MINERALS COUNCIL OF AUSTRALIA VICTORIAN DIVISION

SUBMISSION TO THE INDEPENDENT INQUIRY INTO THE VICTORIAN ENVIRONMENTAL PROTECTION AUTHORITY

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1. EXECUTIVE SUMMARY

The Minerals Council of Australia, Victorian Division (MCA) welcomes the opportunity to provide a submission to the inquiry examining the future task of Victoria's Environmental Protection Authority (the EPA).

The challenges facing Victoria in the future are numerous. Population growth, increased waste streams, climate fluctuations and technology advancement are all part of a complex set of issues that the people and government of Victoria will have to manage. The EPA cannot be expected to manage all these issues, and nor should it.

Rather than broadening and diversifying, the EPA should focus on a few key issues and ensure that overlap with other regulatory regimes is removed or at least reduced. This will enable the EPA to maximise outcomes rather than spread itself too thin. A further advantage will be clarity to all stakeholders what the EPA's mandate is rather than the confusion that currently prevails. An additional concern of the minerals industry is that in broadening its remit, the EPA will become an additional approvals layer in an already onerous state approval environment and thus cause further delay and additional costs to applicants.

The minerals industry supports an EPA playing a significant role in prevention. The EPA, as with all regulators, has the unique insight into the range of risks associated with specific activities that have the potential to cause harm. This information is invaluable to industry and can be used to generate advice and examples of good practice that can then be disseminated to businesses. Targeted information can contribute greatly to compliance. The transformation of the EPA over time to a risk based regulator has been supported by the minerals industry

Given that the minerals industry is not one of the EPA's key regulated sectors, over time there have been policies and procedures developed without consultation with the minerals industry. This has at times meant that those policies and procedures are simply unworkable in the context of the minerals industry and has led to inaccurate advice and delays to approvals processes. The EPA must consult with the minerals industry in the development and review of policies. In the absence of in-house sectoral knowledge, the EPA should also establish a process whereby appropriate technical advice is sourced as required.

The MCA continues to be concerned that the EPA has been elected as the vehicle to regulate for greenhouse gas reductions. The MCA believes that neither the implications of declaring greenhouse gases as pollutants nor the use of the EPA as the regulatory instrument has been fully thought through. Similarly, the MCA does not agree that the use of an air quality management SEPP – a highly specific and complex regulatory instrument that is currently under review – is appropriate for the regulation of greenhouse gas emissions.

2. INTRODUCTION

The Minerals Council of Australia

The Minerals Council of Australia 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, and environmentally and socially responsible, attuned to its communities' needs and expectations.

The Victorian division of the MCA represents the interests of member companies operating, exploring and providing services to the industry in Victoria. Policy positions of the Victorian industry are one and the same as the entire Australian minerals industry. The MCA operates on a platform of national consistency and therefore considers that minerals operations in all jurisdictions should be subject to the same polices and legislative frameworks.

Members of the MCA have a long-standing commitment to sustainable development including the responsible stewardship of natural resources. All members of the MCA are signatories of Enduring Value - The Australian Minerals Industry Framework for Sustainable Development.

The Victorian Division of the MCA represents the interests of member companies operating, exploring and providing services to the industry in Victoria.

The MCA operates on a platform of national consistency and therefore considers that minerals operations in all jurisdiction should be subject to the same polices and legislative frameworks across the country.

The Victorian minerals industry

The Victorian minerals industry has traditionally been an important contributor to Victoria's economy, particularly in regional and rural Victoria.

The Victorian minerals industry is often separated into the coal sector and the metalliferous sector. The metalliferous sector is dominated by four operating gold mines and a mineral sands processing operation. The minerals industry is one of the oldest sectors of Victoria's (and indeed Australia's) economy, operating continuously for the last 160 years.

In 2012/13 the contribution of Victoria's minerals sector to the state's economy was $6.05 billion, about 2 per cent of gross state product, making it one of the smallest of the state's major industries. The industry paid $41.36m in royalties in 2012/13, of which brown coal royalties was $32.74m[1].

