



# MINERALS COUNCIL OF AUSTRALIA

- VICTORIAN DIVISION

SUBMISSION IN RESPONSE TO -  
VICTORIAN COMPETITION AND EFFICENCY COMMISSION:  
GETTING ENVIRONMENTAL REGULATION RIGHT  
DRAFT REPORT OF MARCH 2009

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## Executive Summary

MCA believes that VCEC is in a unique position, having significant ability to influence whole of Government decisions. An all-encompassing review of environmental regulation is a once in a generation opportunity to set policies and strategies for the next few decades and likely result in legislative reform.

Victoria's environmental regulatory environment is by no means leading practice. MCA stresses the importance that the recommendations arising from this Inquiry will significantly streamline environmental regulations without reducing environmental outcomes and make Victoria the Showcase for responsible environmental management with real and measurable outcomes.

The MCA is grateful that the Draft Report acknowledges that there has been limited evaluation of the outcomes from environmental regulation in Victoria. Without evaluation, the effectiveness of regulation cannot be measured. In contrast, the Commonwealth Government and some Victoria Departments routinely review the "effectiveness" of legislation as well as administratively reviewing the implementation of legislation. Not only can the absence of a review process lead to unnecessary or inappropriate regulatory burdens, governments have limited ability to know whether resources are allocated in appropriate ways to deliver the outcomes regulated to achieve.

While VCEC estimates that the cost to business of the five major pieces of environmental regulation is between \$130 million and \$395 million per year, the minerals industry as a whole regularly bears the greatest burden, despite having a footprint in the landscape of less than an almost 'irrelevant' 0.5% of the total landmass of Victoria. Furthermore evidence proves that the minerals industry is an exceptionally responsible land manager and performs beyond compliance in achieving and maintaining its social licence to operate.

The MCA fully supports VCEC's suggestions that environmental regulation can be improved to reduce costs and timeframes, while achieving the same or improved environmental outcomes, by:

- improving regulatory processes for major project start-ups, which could reduce costs, especially those arising from delays; and
- reducing the costs and duplication of regulations covering environmental protection, reporting, and mining and extractives.

On the issue of native vegetation management, the MCA agrees with VCEC's conclusion that a better environmental return will be achieved from the government reducing the regulation's complexity, clarifying administrative accountabilities and investing in incentives as well as regulation to improve native vegetation outcomes.

MCA endorses the following changes to regulation, regulatory principles and institutional arrangements to better position Victoria to respond to future environmental challenges proposed by VCEC:

- Better evidence (based on regular evaluation) of the performance of environmental regulations against their objectives to deliver the actual intent of the regulation.
- The adoption by relevant departments and agencies of performance reporting frameworks for environmental regulation to encourage transparency in decision making and improve accountability.

- Clear separation of the roles of policy maker and regulator to improve the clarity of roles and the administration of environmental regulation.
- Testing and adoption of innovative market-based instruments to address environmental problems efficiently to enable land users a range of options to manage any impacts to the environment.
- A more transparent and consistent approach to considering best practice principles for environmental management, including better guidance and tools.

In addition to these changes the MCA strongly recommends that the principles of Sustainable Development underpin all decisions of regulators to ensure that consideration is given equally to the economic, environmental and social objectives of the Government. Limiting decision-making to what is termed in VCEC's Draft Report "Ecological Sustainable Development" fails to give consideration to the equally important policy imperatives of economic and social development.

The minerals industry has long considered the economic, environmental and social impacts of minerals development and the MCA recommends that the Government's entire regulatory system must also give regard to these three factors, in the same way that the Government develops its policy according to the triple-bottom line.

# 1. Introduction

The Minerals Council of Australia (MCA) welcomes the opportunity to make a submission to the Victorian Competition and Efficiency Commission (VCEC) draft report on its review of the regulatory burden of Victoria's environmental regulation<sup>1</sup>. The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community 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 policies and legislative frameworks across the country.

The MCA detailed a number of issues related to planning, environment and project approvals in its submission to VCEC as a preliminary to the current inquiry into environmental regulation<sup>2</sup>.

## 1.1 Victorian Minerals Industry

The minerals sector accounts, directly and indirectly, for around 8.0 per cent of the Australian economy. In 2007-08, the sector generated exports of \$114 billion, representing approximately 62 per cent of Australia's total merchandise exports and over 48 per cent of total exports of goods and services<sup>3</sup>.

Victoria's minerals and petroleum sector accounts for about 2% of the Gross State Product<sup>4</sup> and is increasing. Investment in the Victorian minerals sector is at an all time high. The investments are in the brown coal, gold, base metals and mineral sands sectors. In addition, private industry expenditure on exploration was at a record high of \$93.7 million in 2007-2008.

The Victorian Government initiative *Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest*<sup>5</sup> identifies the opportunities and possible impacts on regional communities of minerals industry development. These include:

- > diversification of regional community industry bases leading to wider employment options and
- > high demands on existing infrastructure, construction capacity and labour supply.

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<sup>1</sup> Victorian Competition and Efficiency Commission, A Sustainable Future for Victoria: Getting Environmental Regulation Right, Draft Report, March 2009.

