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

Submission
April 2019

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Overview

As an agricultural advocate and farmer I initiated the Community *Over* Mining blog site as a way to interact with community.

My ongoing purpose is to advocate for good governance and mining reform to inform good planning for our future well-being and prosperity.
This includes updating laws to protect our potable water and sustainable agricultural areas.

Given the States duty to protect and improve the environment, the State must do more to reverse the future hydrology complications and subsequent economic risks/impacts caused by poor regulatory framework, compliance and enforcement of existing and past mining legacy.

The State has a clear conflict of interest in regard to promoting mining rationalising that mining can co-exist with agriculture and the community but not learning from the many unsuccessful mining examples around the state which failed because of poor regulatory frameworks from the approval right through to inability to rehabilitate.

As mining is about risk assessment I was hoping this new regulatory framework would reflect upon and address the many shortfalls that the Minerals and Resources department should already know.

Whilst the *Mineral Resources (Sustainable Development) Act 1990* is the primary legislative instrument that regulates the mineral resources sector, it is not without flaws even with the proposed changes to the proposed rehabilitation inclusions.

As such, addressing the general weakness of the legal framework of well-grounded regulatory legislation governing the mineral extractive industries, I find the RIS does not reflect the desired economic, social and environmental objectives of the State. Therefore are not sustainable.

The government's role should be to sanction a trustworthy regulatory and assessment framework in which mining development can be evaluated on its economic, technical, environmental and social merits. The premise that a further decrease in red tape regulation obligations, whilst benefitting the mining industry, cannot keep Victoria clean and safe and meet community expectations.

We are not seeing the application of any principled objective from the various Victorian Acts that would ensure the mining sector can co-exist without causing ongoing economic and social detriment to the person, the environment and regional communities.

In order to strengthen our resource legislation it would be incumbent on the Victorian government to ensure the law is effective, fair and appropriate to the level of risk to the person, environment and economy.
Unfortunately, industry and the Victorian government, to facilitate investment, are prepared to even further reduce regulatory burden yet not address the obvious shortfalls that places a landowner, through no fault of the own, at risk of bearing legal and economic liabilities through the introduction and expansion of mining in Victoria.

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Background to Gippsland's Environmental Legacy

Given the existing issue of aquifer depletion and land subsidence in Gippsland from past mining legacies and proposed sea level rises impacting coastal areas, planning for mining development should, critically, be based on the suitability of the geology rather than the extractive worth of the land.
Water is the new gold yet its value worth in mining is to offset a risk which is in contrast to agricultural as a vital resource to sustain life. The Hazelwood Mine Fire Inquiry highlighted the future problems with the inadequate amount of ground and surface water entitlements needed to rehabilitate the 3 open cut coal mines.

Yet, the MRSDA assumes that the water resource is unlimited.

First of all, mining like no other industry, holds a unique position. Under Victorian law the mining industry is exempt from, or receives privileged treatment under, a wide range of regulatory requirements.[1]

Given these exemptions and the assumption that the public benefit of extracting minerals is greater than any costs that may arise from doing so is seriously flawed and becoming more and more evident with research and science data.
These other costs, that may appear intangible, are not given a value worth so the real cost versus net benefit of mining projects over a lifecycle are not factored.
Therefore, public benefit of mining over public and environmental health is now emerging to be a significant cost liability to the taxpayer.
So, legislation and regulatory frameworks, as mandated by the state, when not adequate cannot produce or prevent outcomes that their principles and regulation serve to manage.
As mining holds priority over all other principled Acts and their Ministers mining should lose its exemption rights under the planning provisions of the Planning and Environment Act 1987. Compromised geology should now take precedent being appropriately recognised using overlays and risk management tools. This, along with transparent and consistent policy frameworks should inform clear public interaction of predicted environmental, social and economic risks along with conditions implemented to manage the risks.

That's how you reduce the risk, be proactive rather than reactive.

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[1] http://planning-schemes.delwp.vic.gov.au/__data/assets/pdf_file/0007/481723/VPPs_All_Clauses.pdf?_ga=2.258585354.1235601894.1555906156-847958673.1552867915 pg 563

First point I would like to make is the contradictory availability to extract shale oil via hydraulic fracturing which is hypocritical of this ERR to its own Fracking Bill.