The minerals industry is a relatively small employer considering the scale of its economic contribution, with 8,900 people employed in the industry as of August 2015[2]. In regions where the industry has operations, however, it is a major employer and provider of high wage jobs. Despite its comparatively small size, the minerals industry's contribution to the Victorian economy is the largest per employee by a considerable margin with a gross value add per employee of over $820,000[3] (gross value added/number of employees).

[1] Department of Economics, Jobs, Transport and Resources, *Earth resources in Victoria Working Paper 01/2015*
[2] ABS Cat no: 6291.0.55.003 - *Labour Force, Australia, Detailed, Quarterly*, Aug 2015
[3] ABS Cat no: 5220.0 - *Australian National Accounts*: State Accounts, 2013-14

3. THE MINERALS INDUSTRY REGULATORY ENVIRONMENT

Exploration and mineral development

The minerals industry is principally regulated under the *Minerals Resource (Sustainable Development) Act 1990* (MRSD Act). This Act enables licences to be granted and work plans approved.

If an application for a licence is approved, a number of regulatory requirements must be met before the Minister for Energy and Resources grants permission for work to commence. An exploration licence allows for the exploration of minerals only – not mineral development, extraction or production. Once an exploration licence has been granted, a work plan is prepared by the exploration company which must address a range of regulations governing safety and health, aboriginal heritage, noise, water, dust etc. These are regulated by multiple government departments and agencies.

Exploration for minerals can be extremely low impact – assessment of historical core, assessment of water bore data, aerial or seismic surveys as well as simply a process of drilling into the ground for soil, ore, and gas samples, where the expression at the surface is 30cm in diameter. All licences require rehabilitation of the land.

If an exploration project is successful in identifying a resource, a mining licence application may follow. Under a mining licence an additional set of regulatory requirements by multiple government departments and agencies are triggered, for example, for planning, water licences and environmental impacts – both State and Commonwealth.

The EPA is a referral authority for mineral development work plan approvals.

Exploration and mining licences are issued prior to specific environmental controls being specified. Work cannot be undertaken under a licence without an approved work plan (Low Impact Exploration is the exception). The licence requires compliance with all legislation as a licence condition and is regulated through the work plan approval process by the Earth Resources Regulator.

Exploration projects do not require a planning permit. Noise regulation therefore is achieved through the work plan. Mining projects are similarly regulated through the work plan approval, although in this case planning approval is required. Again, noise is regulated through the work plan.

Planning approval can be achieved through a planning permit issued following the presentation of an endorsed work plan, or approval can be given by the Minister for Planning following an Environmental Effects Statement (EES) process. The Minister for Planning can recommend special conditions following the EES, or more typically, the project proponent will incorporate the proposed environmental controls in the EES documents and gain EPA approval prior to release of the documents for public consultation. The EES conditions are written into the work plan.

The minerals industry and the EPA

The Victorian Division of the MCA is pleased to have been invited to participate on the Community and Industry Advisory Group established by the Ministerial Advisory Committee appointed to undertake the Inquiry into the Environment Protection Authority Victoria.

The MCA has worked with the EPA over many years and has closely liaised on a range of policy issues including State Environment Protection Policies (SEPPs) and the development of noise and dust guidance.

While the minerals industry is regulated under another instrument and is not one of the key sectors regulated by the EPA, the minerals industry must comply with the *Environment Protection Act 1970* (EP Act) and SEPPs. Some minerals projects do have specific EPA licences for offsite impacts, such as scheduled premises, discharge of water off-site and aquifer recharge.[4]

[4] Power stations associated with coal mines are licenced.

There is a range of memorandum of understandings (MOUs) between government regulators that are intended to streamline administrative processes; unfortunately there is no MOU between the Earth Resources Regulator and the EPA, however it is expected that this will be rectified by early 2016.

Given that the minerals industry is not one of the EPA's key regulated sectors, over time there have been policies and procedures developed without consultation with the minerals industry, despite the significant impacts those policies and procedures have on the industry. The most acute example of this was the development of Environment and Resource Efficiency Plans (EREP) and associated regulations.

Not only did almost all mining operations trigger EREP, MCA expressed concern that the regulator was directing expenditure to environmental efficiency measures as well as determining what the return on private investment should be. Neither is considered an appropriate role for a regulator.

