Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2019

Statement of Reasons

Jobs, Precincts and Regions

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Introduction

On 23 September 2019, the Department of Jobs, Precincts and Regions (DJPR) released a Regulatory Impact Statement (RIS) to facilitate public consultation on the proposed Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2019 (Amendment Regulations). The public consultation period closed at 5pm, 21 October 2019.

Background on the Amendment Regulations and RIS

The objective of the Amendment Regulations is to implement the government's decision to remove the exemption for gold from royalties, effective 1 January 2020, announced in *Victorian Budget 19/20*. A RIS was prepared to accompany the regulatory amendment. The RIS outlined the government's proposal and provided an impact assessment demonstrating the expected impact of the regulatory change on the Victorian gold mining sector, and community.

The RIS provided analysis that demonstrated that gold production in Victoria would not be materially impacted by the royalty. As a result, the public benefits from the royalty outweigh the costs to industry because the royalty revenue will increase the government's public investment capacity and ensure that the community receives a return from the state-owned gold resource.

Submissions

During the 29-day public consultation period, DJPR received 14 submissions from a variety of stakeholders, including members of the community, industry participants, peak bodies and industry associations, and local government.

Respondents to the public consultation

- Minerals Council of Australia (MCA) – Victorian Division
  Submission reference: 170170
- Association of Mining and Exploration Companies (AMEC)
  Submission reference: 167273
- Castlemaine Goldfields Limited (CGT)
  Submission reference: 170258
- Stawell Gold Mines
  Submission reference: 170230
- City of Greater Bendigo
  Submission reference: 170088
- Limestone Association of Australia
  Submission reference: 169897
- Dunolly Gold Developments
  Submission reference: 165627
- Mr Darby
  Submission reference: 170279
- Mr O'Donnell
  Submission reference: 167131
- Five anonymous submissions
  Submission reference: 155757, 155843, 156152, 166428, 170189

Overarching views on the gold royalty

In most submissions, respondents were able to be categorised as either supportive, unsupportive, or conditionally supportive of the gold royalty. Respondents who were conditionally supportive stated it was appropriate that a royalty of some form should be applied to gold but disagreed with the specific design features as set out in the Amendment Regulations, e.g. royalty rate of 2.75 per cent.

The distribution of the views in the submissions was relatively even across the three main categories. Five respondents were not supportive of the royalty (36 per cent), four respondents were supportive (29 per cent) and another four respondents (29 per cent) were supportive of a gold royalty on the condition that it was redesigned per the submission's recommendations. The view of the remaining respondent was unclear and has been categorised as such.

Key issues and concerns of the Amendment Regulations

The public consultation on the Amendment Regulations and RIS revealed a range of common themes that respondents provided feedback and recommendations on. The major themes include:

- Royalty rate
  - The royalty rate of 2.75 per cent for gold production was not supported in most submissions. Respondents believed that the royalty rate should be lower to account for Victoria's unique and challenging geological conditions, and costs of production.
- Exploration expenditure offset
  - Half of the submissions suggested exploration expenditure should be an allowable deduction against gold royalty payments. Submissions noted that without the exploration offset, the royalty requirement would act as a disincentive to ongoing exploration expenditure investment, which they consider to be vital in maintaining the viability of Victorian gold production.
- Revenue distribution
  - Half of the submissions suggested that revenue earned from royalties should be directed back to regional and rural Victoria. Respondents recommended that expenditure be locally driven through councils, industry and the community.
- Phased introduction of the royalty
  - Several submissions argued for a phased introduction of the royalty over several years. Respondents argued that the phased introduction would act as a transitional measure to assist existing operations to adapt to the change in the state's royalty regime.
- Gold price floor
  - Four submissions recommended that the royalty should only apply in circumstances where the gold price is above a certain threshold, e.g. above $1,500 per ounce. Respondents argued the current high gold price may not hold in the long-term and at lower gold prices, royalty payments would be unsustainable.
- Level of the low-production threshold and other exemptions
  - Four submissions argued that the low-production threshold, set at 2,500 ounce of production per financial year under the Amendment Regulations, is too low. Respondents argued the threshold should be increased to 10,000 ounces to ensure small mines could remain profitable. Respondents also suggested additional tiers to the low-production threshold to reduce the impacts on mid-sized operators, and exempting new mines from royalty payments for the first few years of production.

For a complete account of the changes to the Amendment Regulations proposed in the submissions and responses see Table 1 of the **Appendix**.

Criticisms of the RIS and impact assessment modelling

Of the 14 submissions received, three criticised the Regulatory Impact Statement and impact assessment modelling. Specifically, the MCA and CGT were critical of the approach taken to demonstrate that benefits of a gold royalty in Victoria outweighed the costs and AMEC was critical of the lack of options considered in the RIS.

