



**Victorian Competition and Efficiency Commission:**

**REGULATION AND REGIONAL VICTORIA  
Challenges and Opportunities  
Draft Report  
January 2005**

**Submission by:**

**Minerals Council of Australia, Victorian Division**

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## EXECUTIVE SUMMARY

The Minerals Council of Australia welcomes the opportunity to comment on the Victorian Competition and Efficiency Commission's Regulation and Regional Victoria - Challenges and Opportunities, Draft Report issued in January 2005.

The MCA recognises the critical impact of State government regulation on minerals industry operations. The minerals industry is one of the most, if not the most, regulated industry in Victoria and one that strongly advocates for minimum effective regulation as a principle.

The Commission's review of the native vegetation regulations is very timely and reasoned. The MCA continues to support the concepts originally promoted with the Native Vegetation Framework but is extremely concerned at the manner in which the policy has been interpreted and applied by DSE.

The Commission's recommendations on native vegetation are all strongly supported by the MCA. In addition, the MCA recommends that the Native Vegetation Operational Guidelines be withdrawn and rewritten to be principles based and that the original concepts espoused in the launch of the Framework reinstated.

The review of environmental regulation has identified many of the critical issues to the minerals industry and the Commission's recommendations related to environmental protection are all supported by MCA.

However, the MCA recommends further that the EPA become more transparent in the use or enforcement of policies, codes and guidelines that are incorporated documents and these documents be renamed as "incorporated guidelines" or "enforceable codes" etc. It is also recommended that a complete review of EPA regulations be undertaken to ensure they deliver the whole of government environmental, social and economic outcomes required by the community.

The Commission's review of the environmental assessment procedures has highlighted a significant impediment to regional economic development. The EES procedures are critically in need of reform and recommendations were presented to the government by an independent advisory committee in 2002. It is critical that the recommendations be made public.

The recommendation of a structured environmental approvals procedure that ensures appropriate examination to match the perceived risks of the project in question and provide greater certainty with time frames and criteria for assessment is supported.

All of the Commission's recommendations related directly to the minerals industry are supported by the MCA.

The MCA agrees with the Commission's conclusion that Victoria's exploration and mining regulatory framework does not allow transparent evaluation of the social and environmental impacts in a timely and predictable manner and that some aspects of the regulatory process could be improved.

It is important that there be an effective definition of low impact exploration.

The Commission has chosen to recommend a coordination process in preference to the MCA's recommendation of a one-stop-shop for all exploration and mining regulation and licence approvals. If the approach to use MOUs between DPI and DSE is to work it is necessary to ensure that the existing MOU for mining work plans is made operational. This will require a high level of commitment from the executive management levels of both departments and completion of the operational procedures that underpin the MOU. The operational procedures should establish clear timelines for the various stages of approval and continual feedback to the applicant as to progress with their application. It is critical that the existing MOU is effective before arrangements are entered into for exploration approvals.

In considering the question posed by the Commission relating to time limits on exploration and mining licences, the MCA believe that it is important that there be an open and transparent process for the assignment of mineral tenements based on a principled framework for their allocation. There are uncertainties related to projects that are discovered but are not ready for development. The MCA would welcome an investigation into the adoption of licences similar to those used in WA.

The sovereign risk issues associated with the recent VCAT interpretation of the 100m Rule of the Minerals Resources Development Act pose a significant threat to mining company operations across Victoria. A solution has been identified to equitably resolve the problem. Action is now required to implement that solution.

All of the Commission's recommendations associated with the systemic reforms to the regulatory processes, cost recovery and governance are supported by MCA.

## 1. INTRODUCTION

The Minerals Council of Australia, Victorian Division (MCAVic) welcomes the opportunity to comment on the Victorian Competition and Efficiency Commission's Regulation and Regional Victoria - Challenges and Opportunities, Draft Report issued in January 2005.<sup>1</sup>

The Minerals Council of Australia (MCA) is the peak, national organisation representing the exploration, mining and minerals processing industry in Australia. The membership of the Council accounts for some 85 per cent of Australian minerals production and over 90 per cent of Australia's mineral exports. MCAVic is the Division of the MCA that represents the interests of members operating in Victoria.

Members of the MCA are committed to the Australian minerals industry's framework for sustainable development, *Enduring Value*<sup>2</sup>, which operationalises the International Council for Mining and Metals principles (see **Attachment 1**). For the minerals industry, sustainable development defines our licence to operate and means that investments in minerals projects should be financially profitable, technically appropriate, environmentally sound and socially responsible. Importantly it's about the interdependency of social, environmental and economic considerations. It is a three-dimensional prism through which the industry can focus on its contribution to the economy and to Australian society.

The minerals industry recognises the critical importance of State Government regulation on its operations. The minerals industry is one of the most, if not the most, regulated industry in Victoria and one that strongly advocates for minimum effective regulation as a principle. The minerals industry has welcomed the investigation of the Victorian Competition and Efficiency Commission into regulations that impact on regional development and takes the recommendations of the Commission very seriously.

## 2. SIGNIFICANCE OF THE MINERALS INDUSTRY

### 2.1 The National Context

Australia is endowed with significant, diverse and high quality mineral resources. Minerals exploration, mining and minerals processing form a mainstay of the Australian economy. Indeed the Australian minerals industry is an industry sector of considerable size, economic, regional and social significance, which benefits all Australians, both directly and indirectly.

In summary the Australian minerals industry is:

- the pre-eminent export sector accounting for 37 percent of our total merchandise exports and over 8.5 per cent directly and indirectly of Australia's Gross Domestic

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<sup>1</sup> Victorian Competition and Efficiency Commission, Regulation and Regional Victoria - Challenges and Opportunities, Draft Report, January 2005

<sup>2</sup> Minerals Council of Australia, *Enduring Value*, The Australian Minerals Industry Framework for Sustainable Development, 2004.

Product (compared to around 5.5 per cent of GDP for the combined agriculture and food processing industries);

- a significant employer, particularly in remote and regional centres, by:
  - directly employing some 88,000 people, and
  - indirectly employing another 240,000 people through vitally important supply and demand relationships with Australian manufacturing, construction, utility and service sectors (such as metal products, non-metallic mineral products, machinery and equipment manufacturers, transport and logistics, process engineering and construction);
- at the forefront of new investment and the adoption of business innovation, new technology and Research, Development and Demonstration (R,D&D) activity in Australia.

## **2.2 The Victorian Context**

Victoria has a very important minerals industry that is not only significant nationally but also critical to many other industries in Victoria that depend upon low cost, reliable energy. It also provides significant employment in regional Victoria.

Minerals are a very significant part of the Victorian economy. According to the national accounts prepared by the Australian Bureau of Statistics (ABS), the Mining industry contributed about \$2.9 billion to the Victorian economy in 2002-03, as measured by its value-added or its contribution to Gross State Product (GSP).<sup>3</sup> The ABS definition of the Mining industry includes Coal mining, Oil and gas extraction, Metal ore mining, Other mining (which includes quarrying), and Services to mining (which includes exploration).

Victoria possesses world-class geological resources in lignite, gold and titanium minerals. The minerals industry of Victoria currently produces:

- more than 65 million tonnes of coal per year;
- about 3,500 kilograms of gold per year; and
- fuels 85 per cent of Victoria's electricity;

Jobs in the minerals industry are well paid and highly skilled. Employment in the Victorian minerals industry is about 3,200 direct exploration and mining employees. These employees are almost entirely located in regional Victoria. In addition, employment in national and international mining head offices located in Melbourne is in excess of 2,000 people.