<sup>2</sup> MCA's Submission can be accessed at <http://www.vcec.vic.gov.au> and is listed as submission number 58.

<sup>3</sup> ABARE, Australian Mineral Statistics 2009, December quarter 2008.

<sup>4</sup> ABS Catalogue No. 5220.0, Australian National Accounts, 2007/08.

<sup>5</sup> Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest, Victorian Government Regional Development Victoria, November 2005

Following the onset of the Global Financial Crisis Victoria's minerals industry has not experienced the rapid reversal of fortune experienced elsewhere in Australia. There has been a slowdown in investment, but not the closures of mines being witnessed in other states.

The Victorian minerals industry is often separated into the coal sector and the metaliferous sector. The metaliferous sector is dominated by four operating gold mines and a mineral sands mining operation. The major mines are Bendigo Gold Mine, Ballarat Gold Mine, Fosterville Gold Mine, Stawell Gold Mine and Douglas Mineral Sands. There are additional exploration and smaller scale gold operations, including at Walhalla, Costerfield, Donald, Ouyen, Benambra, Maldon and Castlemaine.

The coal sector consists of the three Latrobe Valley coal mines (Loy Yang, Hazelwood and Yallourn), which collectively constitute the largest brown coal mining operation in the southern hemisphere, and second only to the large brown coal mines in Germany. The three Victorian mines power five coal-fired power stations. In addition, the Anglesea mine to the west of Melbourne supplies brown coal to Alcoa's Anglesea Power Station.

As with elsewhere, further investment in the minerals industry in Victoria is influenced by the identification of viable mineral resources, access to the land occupied by those mineral resources, financial resources, the support of the community, the regulatory environment, and the availability of a skilled workforce. Consequently, issues associated with gaining development approval, particularly environmental approvals can have a significant impact on investment decisions.

## 1.2 Sustainable Development

Members of the MCA, have a long-standing commitment to sustainable development. Whilst the effective environmental footprint of mining projects is relatively small, many companies own or manage large tracts of land associated with their projects. Additionally many companies undertake exploration activities across land owned or leased by others.

Traditionally, the investment that mining operations made in environmental management was mandated by regulatory authorities through the impact assessment process. However, companies now recognise that initiatives to better-manage their environmental impact beyond duty of care requirements reflect on their 'social license to operate'. Accordingly there has been an increasing effort by minerals companies to invest in environmental management far-beyond mandated requirements.

The focus of work within the MCA is to build the capacity of the Australian minerals industry to align itself with the pursuit of sustainable development. In the context of government regulation, the practical effect of this commitment is that the industry does not seek a diminution of performance standards. In contrast, the Australian minerals industry seeks a regulatory framework that provides a consistent, equitable and efficient standards of minimum performance, while at the same time supporting and encouraging the adoption of leading practice approaches as a beyond compliance measure.

To give an example of this sort of voluntary industry initiative, in 1997 the MCA developed the Australian Minerals Industry Code for Environmental Management. At the time it was considered a leading framework for an industry association to develop in that it outlined beyond compliance requirements for the sector to improve its environmental performance. It also institutionalised public environmental reporting to the extent that the industry was a leader in that area and has driven a lot of the development of indices around the world. However, like

everyone else, we have recognised that sustainable development is not about environmental management alone. The triple bottom line of environmental, social and economic responsibility means that we had to make a transition to a platform of incorporating all these elements. To give effect to this new platform, the environmental code was retired and replaced with *Enduring Value*<sup>6</sup>.

Developed with the input of over 900 stakeholders, *Enduring Value* is based on a set of internationally agreed principles. In response to the Brundtland commission report on environment and development, the minerals industry produced a set of 10 principles and 46 elements of what sustainable development meant for an industry – particularly an industry like ours that is dealing primarily with finite resources. *Enduring Value*, in turn, represents the national application of these principles, drilling them down into a series of 300 guidance points for on-site implementation. Compliance with relevant Commonwealth and State/Territory legislation is a fundamental requirement under *Enduring Value*, but the industry also recognises that compliance with legislation forms only one part of the industry's 'social licence to operate'.

The concept of a 'social licence to operate' is one of the key underpinnings of *Enduring Value*, being that the regulatory licences issued by government also need to be complemented by acceptance of operations within both local communities and the broader public. It is a condition of membership to the MCA that companies sign on to *Enduring Value* and report progress on the ten Principles.

As a result, *Enduring Value* encourages companies to take beyond-compliance actions to meet the community's expectations of social, environmental and economic performance. With regulatory licences forming an essential component of this broader licence to operate, the MCA seeks efficiency, consistency and effectiveness in their application.

## **2. VCEC Terms of Reference and Methodology**

The terms of reference and review methodology of VCEC are sound and timely. We are however, disappointed that the draft report has not critically reviewed the significant overlap between Federal and State environmental regulations, particularly as manifest through the Commonwealth's Environmental and Protection and Biodiversity Conservation Act.

## **3. Benefits of Environmental Regulation**

The VCEC Draft Report makes a sound case for the need for environmental regulation but questions whether or not these regulations have been effective in improving the environmental outcomes of Victoria. It can be generally agreed, all modern societies require regulation to protect and enhance the environmental values that underpin that society. The question remains however, as to the effectiveness of existing environmental regulation.