8AD Offence to carry out hydraulic fracturing

The term 'mineral' is

Definitions

Term	Definition
Exploration hazard#	Any exploration activity and circumstance that may pose a risk to the environment, to any member of the public or to land, property or infrastructure in the vicinity of work carried out for exploration. k. ground intrusive work that i. is within 200 metres of a waterway; or ii. is on a slope steeper than a ratio of 1 vertical:3 horizontal; or iii. is of greater than 2 hectares in an area of cultural heritage sensitivity during either the term of the licence or a period of 5 years from the grant of the licence, whichever ends first; or iv. involves taking water from an aquifer, hydraulic fracturing, or excavation using heavy earth moving equipment; l. any other activity and circumstance that causes the Department Head to declare that a work plan must be lodged under section 40(2) of the Act;
Mineral*	Any substance which occurs naturally as part of the earth's crust: a. Including: i. oil shale and coal; and ii. hydrocarbons and mineral oils contained in oil shale or coal or extracted from oil shale or coal by chemical or industrial processes; iii. bentonite; fine clay; kaolin; lignite; minerals in alluvial form including those of titanium, zirconium, rare earth elements and platinoid group elements.

Source http://earthresources.vic.gov.au/__data/assets/pdf_file/0009/1767447/Preparation-of-Work-Plans-and-Work-Plan-Variations-Guideline-for-Mineral-Exploration-Projects.pdf

Should shale oil be removed from any mineral extraction rights to ensure some credibility with the public?

Financial benefit to the state

This RIS process is based on a flawed economic value in the absence of full cost analysis to the impacts. The question is - will a growing minerals extraction industry cost the

community and gross regional product more in the long term and, who will ultimately be the beneficiaries of the windfall?

In regards to transparency, how the dept controls or ignores existing negative environmental information and shares that with the community is the biggest problem with this regulatory framework

Currently Earth Resources do not acknowledge what environmental cumulative problems already exist which was evident in the Hazelwood Mine fire Rehabilitation Inquiry.

In approving mining licences it is the fact that the law can be corrupted or is corruptible that is the real issue. At the heart is government's own non-compliance of its own regulatory guidelines and policies with a total absence of accountability to its legislative goals and objectives.

So, what actually happens if government doesn't comply with its own code? Who wears the brunt and who pays for the fallout?

Section 32

In regards to Retention Licences, the area of vendor disclosure now comes onto play.

As the government has granted approval for an outside entity to develop the subsurface of the land in question, it is now incumbent on the government to ensure that potential purchasers are not unduly impacted to the correct description of the title of land that is the subject of a sale.

Risks

- Purchase of land that may, in the future, prevent purchaser from using the land from original intention.
- How will the government address this anomaly of vendor disclosure to ensure the description of the land use is an appropriate level to warn prospective purchasers that they should make land use inquiries that may affect how the purchaser can use the land in total for the future and the consequent value of that land?

Mortgages

Section 69(2)(a)(xiv)

Instrument for creating, assigning or affecting interests in, or conferred by, licences (including mortgages)

Terms & Conditions

Under a person's mortgage contract agreement it is incumbent upon the mortgagee to contact the bank when they may be in default of their mortgage terms & conditions,

- Has the Land been devalued via "works" which includes excavation and earth works, demolition and construction works?
- Is your ability to use, have interest in the property and your capacity and financial positions as originally intended under your Secured Agreement been affected?
- You promise Us that, to the best of your knowledge and belief, at the time You enter the Mortgage the Property is free from pollutants and is not contaminated. You must inform Us as soon as reasonably practicable if You have reason to believe that the Property is polluted or contaminated.
- Must not create, vary or terminate any easement, covenant, licence or other right affecting the Property without notifying Us which, of course would allow any charge or liability to be imposed on the Property

This dept seems to forget the financial and stress burdens on the landowners who own the surface rights that need to provide consent to a miner to access the subsurface rights.

Just to give this process some idea of the individual cost burdens that can impact a landowner is noted below-

Wealth Sacrifice	Direct Costs	Cumulative Cost	Exposure
Real Estate	Human Health	Property Insurance	Litigation
Debt to Equity	Medical Costs	Health Insurance	Product Liability
Compound Capital Gains Loss	Animal Health	Life Insurance	Service Liability
Environmental Stigma	Veterinarian Costs	Income Protection Insurance	Employer / Employee
Commercial Standing	Impaired Income	Livestock Insurance	Legal Responsibilities
	Reputation	Vehicle Insurance	Contamination Liability
	Contravention Existing License	Business Insurance	
	Contravention Mortgage/ Business		
Exploitation	Discrimination	Priced For Risk	Healthy Life Style Choice ?

Licence application

The Victorian Department of Development, Jobs, and Precincts Minerals and Resources are the issuer of licences, the promoter of projects and the regulator.