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<sup>3</sup> Australian Bureau of Statistics, *Australian National Accounts: State Accounts*, Catalogue. No. 5220.0, 2002-03.

### 3. REGULATION AND REGIONAL DEVELOPMENT

#### 3.1 Best Practice Principles of Regulation

As recorded by the Commission “the purpose of regulation is typically to correct some form of market failure, which may be associated with the existence of an externality, a public good or asymmetric information between different participants in a market. The benefits of regulation are typically associated with the correction of the market failure (environmental regulations that target pollution, for example, have amenity and health benefits). These marginal benefits will usually decline as the regulated activity is further reduced. The costs of regulation are largely associated with the costs of administering and complying with the regulation, and will tend to increase as the level of regulation increases. The optimal level of regulation—such that the net benefit to the community is maximised—is where the marginal social costs and benefits of the regulation are the same. A best practice approach to regulation will try to push the level of the regulated activity towards this optimal level.”

The above description of the optimal level of regulation equates closely to the MCA’s recommendation<sup>4</sup> to the Commission regarding “minimum effective regulation”. Consequently, the MCA is supportive of the Commission’s approach to regulation and is in agreement with the best practice principles proposed by the Commission<sup>5</sup> and reproduced here as **Attachment 2**.

What the minerals industry requires of regulation is assistance in meeting the criteria of community acceptance and in underpinning its implied ‘licence to operate’.

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<sup>4</sup> Minerals Council of Australia, Victorian Division, Submission to the Victorian Competition & Efficiency Commission Inquiry into Regulatory Barriers to Regional Economic Development - Minerals Industry Issues, 10 Sept 2004.

<sup>5</sup> VCEC, Ibid, pp 10-11

## 4. NATIVE VEGETATION REGULATION

### 4.1 Native Vegetation Controls

The *Native Vegetation Management – A Framework for Action* (NVF)<sup>6</sup> was introduced by the Victorian Government in 2002 with an aim to increase the quality and quantity of native vegetation across the State. It introduced a range of controls on the removal of native vegetation from both public and private land, as well as the concept of ‘Net Gain’ in the biodiversity value of native vegetation.

The NVF has been rolled out through the Victorian Planning Schemes and is an incorporated document in all planning schemes. The *Draft Native Vegetation Operational Guidelines for Applying Net Gain in the Planning System* (Draft Operational Guideline)<sup>7</sup> was released briefly for comment in September 2004. This guideline and an associated *Native Vegetation Quality Assessment Manual* (Assessment Manual)<sup>8</sup> are intended to assist local Government and developers in the implementation of the NVF.

#### The MCA Position

The MCA was a strong supporter of the NVF and the concept of Net Gain using the objective measure of habitat hectares when it was first introduced. The MCA continues to support the concepts originally promoted with the NVF but is extremely concerned at the manner in which the policy has been interpreted and applied by DSE.

This concern has resulted from the experience of companies required to buy private land for land swaps rather than apply their resources to improving the quality of adjacent Crown land, the heavy discounting of rehabilitation when considering land of very high and high conservation value, and the complex methodology in computing a value for the land. The method of implementation precludes initiatives that could provide more comprehensive and beneficial gains for Victoria.

The NVF recognises that development works will invariably impact on native vegetation. The concept of a net gain provides for offsets to enable the development to proceed whilst at the same time ensuring a ‘Net Gain’ in biodiversity measured as habitat hectares. The process for determining viable offsets is complex and a last resort.

When introduced, the NVF proposed a concept of a *BushBroker* of private land that would identify land that could be improved by developers as a means of achieving the necessary offset to ensure a net gain in biodiversity. However, the program is not in place.

The NVF proposed that the preferred option for offset gains was for these to be applied to the same or nearby land, the so-called like-for-like concept. For

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<sup>6</sup> Department of Natural Resources and Environment, *Victoria’s Native Vegetation Management: A framework for Action*, 2002.

<sup>7</sup> Department of Sustainability and Environment, *Native Vegetation Operational Guidelines for Applying Net Gain in Planning Decisions*, Draft for Consultation, 24 Aug 2004.

<sup>8</sup> Department of Sustainability and Environment, *Vegetation Quality Assessment Manual–Guidelines for applying the habitat hectares scoring method*, Version 1.3, 2004.

developments on Crown land the preferred option was for degraded neighbouring land to be upgraded to achieve the net gain required. This was seen as a win-win for the community.

It is understood that the Draft Operational Guidelines are to be presented to Cabinet shortly for endorsement as Government policy. It is the complexity, overly prescriptive nature, and manner in which the Operational Guidelines and Assessment Manual were developed that concerns us. We believe that these issues will lead to significant delays, increased costs and in some cases abandonment, of projects that involve significant investments in Regional Victoria.

MCA is particularly concerned that the process for native vegetation removal fails to take into consideration the sustainable development or triple bottom line principles. Decisions to limit removing native vegetation for mine or other developments could result in significant social and economic losses to the community, for very little, if any environmental benefit. The Operational Guidelines should ensure that the three pillars of sustainable development are equally considered when determining an outcome in accordance with Government policy. It is pleasing to note that the Commission has drawn a similar conclusion.

It is important to note that the mining and extractive industries cannot dictate where the ore bodies are located and cannot move project location like other development projects. For these projects, the NVF's concept of "avoid, minimise and offset" may not always be able to be applied. Therefore, the replacement of like-for-like can be extremely difficult and in some cases it is not possible to find offsets within the same property or vicinity of the development. Similarly, it is important to encourage private developer resources to be applied to improve the quality of degraded Crown land to produce the offset required where this meets the like-for-like criteria.

**The MCA recommends that the Native Vegetation Operational Guidelines be withdrawn and rewritten to be principles based and that the original concepts espoused in the launch of the NVF in 2002 reinstated.**

#### **Comment on the Commission's Findings**

The focus of the VCEC commentary is on the native vegetation controls on private land. Whilst the implementation of these controls on private land are a significant concern to the minerals industry the Commission appears to have failed to recognise that many natural resource industries are employed on public land and that the application of the NVF on the Crown estate is also a very significant concern to those industries. The controls are not only imposing significant costs on landholders but also to developers of projects on Crown land and adding considerably to uncertainty for investment. The implementation of the native vegetation controls on both public and private land is impeding regional economic development.

The MCA concurs with the Commission findings that the native vegetation controls fail in balancing of economic, environmental and social considerations and that the implementation of the controls provide inconsistent application, excessive compliance costs and result in the loss of economic development opportunities.

The MCA agrees with the Commission that “much of the concern about the lack of balancing of economic, environmental and social factors stems from the way the native vegetation controls were designed and how they have evolved”<sup>9</sup>.

It is also agreed that whilst the Draft Operational Guidelines are intended to provide greater clarity and more streamlined permit approval processes they are too complex and increase compliance costs by requiring proponents to seek specialist advice.

It is noted that after consideration of all the arguments **the Commission concluded that the native vegetation controls are impeding regional economic development** because:

- The processes for developing the controls had shortcomings.
- The controls do not embody a process designed to achieve a well-informed balance between the economic, environmental and social effects of clearing activities.
- Several features of the controls are contributing to uncertainty for businesses looking to invest in regional Victoria.

The MCA agrees with the Commission that “the current native vegetation controls have systemic features that are impeding regional economic development by contributing to uncertainty for investment.”