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<sup>6</sup> *Enduring Value* – the Australian Minerals Industry Framework for Sustainable Development, MCA, 2005.

The report discusses the generally deteriorating environmental performance of the State as a whole. On this basis MCA would make one additional point that appears to have been missed by the report. The economy is paying more and more to protect that environment (public and private expenses) with the overwhelming proportion of that resource applied to a very small if not minute portion of the State's land mass. One has to ask, have we allocated the immense resources appropriately?

Whilst the answer to this question may not change the intent and detail of specific environmental regulation in Victoria it may help ensure that the resources of the regulators are most appropriately allocated to get the best overall environmental outcome for the State.

## **4. Opportunities to Improve Environmental Regulation**

The MCA strongly supports the VCEC position presented in the draft report that a new approach to ensure sound regulatory design and practice is required that intrinsically focuses on outcomes. The approach suggested that effective and efficient regulatory processes should seek to achieve outcomes that are a 'synthesis' of economic, environmental and social objectives is supported. We note that this triple bottom line approach is Government policy for Cabinet decisions.

The VCEC recommendation that the Victorian Government undertake two groups of actions to achieve a better synthesis of economic, environmental and social considerations in regulatory decisions is supported:

- The first group of recommendations aims to make *short-term* change, materially improving the efficiency of major environmental approval processes by reducing the burden on businesses without undermining the Victorian Government's environmental objectives.
- The second group of recommendations aims to address some *future challenges* as well as improve the effectiveness of Victoria's environmental regulations.

## **5. Environmental Impact Assessment**

Environmental impact assessment is the most significant external (to the proponent) process for minerals project approvals and the source of considerable regulatory burden through delays and cost imposts.

For minerals projects approved under the *Mineral Resources (Sustainable Development) Act* the EES process is an alternative to seeking planning approval. This approach is used for all significant mining projects to the benefit of Government, communities and proponents as it provides a robust and transparent examination of the impacts. The EES process is generally conducted concurrently with the project feasibility and design studies which enable a thorough examination of alternatives on a triple bottom line basis.

Whilst it is acknowledged that the EES process has been improved in recent years it continues to be plagued with numerous regulatory design and implementation inefficiencies. The VCEC report is absolutely correct in identifying this regulatory burden as an area requiring reform.

The VCEC proposal of two complementary assessment pathways has merit. The first involves changes within the current framework, while the other combines these changes with a major change in process and decision making for projects of State significance.

The first pathway improves the current process and includes a recommendation that the *Environment Effects Act* be amended to give the minister a call-in power that he or she could exercise (as in the *Planning and Environment Act 1987*) when:

- the matter raises a major issue of policy, or
- an unreasonable delay in the decision on the application disadvantages the applicant.

The second pathway includes the streamlining improvements to the current process but, rather than providing the minister with a call-in power, it makes a significant change by consolidating the approval processes of all or most relevant Acts into the EES process. The second pathway makes an unreasonable delay less likely to develop because the assessment process is integrated with project approval, with the minister as sole decision-maker. This new process is strongly supported by MCA as a significant efficiency measure.

The VCEC proposal for strategic or thematic assessments is not supported by MCA. Minerals projects are invariably very site and commodity specific and we see no efficiency gain in thematic assessments.

We agree with the VCEC conclusion that the proposed reforms to the EES process will save considerable expense for mining project proponents, mainly through improved timelines.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

## **Environmental assessment recommendations**

### **Draft recommendation 6.1**

That the Victorian Government streamline the environment assessment process by introducing two complementary assessment pathways. The first pathway would build on the current assessment process by:

- applying time limits to each stage, of which some would be statutory and others negotiated at the start of the process. Opportunities for parallel processing of approvals would be identified. As now, protocols could exist to give advance notice of delays and revisions to the agreed schedule.

#### **AGREED**

- encouraging compliance with the timelines by reporting publicly the time taken for each stage of the process and also reasons for any delays, and by requiring an independent agency (such as the Victorian Auditor-General) to regularly assess performance against these timelines.

#### **AGREED**

- improving the scoping process by making the current 'indicative' 50 business days enforceable, assigning responsibility to the proponent for developing the scope (but subject to guidelines and government approval), and permitting the Environmental Effects Statement to include issues outside the scope only with the approval of the relevant department Secretary.

### **AGREED – Support Secretary of DPCD as only authority to change scope once agreed.**

- improving the functioning of technical reference groups, by requiring that group members have the authority to express the views of their department or agency. Meetings of a technical reference group would coincide with key check points in the Environmental Effects Statement process. The purpose and timing of the check points would be negotiated at the start of the process, but would include checking whether the Environmental Effects Statement scope could be narrowed and identifying key decisions to be made to avoid delays. Members of the technical reference group would not be allowed to raise issues outside the agreed scope of the Environmental Effects Statement, except with the permission of the responsible departmental Secretary.

### **AGREED – Strongly supported.**

- negotiating memoranda of understanding among the key departments involved in approvals, to provide a template for how the technical reference group would handle issues .

