options for advertising have been assessed</p> <p>The third option is for the government to undertake advertising itself rather than licence applicants</p> <p>The results for this option are not contained in the RIS nor drafted in the proposed regulations</p> <p>This option is an alternative that industry considers worthy of further assessment – it provides consistency of approach and information provision to all stakeholders. Other jurisdictions, like Western Australia, adopt this approach</p>		ERR to consider option whereby government undertakes advertising on behalf of all applicants

¹² Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

¹³ Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

7 PROPOSED REPORTING REQUIREMENTS

Engage Victoria survey questions¹⁴:

Are the proposed amendments to information requirements for annual reports and returns likely to be effective? Yes or no? If not, what changes would you suggest and why?

Is the 28-day time period for lodging returns an appropriate length for submitting the required documentation? Yes or no? If not, what is an appropriate time period?

Should the reporting date for annual returns be changed to a date other than 30 June? If yes, what date would be more appropriate?

The MCA advocates for companies to nominate annual reporting periods that reflect their business requirements (for example 12 months ending December 31), with reporting to follow within 60 days of the reporting period. Refer to the table below for responses to the proposed reporting requirements contained in the draft regulations.

Issue	Detail	Proposed Regulation	Recommendation
Annual reporting requirements	<p>The proposed regulations reduce the flexibility currently available to exploration and retention licences</p> <p>Currently, reporting periods can be nominated for the end of each quarter. This benefits industry, as reporting can be undertaken outside the months when field work is being conducted. In addition, the change to reporting based on the anniversary date of licence being granted is unlikely to align with any corporate reporting, and will increase administrative burden</p> <p>It would be preferable for mining licence holders to have the option to nominate calendar year or financial year for annual reporting to align with individual company reporting practices. This can occur with ministerial consent, but is not specified within the regulations as an option</p> <p>28 days for submission of annual reports is considered tight, and an extension to 60 days would be welcomed</p>	53	<p>Retain existing provisions that allow applicants to nominate quarter end date if anniversary date is considered unsuitable</p> <p>Add option for mine licences to nominate either June 30 or December 31 for annual reporting period</p> <p>Extend submission deadlines to 60 days post reporting period</p>
Additional information requirements for the annual return of expenditure and activities – exploration licences and retention licences	<p>The proposed regulations alter the expenditure categories for exploration and retention licence holders</p> <p>While the new categories are specified in the regulations, what can be claimed under each category as allowable expenditure has not been specified. The current regulations contain extensive detail within the Schedules – with this information removed (noting that in some instances less prescription is helpful), it is difficult to provide appropriate feedback regarding the new options</p> <p>For example, can activities undertaken to address Cultural Heritage or Native Title issues including surveys be claimed under Office based activities? Where do costs associated with landholder negotiations and compensation sit?</p> <p>The current regulatory approach to expenditure</p>	55 (1)	ERR to conduct further consultation with industry regarding categories and what can be claimed under each prior to release of final regulations

¹⁴ Engage Victoria, [Public Consultation Survey](#), released March 25 2019 (received via email)

Issue	Detail	Proposed Regulation	Recommendation
	<p>only being focused on 'ground exploration' is outdated. Many forms of exploration work are now completed in office-based environments (for example, computer modelling and analysis of geochemical, geophysical and geological data sets) and should be considered allowable expenditure. In addition, compliance costs associated with exploration, for example work plans, safety management, should also be allowable</p>		
<p>Additional information requirements for the annual return of expenditure and activities – mining licences and prospecting licences</p>	<p>The proposed regulations introduce a new requirement whereby 'the most recent mineral resource and ore reserve estimate for the licence' must be submitted with the annual return</p>	<p>56 (1) f</p>	<p>Ensure final regulations are not prescriptive regarding the method/approach used to generate mineral resources and ore reserve estimates, and that the estimate does not require annual updating</p>
<p>Requirements for annual technical report on exploration activity</p>	<p>The proposed regulations introduce a new requirement whereby annual technical reports for exploration activity must be submitted on the anniversary date of the licence being granted</p> <p>This increases burden on industry, as different reports will be required for different tenements on different days – currently one report can be provided for multiple tenements</p>	<p>57</p>	<p>Retain current provisions</p>

8 INFRINGEMENT NOTICES AND PENALTIES

The following information outlines the MCA's understanding of the proposed changes relating to Infringement notices and penalties.