I don't believe 'the current draft Regulations enable the collection of information necessary for the Minister to make decisions on granting licences and which the Act expressly requires to be prescribed in legislation.'

My grounds are that not all land open for mining is not without other mining legacies or other cumulative environmental stresses to the suitability of mining therefore should preclude the granting of further licence approvals until updated information is obtained.

If improved regulatory practice and industry compliance is to 'sharpen risk focus' but reduce collated information then the Minister/Department Head needs to have a greater consideration to what the risk is, to whom or what and is it economic, legal or environmental?

These timeframes could see the landowner in default of the mortgage agreement (not part of the Victoria MRSD Act[2]), or to the extremes, dead and family in financial stress unable to sell land for their own benefit meanwhile the dept have the audacity to only consider the economic and regulatory stresses on the miner.

Reduction in red tape as an impetus to reduce regulatory cost burdens

Historically, the minerals industry, whilst playing a significant economic role, has left a litany of legacy contamination via ignorance, poor planning, regulation and compliance with the responsibility/impacts borne by the taxpayer and individual property owners.

The analysis of base-line regulatory costs imposed by industry is relevant but is not reflective of the cumulative and negative cost burdens borne by the landowner as an affected stakeholder from mining.

If the objective of this regulatory improvement is to focus on outcomes and performance than it should be entirely reasonable to expect Earth Resources, as the one stop shop, to institute a strong and highly developed policy for data collection and data handling, and establish a whole-of-environment data repository.

As it currently stands mineral licences are approved in isolation to the pre-existing environmental legacy impacts that already exists and the 'so-called' regulatory burden to complete risk management plans could be further reduced if what is already know forms part of the approvals process.

What is missing is the full cost analysis of the legacy borne by the community for health (emissions), productivity (aquifer depletion, seawater intrusion, surface water quality), soil impacts (degradation/erosion), biodiversity changes (contamination), to name a few.

[2] https://www.piperalderman.com.au/__files/f/5480/Mining%20licenses.pdf

Whilst a new risk management plan is essential, one of the instruments used in assessing the risk and actions to minimise the risk is severely inadequate. The EES process was confirmed in 2011 to need updating[3] but here we are in 2019 still using the already outdated mechanism to review environmental risk. For that reason a risk management plan cannot be as effective as it should be.

Without the right of veto the landholder is subordinated to the Proponent.
The Surface rights held with security comprise only of those contained in the Acts as prohibited areas. (Note - the Minister can authorise work within the prohibited area[4])
The use of the surface rights has already been authorised as prescribed in the above Acts impairing any real protection a landholder can negotiate in access agreement.
The surface areas that are not designated as prohibited areas are enshrined in ambiguity.

Also, environmental impacts as described in environmental impact assessments do not reflect the final reality, as projects increase in size or work variations are added with no community input. Furthermore, where will be the provision to determine how these assessments will be adequate? This goes to the point that operational monitoring and auditing for compliance and consequent enforcement has been seriously lacking in the past

What the public do not know

The landowner is not made aware of the full risk disclosures, the work plan, and the potential timeframe that mining could take or that the landowner is to assume responsibility for all leftover infrastructures after signing off on rehabilitation.
But at their own cost they made access advice or the work plan for a prescribed fee.
If the workplan is to inform compliance and enforcement functions, it should be incumbent on the Minster to ensure that the landowner are aware of full risk disclosures to enable a landowner to sign access agreements knowing legal and liability implications for the future and that the workplan be automatically supplied to all affected landholders?

Infringements

Part 8—Disclosure of interests

[3] https://www.parliament.vic.gov.au/303-enrc/inquiry-into-the-environment-effects-statement-process-in-victoria-sp-515

[4] http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/mrda1990432/s45a.html

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Anecdotally, there is appears to be persons who have done consultancy work for a company and now, conveniently, work as a government departmental employee overseeing the approval of those same works. Check out Kalbar Resources, who their previous consultants were and if any now work on the governmental approval processes.

The RIS, whilst some improvement noted for risk management plans, has not succeeded in building trust that has the intention and capacity to oversee the safe introduction of a growing industry to manage the significant risks and challenges that come with mining.

Based on the work done to date by this RIS, it has not adopted a vigilant, transparent and effective regulatory system to ensure the highest standards of compliance and performance by industry.

But what is the most damning of all is that our prime agricultural land has no net worth in comparison to mining potential so the Government will seek to amend the MRSDA to require the Minister for Energy and Resources to take into account mineral values before making a decision to exempt land from exploration or mining licences.