It is also agreed with the Commission that “a priority action for government is to improve the public information base on which the effectiveness of native vegetation controls and alternative policy instruments can be assessed.”

## **4.2 Improving the Information Base**

### **VCEC Draft recommendation 6.1**

**That the Victorian Government initiate the planned review of the native vegetation management framework to provide a basis for assessing any future changes to native vegetation policy.**

*This recommendation is strongly supported*

This review is required urgently and should be undertaken by an independent body or panel as recommended by the Commission.

The review of the NVF should also include the complete overhaul of the Draft Operational Guidelines as they are inconsistent, too costly and complex and do not consider the triple bottom line.

The withdrawal of the Draft Operational Guideline is urgently required as DSE is currently applying it to project approval processes across the state. It seems of little concern to DSE that the Operational Guideline is a draft and not official government policy. Further, it would be entirely inappropriate for the Operational Guideline to be

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<sup>9</sup> VCEC, Ibid, p 97.

approved by Cabinet whilst the Commission has recommended a complete review of the entire NVF, the policy that underpins the Operational Guideline.

### 4.3 Removing Uncertainty

#### VCEC Draft recommendation 6.2

**That the Victorian Government consider measures to stimulate the development of appropriate land management plans as an alternative to the current requirement that landholders lodge a permit application each time they wish to clear native vegetation.**

*This recommendation is strongly supported.*

The benefits of moving to a system based on land management plans should recognise all land uses including exploration and mining. Many exploration or mining companies are the landholders of the land on which they operate. In addition to this specific recommendation related to land management plans for private land a similar arrangement is required for public land under the active management of a mining company.

Other considerations include the *BushBroker* scheme and offsets on Crown land.

#### ***BushBroker***

The NVF discusses programs aimed at encouraging landholder involvement in achieving a net gain in native vegetation, but provides little information on the different programs' cost-effectiveness or relative priority. The MCA is particularly concerned that the *BushBroker* proposal has not progressed. It is through the *BushBroker* arrangement that offsets were to be readily arranged.

#### **Offsets on Crown land**

It is interesting to note that the Commission has stated that “Offsets can be provided on sites remote from the clearing site (within the same bioregion, which is a large area of the state) and may be on public land (where the offsets must improve the quality of degraded areas through replanting)”<sup>10</sup>. This was the original understanding of the minerals industry when the NVF was introduced and one of the reasons for its support of the Framework. The MCA reasoned that mining companies generally had a small foot print and were one of the few industries that could inject significant resources into repairing much of the continually degrading Crown land estate.

However, in recent approval process for mining projects on Crown land, DSE has vacillated from excluding improvements on neighbouring Crown land in the offsets to allowing the rehabilitation work to be included in the offset consideration. In a letter from DSE (**Attachment 3**) following representations to the Premier on this issue the concession was made to allow offsets on Crown land and to include the rehabilitation as part of an offset. However, in discussions with DSE we understand that recent redrafts of the Operational Guidelines have retreated from this position and offsets will now only be permitted on Crown land that is not under active management and

<sup>10</sup> VCEC, Ibid, p 92.

that rehabilitation will only attract the lowest level of credit. The logic behind limiting the Crown land offsets apparently being that the Government will eventually pay for the repairs to the degraded land and are therefore “in-the-bag” so to speak and any consideration of offsets by private developers will be double counting. The heavy discounting of the rehabilitation work is a disincentive to undertake effective rehabilitation which is contrary to community expectations. MCA believes that the DSE perspective is very narrow and one that fails to appreciate the stretched financial resources of the Government for managing the Crown land estate.

#### 4.4 Sharing Costs

**VCEC Draft recommendation 6.3**

**That the Victorian Government more clearly define landholder responsibilities to retain native vegetation against the benefits to landholders and the broader community. This definition should form the basis for determining the appropriate allocation of the costs of achieving net gain.**

*This recommendation is strongly supported.*

A similar response is required to define the responsibilities of the land managers of the Crown land estate to retain native vegetation against the triple bottom line benefits to the State and community of reduced native vegetation. This definition should form the basis for determining the appropriate allocation of the costs of achieving net gain between the proponent, State and local community.

The MCA concurs with the Commission’s point that “difficulties in assessing the benefits to society of retaining native vegetation reinforce the need for transparent funding and cost-sharing arrangements. This will enable the community to make informed choices about the trade-offs between ensuring more environmental services from native vegetation and achieving other important social, economic and environmental goals”<sup>11</sup>.

The minerals industry is supportive of needs to internalise it’s negative impacts, but this must be done equitably across all industry sectors and the community.

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<sup>11</sup> VCEC, Ibid, p 90.

## 5. ENVIRONMENT REGULATION

### 5.1 Environmental Protection

One of the major concerns raised by the MCA in its submission to the Commission was the use of draft regulations, guidelines and codes by the EPA and other agencies such as DSE which enforce environmental standards. The use of drafts creates unwanted uncertainty for developers and when applied in an ad hoc manner can lead to inconsistent outcomes across industry with consequent commercial inequities.

The MCA also has concerns with the use of inappropriate environmental standards. That is, standards that impose impossible restrictions on industry without any significant gain for the environment; the country noise level standards being a case at point.

In addition, concerns have been and continue to be expressed regarding the use of guidelines as regulatory instruments. Under the Environment Protection Act, the EPA is able to incorporate documents such as guidelines. However, not all codes of practice and other policy documents are incorporated documents under the Act and therefore do not have the full legal standing of a State Environment Protection Policy (SEPP). It is often unclear to proponents which policies are incorporated and which are not. This leads to ad hoc outcomes and misunderstandings and mistrust between parties. More transparency by the EPA on the use or enforcement of policies, codes and guidelines is warranted. To this end the use of the word guideline to describe an incorporated document conveys the wrong message to proponents. Generally a guideline would be just that a guide with no legal status. However, when incorporated it is a legal document. **It is therefore recommended by MCA that the EPA become more transparent in the use or enforcement of policies, codes and guidelines that are incorporated documents and these documents be renamed as “incorporated guideline” or “enforceable code” etc.**

Another issue that requires resolution is the need for environmental regulation to align with whole of government policy outcomes. For example, it is of little benefit to the community and very confusing to proponents if one environmental regulator prevents an activity that another arm of government requires. That is, EPA regulations that seek to minimise or eliminate water discharges from mine sites working in opposition to DSE and Water authority regulations that seek to maximise water recycling. **It is recommended by MCA that a complete review of EPA regulations be undertaken to ensure they deliver the whole of government environmental, social and economic outcomes required by the community.**

### 5.2 Assessment of the Policy Impact Assessment Process

#### VCEC Draft recommendation 7.1

**That the policy impact assessment (PIA) process be modified to require EPA Victoria or the Minister for the Environment to seek an independent review of draft PIAs.**

*This recommendation is supported.*

In supporting this recommendation it is recommended that the assessment be against best practice principles to ensure high level outcomes. It is also recommended that the EPA ensure that sufficient resources are made available to the process so as not to result in window dressing as currently with the Regulatory Impact Statement (RIS) process, discussed later.

However, it is appreciated that the first step is for the EPA to develop PIA guidelines.

### 5.3 Use of Draft Documents

#### VCEC Draft recommendation 7.2

**EPA Victoria should seek to finalise draft or interim environmental guidelines as quickly as possible. Finalisation of the existing draft or interim guidelines, including those relating to noise in regional areas, should be a priority.**

*This recommendation is strongly supported.*

The Commission's recommendation only partly covers the issues of concern to the minerals industry. The recommendation should include all agencies involved in environmental regulation, including the EPA, DSE, and DPI and cover the full range of regulatory instruments including draft regulations, guidelines, codes, protocols and other policy that are enforced or applied through licence and permit processes. It should become mandatory that no regulations, guidelines, codes, protocols or policy documents be applied until they are duly endorsed through a formal approval process.