### **AGREED**

- re-assigning responsibility for releasing the Environmental Effects Statement for public review from the Minister for Planning to the proponent.

### **AGREED – strongly supported as a positive efficiency measure.**

- providing the Minister for Planning with the power to call in decisions when the matter raises a major issue of policy and the decision has been unreasonably delayed.

### **AGREED - it is the Minister's process anyway so the EES Act should be amended to provide for this.**

The second pathway includes all elements of the first pathway except the call-in power. Instead of this power, it integrates environmental assessment and project approvals, with a single minister responsible for both. This process would be available to projects that the minister determines are strategically significant to Victoria and for which unreasonable delays could seriously reduce the project's benefits for Victorians. The minister would be required to publish the reasons for this determination.

**AGREED – strongly supported. The setting of a threshold for nomination of projects as strategically significant projects is required to ensure that the Government does not just use this option for its own public works. A threshold of \$100 million capital investment in rural and regional Victoria would bring this option into line with other States intent on encouraging private sector investment in the minerals industry. A higher threshold may apply in metropolitan Melbourne.**

### **Draft recommendation 6.2**

That the Victorian Government assesses the potential to use strategic assessments for regions with common environmental issues.

**NOT SUPPORTED – This option is not supported for mining project approvals as they are very site specific and commodity specific. The option may have merit for very general regional issues.**

## 6. EPBC Act Opportunities

MCA is concerned that the VCEC draft report has failed to grasp the considerable efficiency that could accrue through a strong response to integration of the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) into the Victorian environmental impact assessment process.

The report correctly identifies that the Victorian and Federal Governments have finally reached agreement on a bilateral agreement on 'assessments' under the EPBC Act. However, it fails to recognise the undertakings of the Council of Australian Governments (COAG) to achieve bilateral agreements for 'approvals'. The achievement of an 'approval' bilateral agreement would remove the duplication of effort and potential avenue for conflict and delay from the regulatory landscape.

COAG has identified development approvals as one of the 'hot spots' for regulatory reform. The most recent annual report card on COAG's business regulation and competition working group records that all jurisdictions are to deliver implementation plans on opportunities for approvals bilateral agreements and strategic assessments by mid-2009.

MCA strongly represents that VCEC should ensure that the Victorian Government establish a fast track plan for agreement to an approvals bilateral under the EPBC Act.

We expect that this plan will need the support of the heads of Governments as there will be a need for concessions to be made at both the State and Commonwealth levels. However, the prize of removal of this duplication of regulation is a worthy significant effort by both parties and therefore worth pursuing vigorously.

## 7. Native Vegetation Regulation

The identification Victoria's native vegetation regulations as a source of considerable inefficiency is sound.

Whilst the specific VCEC recommendations aimed at improving this inefficiency are all sound, MCA is concerned that this area of extreme regulatory uncertainty and burden is not being dealt with more strongly. In many ways MCA considers that the native vegetation recommendations are disappointing. There is a need for greater simplification and greater clarity.

We do recognise that the recommendation that the Victorian Government revise its fundamental objective from 'net gain' to 'no net loss' when applying the policy to individual private landowners is a critical step and one that will require careful consideration by Government. The proposal is practical. VCEC make the point that this approach is consistent with the Victorian Government's view that landholders should be required to make reparations for any loss of public benefits as a result of clearing, but that the broader community is responsible for achieving the 'net gain' objective. MCA supports this pragmatic approach.

A key reason for the MCA's disappointment is that the solutions proposed are focused on the involvement of local Councils in the regulatory process. All planning schemes exempt exploration and mining from the native vegetation regulations as these are managed directly through the mining regulatory process. Vegetation controls on mining sites are regulated directly by the Department of Primary Industries (DPI) and indirectly by Department

of Sustainability and Environment (DSE) through the mining work plan approval process, not through the planning process.

DPI and DSE have been in lengthy consultation over a guideline for vegetation control on exploration and mining sites for a considerable time. The completion of this guideline is seen as critical to the removal of uncertainties and inconsistencies in the administration of the native vegetation framework on exploration and mining sites. Until this guideline is completed and published we cannot comment on its efficacy.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

## **Native vegetation recommendations**

### **Draft recommendation 7.1**

That the Victorian Government simplify the guidance for assessing the quantity and quality of native vegetation. The process of simplification should involve extensive consultation with a wide range of stakeholders.

**AGREED**

### **Draft recommendation 7.2**

That the Victorian Government provide improved guidance on the factors to consider in applying the three-step approach. The aim should be to require regulators to assess the economic, environmental and social impacts of clearing, so they do not proceed straight to the offset step in the three-step process. When formulating the guidance, the government should have regard for the principles of ecologically sustainable development.

**SUPPORTED with reservation - The regulator should apply the principles of sustainable development (triple bottom line), not ecologically sustainable development to the proposals of the proponent. We support the need for better guidance on the application of the three stage process of avoid, minimise, clear so that proponents do not believe that they are to proceed immediately to the clearance and offset option.**

### **Draft recommendation 7.3**

That the Department of Sustainability and Environment (DSE), to improve consistency and address the impact of skill shortages, should develop a system for peer review of decisions on permit applications. Such a system should complement training, information and other support that the DSE provides to councils.