The department reviewed the criticisms and is of the view that the RIS approach and analysis, endorsed by the Commissioner for Better Regulation, represent a thorough and accurate assessment of the estimated impacts of the Amendment Regulations.

Response to consultation

In most cases, respondents supported a gold royalty in Victoria as an appropriate policy decision that aligns with government's broader objectives and community and industry expectations. Most criticism with the proposal focused on the design parameters of the royalty, rather than the royalty itself.

One of the key characteristics of the regulatory amendment is the removal of an existing exemption from the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 (Regulations). This characteristic limited consideration of design options for the gold royalty that were inconsistent with Victoria's current royalty regime for minerals, with exception of brown coal (lignite).

The proposed changes recommended by respondents have been considered in the context of Victoria's current royalty regime, and Earth Resources Regulation's capacity and capability to administer regulations to effectively ensure compliance.

Royalties exist to fairly distribute the economic benefits from the development of non-renewable Crown assets to the broader community. Under current regulations, gold is the only mineral resource exempt from the state's royalty regime. Victoria is the only major gold producing jurisdiction in the world that does not collect a royalty, or some form of resource rent tax, on gold production.

The government is implementing the gold royalty on the basis that the benefits to the broader community from the royalty will outweigh the costs to industry. Gold royalty payments will increase the government's capacity to invest in the infrastructure, skills and training that will support continued growth across Victoria. The long-run benefits for the Victorian economy from these investments will exceed the value of the royalty payments themselves because of the strategic investment decision-making processes of the government.

Several respondents recommended gold royalty revenue be reinvested in local communities. In *Victorian Budget 19/20* the government approved $1 million to design a Community Benefit Scheme to secure enduring benefits for communities that host mining.

DJPR will undertake a full review of current fees, rents and royalties in the earth resources sector from 2020. This is in line with the recommendation from the Commissioner for Better Regulation in the *Getting the Groundwork Right* report, which recommended the department begin to increase cost recovery for Earth Resource Regulation's activities no earlier than 1 July 2020.

Detailed responses to an aggregated list of proposed changes put forward by industry and the community are in Table 1 of the **Appendix**. Recommendations and feedback relating to specific royalty design features, e.g. rate or structure, will be used to inform the fees, rents and royalties review.

Appendix

Table 1 – Summary of proposed changes and responses

Submission reference	Proposed change	Rationale for proposed change	DJPR response
Royalty rate			
155757	Increase the royalty rate.	Increasing the royalty rate was proposed to maximise the benefits of gold (as a non-renewable, state-owned resource) for *all* Victorians.	**No change proposed** The government always seeks to balance incentives for new investment with the need to return value to the community from the development of Crown assets. The removal of the gold royalty exemption brings the arrangements for gold in line with all other minerals (except lignite). The change simplifies Victoria's royalty regime and helps keep administrative costs for government and compliance costs for the industry as low as practicable. Because the implementation of the gold royalty involves the removal of an existing exemption in Victoria's royalty regime, the royalty rate will be set at 2.75 per cent of the net market value of the mineral produced, in line with the royalty rate for all other minerals (except lignite).
167273, 170170, 170258, 170230, 170279	Decrease the royalty rate.	Submissions that proposed decreasing the royalty rate raised concerns about the risk to investment capital and the lack of consideration for the operational cost profiles and unique geological challenges that the Victorian mining industry face.	
Exploration offset			
167273, 169897, 170088, 170170, 170258,	Allow for exploration expenditure to reduce an operator's royalty liability.	Incorporating an exploration offset was a common proposal to mitigate potential impacts on investment appetite, and account for the critical nature of exploration to the future of the gold sector. Respondents reasoned an offset would reduce revenue impacts and lead to further exploration spending that would in turn benefit the Victorian economy in the long-term.	**No change proposed** Mineral exploration expenditure in Victoria, driven primarily by exploration for gold, is at relatively high levels. There is no evidence to suggest that the positive sentiment around Victoria's gold prospectivity has been significantly impacted by the announcement of the gold royalty. On 29 October 2019, the government announced the North Central Victorian Goldfields Ground Release tender. The land release has been widely welcomed by industry, peak bodies (including the MCA and AMEC) and Traditional Owners, who will play an important role to help facilitate responsible gold exploration in the region.