In addition, a recommendation is required to ensure the differentiation between incorporated documents and guidelines or policy that are not incorporated (under the Environment Protection Act) as the enforcement of policy that is not incorporated even though it may be implemented through a licence or permit is a misuse of power.

### 5.4 Environmental Effects Statements

#### VCEC Draft recommendation 7.3

**That the Victorian Government release as soon as possible the report of the review of the *Environment Effects Act 1978* and its proposed response.**

*This recommendation is strongly supported.*

The report of the independent advisory committee formed to consider the submissions from stakeholders to the 2002 options paper on the reform of the environmental assessment procedures has never been made public and the Government response to the recommendations of the committee remains a mystery.

Since the preparation of the report by the independent advisory committee there have been many false starts and signals about the recommendations. However, it can only be assumed that the original recommendations have been eroded to placate parties with a vested interest in the current one-size-fits-all process or government Agencies unwilling to release their influence to a more structured approach.

It is imperative that the committee's report be released as soon as possible and that the Government reassert control of the reform agenda.

## 5.5 Possible Features of a Revised EES Process

### VCEC Draft recommendation 7.4

**That the Victorian Government's response to the review of the *Environment Effects Act 1978* should address the need for (1) a staged EES process that is related to the complexity of projects and the nature of the environmental risks, (2) clear criteria for determining the applicable level of assessment, (3) early identification of assessment timelines and reporting of compliance against these, and (4) streamlined and coordinated input into assessment processes by government agencies.**

*This recommendation is very strongly supported.*

The recommendation is consistent with the preferred option presented for public comment by the Government in 2002 and is probably similar to that recommended to the Minister for Planning by the independent advisory committee in 2002. The recommendation of a structured environmental approvals procedure that ensures appropriate examination to match the perceived risks of the project in question and provide greater certainty with time frames and criteria for assessment is strongly supported. The recommendation also addresses the need for early resolution of inter-government Agency conflict or uncertainty.

In addition to the recommendation of the Commission, **the MCA recommends that the new process incorporate a bilateral agreement with the Australian government that accredits the Victorian procedure as meeting the requirements of the Commonwealth's Environment Protection and Biodiversity Conservation Act.**

Moreover, the new process should have a strong emphasis on achieving sustainable developments through carefully seeking balanced economic, environmental and social outcomes.

## 6. MINING REGULATION

### 6.1 Characteristics of Mining Regulation

Exploration and mining is one of the most highly regulated industries in Victoria; this is partly due to historical legislative arrangements, partly due to the rights exploration and mining licenses afford recipients, and partly due to the environmental and social impacts mining.

The Commission concluded that Victoria's exploration and mining regulatory framework does not allow transparent evaluation of the social and environmental impacts in a timely and predictable manner and that some aspects of the regulatory process could be improved<sup>12</sup>.

The MCA agrees entirely with this conclusion. Moreover, the MCA maintains that the improvement strategies proposed in its earlier submission<sup>13</sup> are warranted. These improvements being:

- establishing a 'one-stop-shop' for all government applications, grants, consents and approvals for exploration and mining, operated by the Minerals and Petroleum Division of DPI
- taking a whole-of-government approach, with strong interagency coordination for all regulatory processes
- setting sensible and effective time limits on the approval and consent processes for exploration and mining work
- resolving and implementing the Ministerial delegations for consents on restricted Crown land
- resolving the significant risk of exposure to the 100-metre consent present with all mines in the state
- using only confirmed government policy and guidelines in project approval processes.

### 6.2 Low Impact Exploration

*The Commission seeks comments on whether the definition of low impact exploration should be reviewed to focus more on the impact of exploration rather than the exploration process.*

Getting the definition of low impact exploration right is critical to achieving an efficient licensing process in Victoria. Low impact exploration work is the first work undertaken once an exploration license is issued and this work can be undertaken without the need for a work plan. The Commission has correctly noted that the current definition is prescriptive and very limiting. In keeping with all new regulatory arrangements the aim should be to achieve outcome based regulation. The suggestion that the description of low impact exploration be risk based to ensure the impact of the activity does not adversely degrade the environment or heritage sites etc. has merit. However, if such an approach were adopted it is likely that a guideline on appropriate

<sup>12</sup> VCEC, Ibid, p 180.

<sup>13</sup> MCA, Ibid, p 48-9.

low impact exploration activities in differing environments would be required. For example, drilling with a light weight rig that does not require the removal of any vegetation or the excavation of any top soil may be unacceptable on land with a high conservation value but perfectly acceptable as low impact exploration on an industrial site or a highly degraded road side.

The NSW definition of low impact exploration may offer some guidance in this respect. The NSW definition is included as **Attachment 4**.

### 6.3 One-Stop Shop

#### VCEC Draft recommendation 9.1

**That the Department of Sustainability and Environment and the Department of Primary Industries negotiate a memorandum of understanding to facilitate streamlined and consistent decisions on applications for exploration licences.**

*This recommendation is supported as a second best outcome to the one-stop-shop proposal.*

The Commission has chosen to recommend a coordination process in preference to the MCA's recommendation that the Department of Primary Industries be established as a one-stop-shop for all exploration and mining regulation and licence approvals. The one-stop-shop approach is the most effective manner of managing the extremely complex referral processes of Government.

However, if the approach to use MOUs between DPI and DSE is to work it is necessary to ensure that the existing MOU for mining work plans is made operational. This will require a high level of commitment from the executive management levels of both departments and completion of the operational procedures that underpin the MOU. The operational procedures should establish clear timelines for the various stages of approval and continual feedback to the applicant as to progress with their application.

It is critical that the existing MOU is effective before arrangements are entered into for exploration approvals.

In addition, it is critical that the MOUs and their operational procedures are made public so that the companies that are required to weave their way through the maze of approvals, consents and authorisations also understand the process.

In addition to the above, it is critical that the Ministerial delegations for access to Crown land are effected so that the DSE Regional Managers are able to deal with routine approvals that are so important to making the MOUs effective.

**VCEC Draft recommendation 9.2**

**That the Department of Primary Industries review both the existing memorandum of understanding (which covers mining and extractive industry work approvals) and the proposed memorandum (which would cover exploration) five years from the date of their commencement.**

*This recommendation is supported.*

If the MOU approach is to be the option to effect streamlining of the complex approvals processes then review after five years is warranted.

**However, MCA recommends that the reviews of the MOUs include the operational procedures and that the review process is undertaken in a rigorous and consultative manner with full industry participation.**

## **6.4 Time Limits Applied to Government Decisions**

**VCEC Draft recommendation 9.3**

**That the Minister responsible for the *Mineral Resources Development Act 1990* be required to publish reasons for granting extensions of time for any stage in the approval processes for exploration and mining licences and work approvals.**

*This recommendation is supported.*

Time delays in the approvals process for exploration and mining are one problem that should be readily addressed by Government. It should be a simple management process to ensure time limits are set, monitored and reported at all of the key approval points through the regulatory process. It is reasonable for the Minister to extend time and that the reasons for the extension be made public. Unless the Minister extends the time limit then the Officer responsible for the approval should be held accountable and the authorisation should be deemed to have been granted.