EPA policies given effect through the MR(SD) Act

Periodically EPA policies are reviewed and revised. It is normal regulatory practice for all existing projects/enterprises to continue to be regulated to existing licence conditions, rather than new policies applied retrospectively.

Given the dynamic nature of minerals development, work programs are often varied many times to accommodate changing operating conditions. The Earth Resources Regulator can also request a work plan variation. It has been the experience of industry that the work plan variation process can be used as a trigger by the Earth Resources Regulator to change regulatory requirements. Work plans often have clauses stating that when a variation is sought, any changes to Government regulation must be incorporated into the conditions attached to the work plan. This can in effect mandate conditions based on new policies being applied to existing approved operations, therefore retrospectivity. It is critical that this never occurs.

Non-regulatory tools such as guidelines, are also incorporated as mandatory requirements when referenced in MR(SD) Act licence conditions. This results in regulatory creep.

Noise regulation in country Victoria has also been an area of concern. The *Interim Guidelines for Control of Noise from Industry in Country Victoria (N3/89)* was issued in 1989. The MCA was involved in a review of the guideline when a draft was issued in 2000. The MCA made submissions to the EPA at that time regarding the 'draft' guideline and the problems that application of the noise limits would have on mining operations.[5]

The concerns related to the application of the informal guideline limits through licence conditions rather than the guideline being finalised and having its own 'formal' regulatory status. There should be no circumstance where a draft document of one regulator is given legal effect through the regime of another regulator, as has been the case.

As described in the discussion paper, the EPA's statutory functions have become 'increasingly broad and diverse'. This has led to duplication and overlap with other regulatory regimes and regulatory practice. Exploration and mineral development work plans, regulated by the Earth Resources Regulator, are required to address numerous potential impacts, including dust, water and waste – three principle statutory functions that the EPA also has.

[5] In 2010 the EPA recommenced its review and a revised guideline was finalised.

4. EPA – THE REGULATOR

The transformation of the EPA over time into a risk based regulator has been supported by the minerals industry. It is only now that the Earth Resources Regulator is undertaking this transformation. A risk-based regulator by design must be adept and flexible in responding to emerging issues. A regulator that does not do this hinders continuous improvement, innovation and business transformation.

The EPA's role is often blurred, between the protection of human health (as a consequence of changes to the environment) and protection of the environment more broadly. The latter is regulated under many state and commonwealth regulatory regimes. The Victorian Competition and Efficiency Commission 2009 report, *A Sustainable Future for Victoria: Getting Environmental Regulation Right*[6] was an inquiry into environmental regulation in Victoria. The Inquiry identified 43 environmental Acts in operation in Victoria administered by a number of State Government departments and agencies, with the 79 local councils also playing an important role.

The Commission identified five major areas of regulation impacting on Victorian businesses for detailed investigation. In addition to the EP Act, the *Environment Effects Act 1978* and Native Vegetation Regulations, the minerals and extractive Acts (now combined into the MR(SD) Act) rounded out the top five. A common feature of these five areas of environmental regulation is that they all require businesses to seek an assessment or an approval for the environmental impacts of proposed works.

This duplication results in approval delays, increased business costs and multiple conditions, monitoring and reporting requirements. A clearer demarcation between roles and responsibilities of the EPA and other regulators of the environment and human health is required as well as the removal of duplicative requirements.

The EPA is principally a regulator, with its policy development a function of the Department of Environment, Land, Water and Planning. However, as discussed above, guidance material and SEPPs are formulated within the EPA and, by virtue of licence conditions, often become regulatory instruments. This is a further blurring of roles and responsibilities.

[6] Victorian Competition and Efficiency Commission, *Inquiry into Environmental Regulation in Victoria*, 2009.

5. THE EPA OF THE FUTURE

The challenges facing Victoria in the future are numerous. Population growth, increased waste streams, climate fluctuations and technology advancement are all part of a complex set of issues that the people and Government of Victoria will have to manage into the future. The EPA cannot be expected to manage all these issues, and nor should it.

Roles and Responsibilities

The list of considerations for framing the future EPA (p20 of the discussion paper) clearly indicate that the EPA may even further broaden and diversify, thus leading to potentially even more overlap and duplication with other regulatory instruments and agencies. The EPA cannot be 'everything to everyone'.