**AGREED**

### **Draft recommendation 7.4**

That the Victorian Government, to increase flexibility in the rules for determining offsets, simplify the rules by:

- enabling offsets to be provided in any bio-region.

**SUPPORTED with reservation. It is important to ensure that the community experiencing the vegetation loss also benefits from the offset. This may mean flexibility to apply the offset to a different EVC in the same region.**

- limiting the capacity for councils to impose additional conditions on offsets when the Department of Sustainability and Environment has already specified the offsets to be provided.

#### AGREED

- increasing flexibility for landholders by permitting offsets on public land, subject to appropriate transparency arrangements.

**AGREED – Strongly supported as this will improve the quality of the Crown estate. It will be important for the State to ensure adequate resources are applied to maintaining the improved Crown land estate.**

- clarifying the offset rules relating to the rehabilitation of mines and quarries.

#### AGREED

##### Draft recommendation 7.5

That the Department of Sustainability and Environment (DSE) develop a strategy to monitor and enforce compliance with the native vegetation regulations and offset agreements. If councils retain responsibility for implementing the regulations, the Victorian Government should require councils to develop and implement enforcement strategies, with the DSE providing oversight.

**AGREED – Although it should be pointed out that native vegetation clearance proposals for mining projects are not administered by local Councils.**

##### Draft recommendation 7.6

That the Victorian Government make greater use of strategic planning tools to improve information for businesses about the locations and types of native vegetation to be protected, and particularly areas of private land containing high value native vegetation where clearing would not be permitted. These areas should become priorities for support under incentive schemes such as BushTender. Detailed mapping of native vegetation of all areas of Victoria should occur as rapidly as resources permit.

#### AGREED

##### Draft recommendation 7.7

That the Victorian Government seek expressions of interest from the business and not-for-profit sectors to provide BushBroker in its current form.

#### AGREED

##### Draft recommendation 7.8

That the Victorian Government clarify the outcome that native vegetation regulations are intended to achieve, by specifying that the objective is to ensure no net loss of environmental benefits as a result of clearing.

**SUPPORTED with condition that the net gain principle continue to be applied as a State wide policy objective, and with the application of 'no net loss' applied to individual private projects.**

##### Draft recommendation 7.9

That the Victorian Government develop and publish performance monitoring and evaluation strategies to assess the impact of the current regulations and any changes implemented.

**AGREED**

#### Draft recommendation 7.10

That the Victorian Government address the potential for additional overlap between Victorian native vegetation regulations and the Commonwealth's Environment Protection and Biodiversity Conservation Act by consulting the Commonwealth Government on any changes to the native vegetation regulations resulting from this inquiry.

**AGREED It is necessary to remove the possibility of the situation where two offsets or an offset and a bond are required to satisfy both State and C'th requirements as has occurred in the recent past.**

## 8. Environmental Red Tape

The review of EPA environmental red tape by VCEC is important and generally supported. However, MCA is disappointed that the Draft Report failed to make a recommendation for the EPA to finalise the long outstanding draft regulation on noise in rural Victoria. This was a recommendation of earlier VCEC reports and remains an outstanding matter.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

### Environmental protection recommendations

#### Draft recommendation 8.1

That the Victorian Government redraft the triggers for works approvals in the *Environment Protection Act 1970* so works approvals are not required for premises upgrades that will result in the same or less environmental harm (to be defined as either the same or lower level of waste discharged, or the same level of discharge, but less toxic). Where appropriate, licences should be amended to reflect the new operating conditions.

**AGREED**

#### Draft recommendation 8.2

That the *Environment Protection Act 1970* be amended to enable EPA Victoria to develop and maintain a list of pre-approved technologies that are exempt from the works approval process. For a technology to be included on the list, EPA Victoria must assess it to have demonstrated and predictable environmental impacts. The lists should be posted on the EPA Victoria website.

**AGREED**

#### Draft recommendation 8.3

That the *Environment Protection Act 1970* be amended to:

- establish a two-month maximum limit on the time taken by EPA Victoria to assess works approval applications (excluding the time it waits for further information from the applicant beyond the specified due date).
- allow time extensions beyond the two-month statutory time limit in exceptional circumstances only.
- establish a 30-day maximum time limit for responsible authorities to support or object to applications or to request specified conditions be included in works approvals.

**ALL AGREED - Great efficiency measures.**

#### **Draft recommendation 8.4**

That the Victorian Government amend the *Environment Protection Act 1970* to require EPA Victoria to report on its performance against the statutory and target time limits in its annual report, including:

- the elapsed time to assess works approval applications
- the time taken by EPA Victoria to assess applications (excluding the time it waits for further information from the applicant beyond the specified due date) compared with the statutory and target time limits
- the percentage of applications assessed within the statutory and target time limits
- the number of information requests made under s22 of the Act and the length of any time extensions
- the number of time extensions made under s67A of the Act, and the length of these extensions.

EPA Victoria should incorporate statutory and target time limits in its annual plan of key deliverables. An independent entity such as the Victorian Auditor- General should periodically audit the organisation's performance reporting on approval times (for example, once every five years).