## **6.5 Reporting Progress of Licence Applications**

**VCEC Draft recommendation 9.4**

**That the Department of Primary Industries review its existing performance indicators on the time taken to grant exploration and mining licences and work approvals, with the aim of reporting the total amount of time between the submission of applications and the decisions made on those applications, as well as the time taken by individual agencies for specific stages of the approval processes.**

*This recommendation is strongly supported.*

The existing performance indicators reported by DPI in their annual report are nonsense. They demonstrate a total disregard for the plight that companies are subjected to in working their way through the maze of approvals, consents and authorisations required from other Departments even though DPI is the custodian of the Mineral Resources Development Act (MRD Act) and its stated purpose “to encourage an economically viable mining industry which makes the best use of mineral resources in a way that is compatible with the economic, social and environmental objectives of the State”<sup>14</sup>. Many could assume that the performance indicators are a cynical approach more attuned to performance pay credits.

The reporting of the total time taken for work approvals can only assist in improving the whole-of-government approach and identify where management attention is required to improve performance.

## 6.6 Time Limits on Miners and Explorers

*The Commission invites comments on the advantages and disadvantages of Mineral Resource Development Act requirements that work commence within specified times after exploration and mining licences are issued.*

It is important that there be an open and transparent process for the assignment of mineral tenements based on a principled framework for their allocation (**Attachment 5**), maintained in the public interest and preserved through appropriate statutory and regulatory approaches, which deliver the most efficient outcome by the application of the principle of minimum effective regulation.

To this end, the MCA seeks to ensure Victoria’s natural endowment of resources is developed to create wealth for the State. However, it needs to be recognised that the economic viability of a project or sub-project does vary over time due to changes in mining, metallurgical, economic, marketing, technological, legal, environmental, social and government factors. These factors impact on the net present value/internal rate of return of a project/sub-project and can render previously uneconomic demonstrated resources economically recoverable and vice versa. Government policy regarding a State’s mineral resources, their development potential and the allocation of mineral tenements needs to recognise this reality through implementing a flexible regime that does not penalise a minerals company for deferring investment in a resource because it is uneconomic. Once the legal framework has been developed future intervention by government must be consistent with established principles in the interest of maintaining certainty and avoiding sovereign risk.

Under the various States’ and Northern Territory mining Acts and Regulations, prospecting and mining rights are usually issued for limited durations, and are subject to forfeiture (surrender or relinquishment), to renewal or to extension at established and/or set intervals. There is usually a progression or “conversion” through various forms of title depending on the status of an area and the state/territory jurisdiction concerned.

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<sup>14</sup> Government of Victoria, Mineral Resources Development Act, 1990, Section 1.

In addition, a range of other tenement changes frequently occurs. These include amalgamations, splits, partial relinquishments, change in title nominee, change in tenement conditions and so on. In addition, business structures are sometimes reorganised, involving surrender and reissue of titles. In the gold sector, for example, this can involve an exploration licence over a tract of land being replaced by a production permit and an exploration licence covering the same area of land or a portion of it but with the same beneficial interests. Each renewed or new form of title carries with it its own particular conditions as to term, work commitment and so forth.

The one common factor in the majority of such routine dealings is that beneficial ownership interests of operators remain unaltered although sales of mining rights also occurs. The latter can occur:

- (a) via a direct sale of a right; or
- (b) via a share acquisition of a company holding a right.

The nature of merger and takeover activity in the industry over the long life of typical minerals projects can result in the ownership of these rights changing beneficially a number of times during the life of a project

Various titles can be granted under the *Western Australian Mining Act*. These involve a progression from an *Exploration Licence* to a *Retention Licence* to a *Mineral Lease*.

The MCA would welcome an investigation into the adoption of a similar series of licences in Victoria.

## 6.7 The 100m Rule

### VCEC Draft recommendation 9.5

**That the Department of Primary Industries review s.45 of the *Mineral Resources Development Act 1990* to provide for a reasonable balancing of the respective interests of licence holders, and existing and future owners and occupiers of adjacent land, and the holders of other interests now protected by s.45.**

*This recommendation is supported.*

The sovereign risk issues associated with the VCAT interpretation of the s45 (100m Rule) of the Mineral Resources Development Act in the Tech Sol Resources vs Minister for Energy Industries and Resources case of August 2004<sup>15</sup> pose a significant threat to mining company operations across Victoria.

The following amendments to the Act are proposed:

- move the 100m Rule consents for mining activities into the planning approval process and resolve at the initial project approval stage (council planning permit or EES);

<sup>15</sup> Victorian Civil and Administrative Tribunal, Tech-Sol Resources PL v Minister for Energy Industries & Resources [2004] VCAT 1648 (13 August 2004).

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- leave the 100m Rule consents for exploration under the existing Section 45 provisions;
- ensure the minimum necessary changes to resolve the sovereign risk issues; and
- preserve the rights of all parties (miners, explorers and owners/occupiers).

The amendments are required as soon as possible to remove the uncertainty to investors and owner/occupiers.

Since it is proposed that the 100m Rule shall continue to apply it is therefore also necessary to resolve the uncertainties of where the 100m is actually measured. The boundaries to the places described in the Act have been variously interpreted in the past. For example, it is unclear where the boundary of a garden exists (is it the fence line around a house or the property boundary) etc?

**It is recommended by the MCA that a guideline be prepared to clearly describe the range of boundary conditions of the objects/places covered by Section 45 of the MRD Act. The guideline should be developed by DPI in close consultation with stakeholders.**

## 7. SYSTEMIC REFORM

### 7.1 Improving the RIS Process

#### VCEC Draft recommendation 11.1

**That the Victorian Government endorse, consistent with current guidelines for developing regulatory impact statements, agencies preparing regulatory impact statements or business impact assessments identifying whether there are groups, including regional groups, for whom the costs and benefits of regulation are likely to differ from the most common outcomes. The Commission would look for this analysis in its assessment of the adequacy of regulatory impact statements and business impact assessments.**

*This recommendation is supported.*

Whilst it is agreed that greater care is required to assess the regional impacts when conducting a regulatory impact statements there remains a far greater concern.

The current guidelines for developing regulatory impact statements and more particularly the very limited resources allocated for the tasks seriously limit the value of the exercises. Consultants that bid for the RIS work are unable to do the task justice with the prices they charge. The MCA has no faith in the outcomes of Victorian government regulatory impact statements; they are seen as window dressing at best.

### 7.2 Stakeholder Feedback

#### VCEC Draft recommendation 11.2

**That, where possible, 60 days should be allowed for public consultation on regulatory impact statements covering significant or complex issues. Each regulatory proposal going to the Scrutiny of Acts and Regulations Committee should document the time allowed for the consultation period and explain why that period was adequate. In its annual report on regulation, the committee could report on the time periods allowed for consultation.**

*This recommendation is supported.*

As stated above, the resources allocated for regulatory impact statements are inadequate to ensure effective examinations. This is a far more critical issue than the time allowed for consultation on the regulatory impact statements.

To increase the consultation time to 60 days will improve the outcome, but only if the resources are allocated to enable the review to be effective.