A further concern is that the EPA will become an additional layer of approval in an already onerous state approval environment and thus cause further delay and additional costs on applicants.

Rather than broadening and diversifying, the EPA should focus on a few key areas akin to the functions on page 4 of the discussion paper and ensure that overlap with other regulatory regimes is removed or at the least reduced. This will enable the EPA to maximise outcomes rather than spread itself too thin. A further advantage of this is that it will be clear to all stakeholders what the EPA's mandate is rather than the confusion that prevails.

Education

The regulator can play an equally powerful role in prevention, as it does in compliance and enforcement. Preventing an impact is always better than rectifying an impact. The EPA, as with all regulators, has a unique insight into the range of risks associated with specific activities that have the potential to cause harm. This information is invaluable in generating advice and examples of good practice that can then be disseminated to business. Targeted information to business sectors contributes greatly to compliance. The benefits of this are often undervalued by regulators.

Sectoral knowledge

As the minerals industry is not one of the key sectors regulated by the EPA, when operators seek advice or approvals it is evident that there is limited sectoral expertise within the EPA. Whilst somewhat understandable, it nonetheless creates confusion. Inaccurate advice provided by the EPA and a lack of decision making capability causes significant delays and impacts the operability of sites.

This is clear in the development of SEPPs and guidelines where limited sectoral knowledge leads to outcomes that do not acknowledge the unique circumstances of the minerals industry. For example, over the past couple of years the MCA has been in discussion with the EPA on the lack of flexibility in section 30A of the EP Act regarding (emergency discharge). The lack of sectoral understanding has meant that this remains unresolved.

In the absence of in-house sectoral knowledge, the EPA should establish a process whereby appropriate technical advice can be sourced.

EPA as the greenhouse gas regulator

The MCA continues to be concerned that the EPA has been elected as the vehicle to regulate greenhouse gas emissions. The MCA does not believe that the implications of declaring greenhouse gases as a pollutants and the use of the EPA as the regulatory instrument has been fully thought through. Similarly, the MCA does not agree that the use of an air quality management SEPP – a highly specific and complex regulatory instrument that is currently under review – is appropriate for the regulation of greenhouse gas emissions.

Further, the MCA does not support state-based climate change policies and legislative regimes because they are at best inefficient and at worst ineffective and counterproductive.

Successive landmark analyses of climate policy measures have warned against the pursuit of broad-based climate policy measures at the state and territory level.

In 2007 the Productivity Commission argued that climate change policy in Australia was a 'disjointed patchwork' of measures across sectors and jurisdictions.[7] Nearly a decade later, one could argue that this is still the case.

The 2008 Strategic Review of Australian Government Climate Change Programs (the Wilkins Review), further highlighted the shortcomings of a fragmented policy approach to climate change mitigation. The Wilkins Review identified more than 200 separate State and Territory climate change programs, the combination of which resulted in a mix of contradictory price signals, incentives and regulations. The key message from this review was the need for the rationalisation and streamlining of climate change programs, not the addition of yet more incremental policy changes.

The achievement of substantial emissions reductions, without damaging the economy, jobs and living standards, will require finding the lowest cost emissions abatement initiatives across the national economy. The abatement initiatives may not necessarily be achieved at uniform levels across respective states and territories. Therefore, a policy approach that seeks to produce emissions reductions in one jurisdiction without reference to broader nation-wide approaches makes it inevitable that the abatement will come at a much higher cost. Over time the impact of such measures will be counterproductive not least because they will weaken public support for genuine climate change mitigation measures.

Accordingly, the MCA does not support the reintroduction of an emissions target or specific emission standards in state law. If adopted, these measures will inevitably result in Victorians and Victorian businesses being disadvantaged through increased cost pressures without an overall dividend in the form of lower national emissions.

Regulatory measures – both existing and prospective - must be subjected to analysis and review. Ill-judged federal and state programs can represent unnecessary reporting and compliance burdens on businesses.

[7] Productivity Commission, *Submission to the Prime Ministerial Task Group on Emissions Trading*, 2007