**ALL AGREED – Transparent reporting is important to improve efficiency.**

#### **Draft recommendation 8.5**

That EPA Victoria adopt a more strategic approach to works approval applications. It should:

- apply a risk-based approach to assessing works approval applications
- wherever appropriate, develop outcome-based conditions for works approvals
- prepare templates for works approval applications
- offer the option of holding pre-application meetings for complex works.

**ALL AGREED – last point important.**

#### **Draft recommendation 8.6**

That EPA Victoria, in addition to simplifying compliance and reporting requirements in corporate licences, should aim to incorporate performance-based conditions wherever appropriate. To deliver the benefits of corporate licensing as soon as is practicable, EPA Victoria should establish targets in its annual plan of key deliverables to achieve 25 per cent of the total potential rollout of corporate licences by June 2010, 50 per cent by June 2011 and 75 per cent by June 2012.

**AGREED**

#### **Draft recommendation 8.7**

That EPA Victoria conduct a rolling review of standard licences on issue. The review should:

- examine the conditions of standard licences and, where appropriate, replace prescriptive conditions with performance-based conditions.
- simplify licence conditions and reporting requirements.

EPA Victoria should establish targets in its annual plan of key deliverables to review 25 per cent of standard licences by June 2010, 50 per cent by June 2011 and 75 per cent by June 2012.

**ALL AGREED**

#### **Draft recommendation 8.8**

That EPA Victoria encourage waste producers, transporters and receivers to use the WasteCert system. It should establish targets in its annual plan of key deliverables to have at least 50 per cent of all waste transport certificates lodged in electronic form by June 2011 and at least 75 per cent by June 2012.

**AGREED**

#### **Draft recommendation 8.9**

That the requirement for annual producer returns not be included in the proposed Environment Protection (Industrial Waste Resource) Regulations.

**AGREED**

#### **Draft recommendation 8.10**

That the Victorian Government redraft principle 11 of the *Environment Protection Act 1970* to state that waste should be managed according to the net benefit criterion—that is, waste management strategies should be based on actions which deliver the largest net benefits. This may involve considering the costs and benefits of actions such as avoidance, reuse, recycling, recovery of energy, treatment, containment, disposal and any other relevant options. Relevant state environment protection policies, waste management policies and industrial waste management policies should reflect this change.

**AGREED**

#### **Draft recommendation 8.11**

That EPA Victoria, in developing protocols and guidelines for environmental management, publish the key steps in the process as well as timeframes.

**AGREED – Good recommendation.**

**Draft recommendation 8.12**

That EPA Victoria clarify the definitions of ‘best practice’, ‘best practicable outcome’, ‘best practicable measure or approach’ and ‘best available technology’ in its policies and guidance to ensure they do not constrain businesses from meeting the required performance or outcome standards in a least cost manner.

**AGREED**

**Draft recommendation 8.13**

That EPA Victoria, to promote the consistency of its advice to business, should review its training procedures, internal guidance material, information systems and other methods of internal communication.

**AGREED**

## **9. Environmental Reporting**

Duplication and overlap of environmental reporting is a considerable inefficiency and waste of effort for all parties. Mandatory environmental reporting requirements originate from EPA Vic, DSE and Commonwealth agencies such as the National Environment Pollution Council. Overlap and duplication occurs when the competing agencies require reports on the same environmental impact but in differing forms. This creates unnecessary work for industry and adds no real value to environmental outcomes.

VCEC is right to identify this source of inefficiency for reform.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

### **Environmental reporting recommendations**

**Draft recommendation 9.1**

That EPA Victoria reduce the unnecessary costs of the Environment and Resource Efficiency Plans (EREPs) by exempting sites that do not derive benefits from participating in the EREP program. These sites could include those that:

- have a track record of sustained resource efficiency improvements.
- already report under other mandatory programs such as EPA Victoria licences, Energy Efficiency Opportunities and the National Greenhouse and Energy Reporting System.
- participate in voluntary reporting and programs such as corporate sustainability reporting, the National Packaging Covenant, the ABARE fuel and electricity survey and Greenhouse Challenge Plus.
- have an environmental management system with ISO certification.

- depend on water and energy use and waste generation for their core business, and have proportionally high water, energy and waste costs.

**ALL AGREED – There is also a need to ensure consistent outcomes and advice to industry. In addition to the above recommendation on EREPs reform is required to enable the company to identify the key areas for efficiency, not the EPA after a review of all potential opportunities.**

#### Draft recommendation 9.2

That the Department of Sustainability and Environment reduce the unnecessary costs of the WaterMAP program by:

- automatically exempting Environment and Resource Efficiency Plan participants from the WaterMAP program
- reducing the 90 or so information obligations under WaterMAP to a core of about 15 one-off information obligations and 20 annual reporting obligations.

**ALL AGREED.**

#### Draft recommendation 9.3

That the Victorian Government reduce the costs to business of meeting environmental reporting requirements by:

- developing one on-line reporting point for all Victorian programs and licences, with standard formats and timing
- promoting a broader review of reporting at the Council of Australian Governments, which would include assessing ways in which to develop a national on-line reporting point for all programs and licences, with standard formats and timing, using OSCAR.