However, in recommending an increase in the time for consultation on RIS there remain some regulations, guidelines, codes and policies that are implemented without

any consultation, let alone the RIS part of the exercise. The Draft Operational Guidelines for a net gain in native vegetation being promulgated by DSE are a current case at point. **MCA recommends that all policy, regulation, guidelines, codes and protocols be required to engage in effective consultation with stakeholders for a minimum 60 day period.**

### 7.3 Consistency across States

#### VCEC Draft Recommendation 11.3

**That the Victorian Government endorse that agencies advocating regulation that is not consistent with that of other jurisdictions analyse, where appropriate and relevant, the costs and benefits of a consistent approach as one of the alternatives included in their regulatory impact statements or business impact assessments. The Commission would take this analysis into account in its assessment of the Adequacy of regulatory impact statements and business impact assessments.**

*This recommendation is strongly supported.*

MCA members recognise the business inefficiencies of inconsistent regulation across the States of Australia. Most mineral companies work across many states and are continually frustrated with variations in regulations. This recommendation is strongly supported and if achieved would greatly reduce the cost of regulations on regional economic development.

### 7.4 Continual Improvement by Regulators

#### VCEC Draft recommendation 11.4

**That Ministers encourage the regulators for whom they are responsible to participate actively in the state forum of regulators. The forum should include on its agenda an exchange of information on regional issues, including consultation mechanisms.**

*This recommendation is strongly supported.*

It is amazing to realise that a forum of Victorian regulators does not already exist. Systemic reforms are required to address recurrent problems in policy development, administration and enforcement processes in Victoria and Ministerial intervention is required to ensure these reforms are achieved. A forum of regulators would provide an opportunity for existing processes to be reformed and hopefully to avoid new problems from emerging.

The forum should allow for presentations from industry groups and could organise public, facilitated seminars to discuss systemic issues.

## 7.5 Basis for Cost Recovery

### VCEC Draft recommendation 12.1

**That the new Victorian guidance for developing regulatory impact statements and business impact assessments, and any new cost-recovery guidelines make it clearer that agencies must demonstrate that an appropriate cost base underpins their cost-recovery arrangements.**

*This recommendation is supported.*

By requiring an appropriate cost base to underpin any so-called cost recovery exercise through regulation gross excesses of Government should be avoided. The example cited by the MCA in its earlier submission<sup>16</sup> related to the Fire Service Levy on underground mine assets. The levy is required for the provision of community based fire protection services. However, the fire services agency does not have a capability to fight fires underground even though they have a statutory obligation to do so. Consequently mining companies are required to pay the fire service levy and maintain their own fire service capability.

As stated earlier, unless resources are increased to enable the RIS process to uncover the types of consequences described above for the fire service levy the Commission's recommendation will fail. The mining industry was not consulted when the regulation relating to the fire service levy was last amended as presumably the consequences of the change were not appreciated and the minerals industry was not identified as a stakeholder. Clearly, the consequences of a regulation can be far wider than immediately apparent.

**It is recommended by the MCA that the final report establish high level principles to assist with cost recovery.** These should build on the best practice principles (Attachment 2) to ensure that the costs of establishing and managing regulations are shared across the public and private sectors. It is recognised that governments have a role to play in meeting public policy obligations and that both private and public stakeholders play a role as beneficiaries of better outcomes.

## 7.6 Understanding the Impacts of Cost Recovery

### VCEC Draft recommendation 12.2

**That the Department of Treasury and Finance be responsible for developing more Extensive Victorian cost-recovery guidelines that better impart how to ensure charges are set according to an efficient cost base, the principles for splitting costs between industry and taxpayers, and how to design robust cost-recovery arrangements that do not generate unintended incentives. These guidelines should be developed using a consultative process and publicly released.**

*This recommendation is supported.*

<sup>16</sup> MCA, Ibid, p 39.

It is appreciated that there exist many cost-recovery models in Government and that not all pass the economic efficiency test. Whole of government guidelines would assist in improving the current processes provided that they adequately achieve an effective balance between beneficiaries, impacters and users.

## 7.7 Accountability Mechanisms

### VCEC Draft recommendation 12.3

**That the Victorian Government, where it requires local government to administer or enforce new or reviewed State regulation, first discuss with local government how the regulation will be funded, what training or assistance will be provided, and how ongoing performance will be monitored, all of which should be public. The performance of local government against the agreed monitoring regime should also be made public.**

*This recommendation is supported.*

This recommendation is self evident, it is inappropriate for the State to shift costs to rate payers for State based initiatives. However, any additional resource allocations to local government should not be at the expense of perpetuating inefficiencies. The aim should be to ensure an effective and efficient local government sector.

## 7.8 Advisory Bodies

### VCEC Draft recommendation 12.4

**That Victorian Government departments and regulators include in their 2004-05 annual reports information on each advisory body that they support. This information should include:**

- **how each body's activity contributes to improved policy outcomes**
- **details of membership of the body, including any changes that took place during the year**
- **the total remuneration, if any, of the chair and members**
- **indicative estimates of the costs of administrative support of the body**
- **date of formation, and when any reviews of the body's roles occurred**
- **a point of contact in the sponsor department or regulator, from whom further information can be obtained.**

*This recommendation is supported.*

There is a very wide diversity of advisory bodies established by the State government in regional Victoria. This process should be encouraged as direct engagement with government is essential to ensure regional development issues are addressed effectively. However, the roles and effectiveness of these bodies require continual review. The recommendation will go part way to ensuring accountability and review.

## 7.9 Reviewing Advisory Bodies

### VCEC Draft recommendation 12.5

**That the Victorian Government develop criteria and associated guidance material (along the lines of the UK Cabinet Office publications) for establishing any new advisory body, and the process of reviewing an existing body.**

*This recommendation is supported.*

It is surprising that a process for review and assessing accountability does not already exist.

### VCEC Draft recommendation 12.6

**That the terms of reference of all major policy reviews include an examination of the Efficiency and effectiveness of relevant government advisory mechanisms, and have regard to the criteria and associated guidance material outlined in recommendation 12.5.**

*This recommendation is supported.*

Major reviews by Government of policy or legislation should consider the advisory mechanism as one of the institutional arrangements associated with that legislation or policy.

## 8. SUMMARY

No.	Recommendation	MCA Position
<b>Native vegetation</b>		
6.1	That the Victorian Government initiate the planned review of the native vegetation management framework to provide a basis for assessing any future changes to native vegetation policy.	Very strongly supported
6.2	That the Victorian Government consider measures to stimulate the development of appropriate land management plans as an alternative to the current requirement that landholders lodge a permit application each time they wish to clear native vegetation.	Strongly supported
6.3	That the Victorian Government more clearly define landholder responsibilities to retain native vegetation against the benefits to landholders and the broader community. This definition should form the basis for determining the appropriate allocation of the costs of achieving net gain.	Strongly supported
<b>Environmental regulation</b>		
7.1	That the policy impact assessment (PIA) process be modified to require EPA Victoria or the Minister for the Environment to seek an independent review of draft PIAs.	Supported
7.2	EPA Victoria should seek to finalise draft or interim environmental guidelines as quickly as possible. Finalisation of the existing draft or interim guidelines, including those relating to noise in regional areas, should be a priority.	Strongly supported
7.3	That the Victorian Government release as soon as possible the report of the review of the Environment Effects Act 1978 and its proposed response.	Strongly supported
7.4	That the Victorian Government's response to the review of the Environment Effects Act 1978 should address the need for (1) a staged EES process that is related to the complexity of projects and the nature of the environmental risks, (2) clear criteria for determining the applicable level of assessment, (3) early identification of assessment timelines and reporting of compliance against these, and (4) streamlined and coordinated input into assessment processes by government agencies.	Very strongly supported
<b>Mining</b>		
9.1	That the Department of Sustainability and Environment and the Department of Primary Industries negotiate a memorandum of understanding to facilitate streamlined and consistent decisions on applications for exploration licences.	Supported
9.2	That the Department of Primary Industries review both the existing memorandum of understanding (which covers mining and extractive industry work approvals) and the proposed memorandum (which would cover exploration) five years from the date of their commencement.	Supported
9.3	That the Minister responsible for the Mineral Resources Development Act 1990 be required to publish reasons for granting extensions of time for any stage in the approval processes for exploration and mining licences and work approvals.	Supported
9.4	That the Department of Primary Industries review its existing performance indicators on the time taken to grant exploration and mining licences and work approvals, with the aim of reporting the total amount of time between the submission of applications and the decisions made on those applications, as well as the time taken by individual agencies for specific stages of the approval processes.	Strongly supported
9.5	That the Department of Primary Industries review s.45 of the Mineral Resources Development Act 1990 to provide for a reasonable balancing of the respective interests of licence holders, and existing and future owners and occupiers of adjacent land, and the holders of other interests now protected by s.45.	Supported