Submission reference	Proposed change	Rationale for proposed change	DJPR response
			The land release tender process is expected to attract both local and international tenderers, encouraged by recent high-grade gold discoveries and production successes of the Fosterville Gold Mine. Allowing for exploration expenditure to be offset against a producer's gold royalty liability would introduce inconsistencies into the state's mineral royalty regime because no other mineral has an exploration offset. This would undermine the government's objective to have a consistent and simple approach to royalties across all minerals (except lignite) in Victoria.
Thresholds and exemption periods			
155843	Remove the low production threshold.	Removing the low-production threshold (so that the royalty would apply to *all* gold produced) was proposed to reduce the impacts created by small miners and their activities, particularly in local parks and forests.	**No change proposed** The inclusion of a low-production threshold reduces impacts and administrative burden of the royalty on small gold producers, as the royalty will not apply to the first 2,500 ounces of gold produced each year under a mining licence. Determining an appropriate threshold requires balancing the objective to return a fair share of the resource to the community with ensuring that small producers are not subject to unnecessary regulatory burden. The proposed 2,500 ounce per year low-production threshold represents annual foregone revenue of more than $0.6 million (at current gold prices). The 2,500 ounce low-production threshold will result in only four of the state's 18 gold mining licences being liable for royalty payments (at current production levels). The inclusion of a time-based exemption for new mines would increase the complexity of the state's royalty regime, introduce new inconsistencies and ambiguity. An exemption of this nature would be challenging to regulate in practice, administratively complex and may lead to increased regulatory burden for the industry to comply and for government to regulate.
167237	Increase the low-production threshold.	Increasing the low-production threshold was proposed to support junior explorers and new mines.	
170230, 170170, 170258	Introduce a tiered royalty structure.	Tiered royalties were proposed to deliver a more competitive royalty scheme, by limiting cash flow impacts in the critical early development of mines and considering the phase and scale of operations.	
165627, 170170, 167273	Establish a lower initial royalty rate for new mines.	Several respondents proposed a lower initial royalty rate for new mines in order to incentivise new projects and provide a cushion for the cash flow and operating risks common in the opening months of a mine.	

Submission reference	Proposed change	Rationale for proposed change	DJPR response
Transition			
167273, 170258, 170088, 170230	Allow a reduced royalty rate during a staged implementation process	Provide a staged implementation of the gold royalty rate to enable organisations to account for additional costs to their businesses and prepare for royalty commitments.	**No change proposed** Amending Regulations are scheduled to come into effect on 1 January 2020, halfway through the initial royalty payment period, i.e. 2019-20 financial year. The first round of royalty payments is not expected until the beginning of financial year 2021. A transitional provision has been included in the Amendment Regulations that provides for the full 2,500 ounce per year low-production threshold to be used over the six-month period between 1 January and 30 June 2020. The inclusion of this transitional provision will further reduce the financial impost of the royalty in the first year of implementation. Any departure from the government's publicly announced plan to implement a royalty on gold from 1 January 2020 would create significant uncertainty in the market. Consideration of market sensitivities was the primary reason the government was unable to engage in targeted consultation with gold producers prior to the government's decision and announcement on the gold royalty, as there was a material risk that disclosing sensitive information to selected parties could have an impact on the market valuation of these businesses.
170170, 170258	Delay the implementation of the gold royalty	Two submissions requested the introduction to the gold royalty be delayed so that a full and transparent policy consultation process could take place with community, industry, and local councils.	
Gold price floor			
167273, 170170, 170258, 156152	Introduce a gold price floor.	Multiple submissions proposed the introduction of a gold price floor to protect producers in the event of extremely low pricing environments, and to support ongoing productivity by accounting for cycles in the gold sector. Other royalty regimes were used as a point of reference to show that a gold price floor could be successfully included in Victoria's Regulations.	**No change proposed** For a gold floor price to achieve its intended objective, the price floor must be determined with respect to the costs faced by Victorian gold producers—the objective being the royalty only applies when the gold price is greater than the costs of production, i.e. when producers are profitable. Given the disparate production costs of Victoria's gold producers, a range of price floors that dynamically respond to operators' fluctuating costs would need to be implemented in order to be effective. Setting a floor price based on Fosterville's costs of production, for example, would be ineffective for all other Victorian gold producers. Conversely, setting a price floor based on the

Submission reference	Proposed change	Rationale for proposed change	DJPR response
			costs of a higher cost operation like the Ballarat Gold Mine would result in the floor price being ineffective to Fosterville. Price floor mechanisms are not used in Victoria’s existing royalty regime. The introduction of a gold price floor mechanism would increase the complexity of the Regulations, making the regulations difficult to administer and requiring ongoing resources to monitor and update producers’ costs of production over time. The resources required to ensure the gold price floor mechanism is operating efficiently and effectively would be disproportionate to the scale of Victoria’s minerals industry. Maintaining a regime that is proportionate to the scale of the industry aligns with government’s objective to have modern, fit for purpose regulations.

Authorised by the Hon. Jaclyn Symes MP
Department of Jobs, Precincts and Regions
1 Spring Street Melbourne Victoria 3000
Telephone (03) 9651 9999