**ALL AGREED.**

## **10. Regulation of Exploration and Mining**

It is no surprise that VCEC has identified the regulation of the minerals industry as the only industry to be awarded specific attention in the draft report. The minerals industry is one of the most, if not, the most regulated industries in the State. This excessive and complex regulatory environment is prime for efficiency gains. MCA seeks considerable relief from ineffective and inefficient regulation of the minerals industry. We, however, do not seek a diminution of the environmental impacts.

An authoritative measure of the regulatory regime in mining jurisdictions is provided by the Fraser Institute of Canada. Since 1997, The Fraser Institute has conducted an annual survey of metaliferous mining and exploration companies to assess how mineral endowments and public policy factors such as regulation affect and exploration investment. Survey results represent the opinions of executives and exploration managers in mining and mining consulting companies operating around the world. The survey now includes data on 71

jurisdictions around the world, on every continent except Antarctica, including sub-national jurisdictions in Canada, Australia, and the United States.

The most recent annual Fraser Institute survey of mining companies was published in March 2009<sup>7</sup>.

While geologic and economic evaluations are always requirements for exploration, in today's globally competitive economy where mining companies may be examining properties located on different continents, a region's policy climate has taken on increased importance in attracting and winning investment. The Policy Potential Index (PPI) serves as a report card to governments on how attractive their policies are from the point of view of an exploration manager.

The PPI measures the effects on exploration of government policies including uncertainty concerning the administration, interpretation, and enforcement of existing regulations; environmental regulations; regulatory duplication and inconsistencies; taxation; uncertainty concerning native land claims and protected areas; infrastructure; socioeconomic agreements; political stability; labor issues; geological database; and security.

The key indicator in this report is the score for mineral potential under current regulations when compared with mineral potential in a "best practice" scenario. This provides a result termed "room for improvement". The Australian jurisdictions that are in the first quartile for mineral potential include WA, NT, Qld, and SA but all except South Australia are in the second quartile for policy potential. South Australia is in the first quartile. This should be a concern for all except the South Australians. In terms of room for improvement, all the Australian jurisdictions are in the third quartile, which is at least positive. **Nevertheless Victoria is identified as the Australian jurisdiction with the most room to improve its policy position.**

The recommendations identified by VCEC in the environmental assessments, native vegetation, EPA red tape and environmental reporting all impact directly and are significant to the minerals industry. The specific exploration and mining recommendations presented in the draft report are also critical. They are all supported by MCA.

The recommendations associated with breaking down the silos of Government are critical to improving efficiency. MOUs are identified as the primary instrument in this endeavour. MCA supports this approach but considers that the MOUs should seek to authorise DPI to act on behalf of the respondent agency for straight forward approvals. It is critically important that solutions are found to embracing a holistic triple bottom line approach for regulatory regimes such as the work plan approval regime for exploration and mining projects that involve multiple Acts and therefore multiple agencies.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

## **Mining regulation recommendations**

### **Draft recommendation 10.1**

[That the Department of Primary Industries \(DPI\), on behalf of work approval applicants, should coordinate with other departments and agencies whose approvals are required in respect of mining and extractive approvals, when requested to do so by proponents.](#)

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<sup>7</sup> McMahon, F and Cervantes, M, Fraser Institute Annual Survey of Mining Companies 2008/09, The Fraser Institute, Vancouver, Canada, March 2009.

### **AGREED - But why only limit action to when requested?**

In appropriate cases, the DPI should exercise the coordination powers granted to it by s2(2) of the *Mineral Resources (Sustainable Development) Act 1990*. It should identify whether these powers are insufficient in any way, and propose a remedy.

### **AGREED – Why not assume the powers until challenged; DPI show some leadership?**

#### **Draft recommendation 10.2**

That the Department of Primary Industries should enter into memoranda of understanding with referral agencies, other than the Department of Sustainability and Environment with which one already exists, to ensure better coordination and shorter timeframes for their approval processes.

### **AGREED – The MOUs should confer authority on DPI to represent the interest of the whole-of-government in the approval process for straight forward proposals.**

#### **Draft recommendation 10.3**

That the Department of Primary Industries (DPI) commit to:

- establish and publish target timeframes for approvals under mining and extractives legislation.
- measure and publish information on the time taken by the DPI and referral authorities to process approvals required under mining and extractives legislation.
- provide an explanation on its website of the reasons for any substantial delays in granting approvals by the DPI or any referral agencies.
- regularly review and report on timeframes for approval with a view to finding areas for future improvements.

Reporting by the DPI on the timeliness of approval process should be reviewed periodically by an independent agency such as the Victorian Auditor-General.

### **ALL AGREED – The establishment of a strong public reporting culture is a most effective way to improve efficiency. DPI does not have to be accountable for the performance of other agencies, but it can report performance as far as it affects its ability to implement the objects of the MRSDA. The Department should routinely report performance to its stakeholders as is done by WorkCover.**

#### **Draft recommendation 10.4**

That the Department of Primary Industries (DPI) expand its website to list all the approvals that a mining or extractive industries proponent may need, and to provide guidelines, policy notes and advice on the requirements of each approval.