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<b>Systemic reforms</b>		
11.1	That the Victorian Government endorse, consistent with current guidelines for developing regulatory impact statements, agencies preparing regulatory impact statements or business impact assessments identifying whether there are groups, including regional groups, for whom the costs and benefits of regulation are likely to differ from the most common outcomes. The Commission would look for this analysis in its assessment of the adequacy of regulatory impact statements and business impact assessments.	Supported
11.2	That, where possible, 60 days should be allowed for public consultation on regulatory impact statements covering significant or complex issues. Each regulatory proposal going to the Scrutiny of Acts and Regulations Committee should document the time allowed for the consultation period and explain why that period was adequate. In its annual report on regulation, the committee could report on the time periods allowed for consultation.	Supported
11.3	That the Victorian Government endorse that agencies advocating regulation that is not consistent with that of other jurisdictions analyse, where appropriate and relevant, the costs and benefits of a consistent approach as one of the alternatives included in their regulatory impact statements or business impact assessments. The Commission would take this analysis into account in its assessment of the adequacy of regulatory impact statements and business impact assessments.	Strongly supported
11.4	That Ministers encourage the regulators for whom they are responsible to participate actively in the state forum of regulators. The forum should include on its agenda an exchange of information on regional issues, including consultation mechanisms.	Strongly supported
12.1	That the new Victorian guidance for developing regulatory impact statements and business impact assessments, and any new cost-recovery guidelines make it clearer that agencies must demonstrate that an appropriate cost base underpins their cost recovery arrangements.	Supported
12.2	That the Department of Treasury and Finance be responsible for developing more extensive Victorian cost-recovery guidelines that better impart how to ensure charges are set according to an efficient cost base, the principles for splitting costs between industry and taxpayers, and how to design robust cost-recovery arrangements that do not generate unintended incentives. These guidelines should be developed using a consultative process and publicly released.	Supported
12.3	That the Victorian Government, where it requires local government to administer or enforce new or reviewed State regulation, first discuss with local government how the regulation will be funded, what training or assistance will be provided, and how ongoing performance will be monitored, all of which should be public. The performance of local government against the agreed monitoring regime should also be made public.	Supported
12.4	That Victorian Government departments and regulators include in their 2004-05 annual reports information on each advisory body that they support. This information should include: <ul style="list-style-type: none"> <li>• how each body's activity contributes to improved policy outcomes</li> <li>• details of membership of the body, including any changes that took place during the year</li> <li>• the total remuneration, if any, of the chair and members</li> <li>• indicative estimates of the costs of administrative support of the body</li> <li>• date of formation, and when any reviews of the body's roles occurred</li> <li>• a point of contact in the sponsor department or regulator, from whom further information can be obtained.</li> </ul>	Supported
12.5	That the Victorian Government develop criteria and associated guidance material (along the lines of the UK Cabinet Office publications) for establishing any new advisory body, and the process of reviewing an existing body.	Supported
12.6	That the terms of reference of all major policy reviews include an examination of the efficiency and effectiveness of relevant government advisory mechanisms, and have regard to the criteria and associated guidance material outlined in recommendation 12.5.	Supported

## **Attachment 1**

### **ICMM Sustainable Development Framework**

On May 29th 2003, the International Council on Mining & Metals (ICMM) approved ICMM's Principles and resolved that ICMM corporate membership includes a commitment to measure corporate performance against these principles.

The Principles are central to ICMM's sustainable development framework. They are based on the objectives set by the minerals industry in Toronto in 2002 and draw on the landmark MMSD report. They reflect the values and the policy directions that will help ensure that the industry continually improves the sustainability of its operations. They will also guide the design of the industry's performance measurement processes in conjunction with the Global Reporting Initiative.

#### **ICMM Principles**

As members of ICMM or as companies that have otherwise agreed to take on the same performance obligations as ICMM members, we seek continual improvement in our performance and contribution to sustainable development so as to enhance shareholder value. In striving to achieve this, we will:

1. Implement and maintain ethical business practices and sound systems of corporate governance.
2. Integrate sustainable development considerations within the corporate decision-making process.
3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.
4. Implement risk management strategies based on valid data and sound science.
5. Seek continual improvement of our health and safety performance.
6. Seek continual improvement of our environmental performance.
7. Contribute to conservation of biodiversity and integrated approaches to land use planning.
8. Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.
9. Contribute to the social, economic and institutional development of the communities in which we operate.
10. Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.

ICMM corporate membership includes a commitment to measure corporate performance against these principles.

## Attachment 2

### Best Practice Principles of Regulation

#### 1. Regulations should be understandable and introduced only after proper consultation:

- Regulations should be developed through consultation that tests specific proposals, including the estimates of costs and benefits, and identifies the potential for unintended consequences.
- Regulations should be easy to understand and readily available.
- Timely advice should be available on general issues of interpretation and compliance.

#### 2. Regulatory effort should be the minimum necessary given the scale of the problem:

- Objectives should be tightly defined, and there should be clear evidence of a problem not able to be addressed by other means.
- The regulation should be targeted at the specific problem to achieve the objectives.
- Overall benefits to the community should clearly justify costs.
- Regulation should be the best feasible alternative.
- Benefits and costs relevant to key subgroups, such as small business, should be considered.
- Regulation should not restrict competition, unless this clearly generates the highest net benefit of all the options.

#### 3. Regulations should not be unduly prescriptive:

- Regulations should usually be performance and outcome focused.
- They should not be overly prescriptive about how outcomes are to be achieved.
- They should be flexible enough to accommodate changes over time and different circumstances.

#### 4. Regulations and their administration should be consistent with other regulations:

- Overlap and duplication with other state or Commonwealth Government regulation should be avoided.
- Any differences from the regulation and administration of other industries, or from that applied by other Australian governments to the industry being regulated, should be transparent, and the costs and benefits of these differences should be carefully considered. Consistency need not require uniformity.

#### 5. Regulations should be enforceable:

- Regulations should provide the minimum incentives necessary for reasonable compliance.
- They should be fairly and consistently enforced.
- They should be developed to achieve a reasonable level of voluntary compliance and community support.
- They should be able to be effectively monitored and policed.

#### 6. There should be processes for the continual improvement of regulation:

- All regulatory instruments (such as legislation, mandatory guidelines and codes of practice) that impose a significant burden on the community should be reviewed every 10 years. These reviews should be subject to external scrutiny.
- Regulators should clearly explain their decisions, publicly where possible.
- There should be an appeal process for individual decisions that have substantive effects on individuals and firms.
- There should be mechanisms for evaluating the operation of regulations, to assess how well the regulations are achieving their intended outcomes.