MCA understanding of proposed changes

The RIS did not apply the assessment approach used for the rest of the key areas to Fees and Royalties, Rents and Levies. However, areas were identified where enforcement would be strengthened if there were infringements attached to certain acts or omissions.

These new infringements specifically relate to tailings management (Section 14(2A) and 14BA of the MR(SD) Act), showing of authority (section 26AT of the MR(SD) Act) and reportable events (proposed regulations 51(3) and 51(4)).

Infringements are contained in Schedule 14 of the draft Regulations.

MCA response

The new infringements included in the proposed regulations seem unclear in their intent – are they a penalty that is imposed when the penalties outlined in the Act have not been paid? Clarification is needed before adequate feedback can be provided.

Issue	Detail	Proposed Regulation	Recommendation
New Infringements	<p>The proposed regulations include new infringements and penalties</p> <p>The intent of the penalties are unclear – are they an additional penalty that is imposed for failure to pay penalties associated with associated infringements?</p> <p>The following example is provided to highlight the issue: Infringement item 2 relates an offence under section 14(2A) of the Act. Section 14(2A) addresses requirements for tailings disposals. Penalties for failing to comply with the conditions imposed by the Minister for tailings disposal is set at 60 penalty units. The new infringement item 2 is for 6 penalty units. What is this new infringement meant to achieve?</p> <p>Infringement numbers 39 and 40 relate to reportable events – the Schedule states 5 penalty units but the draft regulations (51 (3) and 51 (4)) state 20 penalty units hence are inconsistent</p> <p>There are two items both numbered 35 – one relates to 95R(2)(a) of the Act and the other to section 110(3) of the Act</p>	Schedule 14	<p>ERR to clarify intent of new infringements</p> <p>Draft regulations to be amended to fix numbering errors and/or inconsistencies</p>

9 OTHER ISSUES

The MCA provides the following feedback on a variety of other issues that have emerged through the review process.

Issue	Detail	Proposed Regulation	Recommendation
Rent on a licence	<p>The proposed regulations alter the existing arrangements for rents, changing the due date to the anniversary of the granting of the licence (similar to the proposed changes to annual reporting requirements and technical reporting requirements). Currently, these are due 28 days after June 30 each year</p> <p>Where multiple licences are held, moving to anniversary dates will increase administrative burden</p>	29	Draft regulations amended to retain existing provisions for annual payment of rent based on 30 June
Review triggers	<p>The Statement of Adequacy from OCBR proposes to conduct a mid-term review of the regulations (after five years of operation)</p> <p>The proposed regulations are silent on review periods and term of life</p> <p>If the MR(SD) Act is changed or rewritten, this should trigger a review of the regulations</p>	1 Objectives	Draft regulations amended to include review period and potential review triggers
Prospecting Licences - Term	<p>RIS states that prospecting licences will be increased from five to seven years (page 53, first bullet point).</p> <p>Licence terms are stated in the Act – how will this change be made?</p> <p>If this change can be made, industry would seek to adjust other licence terms too, particularly for exploration licences. Changes to relinquishment criteria would also be welcomed – whether through changes to the Act itself or changes to the Exploration Licence guidelines¹⁵.</p>		<p>ERR to clarify if licence terms are able to be changed as part of regulations remake</p> <p>If so, consult with industry on additional changes to tenure and relinquishment criteria</p>

10 FURTHER INFORMATION

To request further information in relation to this submission please contact:

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¹⁵ Victorian State Government, Earth Resources Regulator, [Exploration Licence](#) guidelines, viewed April 11 2019