#### 7. Regulators should be accountable

- There should be clear criteria for assessing each regulator's performance and public reporting of information, to allow the Parliament, those regulated and the wider community to make that assessment.

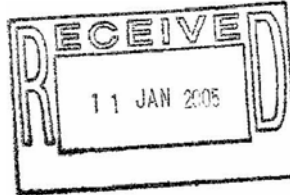
## Attachment 3



### Department of Sustainability and Environment

Our Ref: MWO 19620

Mr Chris Fraser Executive  
Director Minerals Council of  
Australia 51 Queen Street  
MELBOURNE VIC 3000



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Dear Mr Fraser

#### NATIVE VEGETATION MANAGEMENT - A FRAMEWORK FOR ACTION

I am writing in response to your letter of 2 December 2004 sent to the Premier and copied to the Minister for Environment and the Secretary, Department of Sustainability and Environment, regarding the Native Vegetation Operational Guidelines. The Minister has asked me to reply on his behalf.

Firstly can I thank you for our meeting in late November. It was a good opportunity to hear first hand your concerns and discuss a way forward. I recall you had particular concerns regarding the location, type and timing of offsets in relation to mining activities and these are reiterated in your letter.

The draft Operational Guidelines now explicitly refer to mining and rehabilitation as temporary loss, and therefore requiring a slightly different approach to an offset for permanent clearing. They provide for the whole of the mine rehabilitation work to be counted towards the offset requirement and for this rehabilitation to be undertaken progressively over several years if necessary. Of course this rehabilitation would need to be to a certain standard to contribute to a net gain.

The draft Operational Guidelines also allow for offsets to be located on Crown land, within certain parameters.

As discussed when we met, your technical staff may be interested to pursue certain issues further with the Department. I would suggest you contact David Parkes, Senior Policy Analyst, Biodiversity Conservation Strategies on (03) 9637 8435 should you wish to arrange a meeting to discuss technical issues such as the Vegetation Quality Assessment Manual.

Thank you again for your input into this issue.

Yours sincerely

**CHRIS McRAE**  
Executive Director  
Land and Catchments

**Victoria**  
The Place To Be

## Attachment 4

### Low Impact Exploration

Low Impact Exploration shall include:

- (a) aerial surveys;
- (b) geological and surveying fieldwork that does not involve clearing (as defined below);
- (c) sampling by hand methods;
- (d) ground-based geophysical surveys that do not involve clearing;
- (e) drilling and activities associated with drilling that do not involve clearing or site excavation (as defined below), other than the minimum necessary to establish a drill site; environmental fieldwork that does not involve clearing.

For the purposes of paragraph (e) the following are not permitted:

- side hill excavation for access or drill pads, as would be necessary on steep slopes;
- drilling in a watercourse or any stream diversion;
- cutting down or pushing over trees;
- clearing of densely vegetated areas; or
- clearing or excavation for the purpose of obtaining access to drill sites;

For the purposes of this determination, the terms ‘clearing’, ‘excavation’, and ‘topsoil horizon’ have the following meanings:

#### Clearing

- a) In the case of grass, scrub or bush, ‘clearing’ means the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
  - the flattening or compaction of vegetation by vehicles where the vegetation remains living;
  - the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or
  - the clearing of noxious or introduced plant species
- b) In the case of trees, ‘clearing’ means cutting down, ringbarking or pushing over trees.

#### Excavation

‘Excavation’ means the use of machinery to dig below the ‘topsoil horizon’, but does not include:

- minor levelling of a site to allow the drill rig to operate on a level surface for safety reasons eg. to provide a safe working area or for fire prevention; or
- the construction of a small sump for operational purposes.

#### Topsoil Horizon

The ‘topsoil horizon’ means the top level or layer of soil which is generally less than 30cm thick.

## Attachment 5

### A Principled Approach to the Allocation of Exploration and Mining Rights

In a system where mineral rights are owned by the Crown and mineral resources are developed by the private sector, some mechanism for transferring exploration and mining rights to private hands is needed. Clearly the type of mineral rights offered and the way they are allocated, along with the mechanisms governments adopt for charging for those rights through royalties, has a considerable influence on the efficiency, competitiveness and operation of mining and associated mineral processing activities in Australia.

It is important therefore that the mechanisms put in place to assign and charge for mineral rights, serve as far as possible to promote the efficient exploitation of Australia's mineral resources. The Minerals Council advocates a principled approach to achieve this outcome, vis:

1. The process of charging for mineral rights should be transparent, equitable and developed in a manner which is consistent over time to maximise efficiency and the ability of the mining and mineral processing sector to contribute to wealth creation thereby enhancing Australian material living standards.
2. Sovereign risk (ie where governments change the rules mid-project, thus eroding the value of private property rights) seriously impact on the efficient development of mining and mineral processing as it diminishes the value of Australia's collectively owned mineral estate. To minimise the possibility of sovereign risk:
  - governments need to adopt a transparent, simple and equitable allocating system for mining rights which they and future administrations will accept as appropriate and not be tempted to intervene subsequently to change the rules; and
  - governments should bind themselves and their successors contractually to rights governing mineral developments based on this allocating system, which should take into account the different forms of rights.
3. Key aspects of mineral rights which fundamentally affect decisions made about how explorers, prospectors and miners will go about their activities need to be transparently developed and consistently applied over time. These aspects include:
  - the nature of conditions attaching to the rights;
  - the length of tenure of the rights;
  - the security with which they are held; and
  - their tradability.
4. It is of fundamental importance that mineral rights are allocated in such a manner and subject to such conditions as permit those with the best information and expertise to be able to acquire and exercise those rights.
5. Rights over minerals should provide incentives for miners to behave as if they own the deposits they seek to discover and develop, unencumbered by conditions which effectively dictate how or when such resources, once discovered, should be mined.
6. Mineral rights should be encumbered by as few conditions as possible with the exception of the circumstances where exercising rights over ones property interferes with the rights of others – for example, the rights of land holders who make their living from exercising surface rights which may be devalued by the mineral activity, or the right of the community to a habitable environment.
7. The allocation of mineral rights should not encourage the over exploration and premature exploitation of minerals.
8. The Minerals Council seeks to ensure Australia's inherent comparative advantage in the natural endowment of resources is in fact exercised. However, it needs to be recognised

## Attachment 5

that the economic viability of a project or sub-project does vary over time due to changes in mining, metallurgical, economic, marketing, technological, legal, environmental, social and government factors. These factors impact on the net present value/internal rate of return of a project/sub-project and can render previously *uneconomic* demonstrated resources economically recoverable and vice versa. Government policy regarding a state's mineral resources, their development potential and the allocation of mineral tenements needs to recognise this reality through implementing a flexible regime that does not penalise a minerals company for deferring investment in a resource because it is uneconomic.

Australia's ability to successfully invest in and operate mining and minerals processing activities and market products in fiercely competitive international markets has been hard won and cannot be taken for granted.

It is therefore important that an open and transparent process – based on a principled framework – for the allocation of mining rights is maintained in the public interest and preserved through appropriate statutory and regulatory approaches which deliver the most efficient outcome by the application of the principle of minimum effective regulation.

Once the legal framework has been developed future intervention by government must be consistent with established principles in the interest of maintaining certainty and avoiding sovereign risk.