The DPI should regularly update the website, to ensure proponents are informed of any proposed changes to the legislation or the approvals process.

### **AGREED – The information on approvals to be placed on the website needs to be easily understood and not just a dump of complexities.**

### Draft recommendation 10.5

That the Department of Primary Industries, with input from the Department of Sustainability and Environment, review the definition of 'low impact exploration' in the *Mineral Resources (Sustainable Development) Act 1990* and propose a legislative amendment to the definition based on environmental impact rather than on the use of mechanical equipment.

**STRONGLY AGREED – Such a reformed definition should have been agreed years ago following earlier VCEC recommendations. The definition used by AAV in their guidelines for the Aboriginal Heritage Regs is appropriate.**

### Draft recommendation 10.6

That the Department of Primary Industries (DPI) website report at least annually on the DPI's administration of the *Mineral Resources (Sustainable Development) Act 1990*, detailing matters such as monitoring and enforcement, the implementation of ecologically sustainable development principles, and the contribution its administration makes to achieving the objectives of the Act.

**AGREED – but DPI should report against the sustainable development principles not ecologically sustainable development. SD is in the Act, not ESD.**

## 11. Institutional Arrangements

Institutional arrangements are a critical ingredient that impacts directly on the efficiency and effectiveness of the regulatory regime. The VCEC report identifies the critical matters in this regard and the recommendations are generally agreed.

However, institutional structure is only one ingredient in the efficiency and effectiveness of a regulatory regime. Institutional capacity in the form of resources and competence is also a critical ingredient.

The implementation of good regulation is dependent upon implementation by good regulators. MCA considers that it is critically important that the regulatory agencies are adequately resourced and staffed by competent individuals. The VCEC report would benefit from an assessment of institutional capacity of the regulators.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

### Institutional and interface arrangements recommendations

#### Draft recommendation 11.1

That the Victorian Government review the objectives of environmental regulation to ensure that all environmental legislation and supporting guidance contain clearly stated and specific objectives. Priority areas for attention are:

- *Environment Effects Act 1978*
- native vegetation regulations (under the *Planning and Environment Act 1987*)

- *Environment Protection Act 1970*
- *Flora and Fauna Guarantee Act 1988*
- *Wildlife Act 1975*
- *Sustainable Forests (Timber) Act 2004.*

All AGREED – Although we question the status of native vegetation regulations, these are better described as a policy framework and guidelines.

#### Draft recommendation 11.2

That the Victorian Government consider extending the scope of the Reducing the Regulatory Burden Initiative to include substantive compliance costs (including delay costs) at the end of the first phase of the Initiative.

AGREED

#### Draft recommendation 11.3

That the Victorian Government develop performance reporting frameworks for environmental regulations to be implemented by the relevant department or agency. The frameworks should:

- specify regulatory objectives, including the outcomes that regulation is intended to achieve.
- specify the types of indicators (outcome, output and input) and the frequency of reporting.
- specify how the results are to be used (for example, the frequency of public reporting and the use of the information to review the regulations).

The development and implementation of performance reporting frameworks should be subject to oversight by an independent body such as Victoria's Office of the Commissioner for Environmental Sustainability or the Victorian Auditor-General's Office, which would report periodically on implementation.

ALL AGREED

#### Draft recommendation 11.4

That the Victorian Government commit to the principle that all new environmental regulations with a potentially significant impact on business should have an evaluation strategy and associated data collection plan.

AGREED

## 12. Market-based Instruments of Regulation

The MCA response to the specific recommendations on market based instruments posed in the draft VCEC report is presented below:

## Market-based instruments recommendations

### Draft recommendation 12.1

That the Victorian Government amend the *Victorian guide to regulation* to require that regulatory impact statements and business impact assessments for new environmental regulations and legislation include a market-based approach such as tradeable pollution permits, auction conservation contracts and smart markets, unless the proponent can demonstrate that such approaches are not practicable.

**AGREED – But wording is clumsy. There is no proponent involved in a RIS.**

### Draft recommendation 12.2

That the Victorian Government establish a policy design reference group, consisting of an independent expert group that includes academic economists and senior policy makers. The group's functions would include advising interested departments and agencies about:

- the likely efficiency and effectiveness of new policy solutions
- the adequacy and efficacy of evidence from experiments and/or pilots
- governance and risk management issues relevant to the use of market-based instruments to achieve policy outcomes.

**NO COMMENT**

### Draft recommendation 12.3

That EPA Victoria finalise by June 2010 its framework and process for assessing applications for environmental offsets, taking into account that offsets can be used to minimise the costs of achieving environmental objectives.

**AGREED – Strongly supported.**

### Draft recommendation 12.4

That EPA Victoria implement offset arrangements where it can demonstrate their cost effectiveness relative to other approaches.

**AGREED**

## 13. Principles for Future Regulation

VCEC is wise to identify the need in regulation design and decision making for the triple bottom line to be of primacy. As stated in the introduction to this submission, MCA and its members are committed to the principles for sustainable development (SD) through *Enduring Value*.

The concerns we raise below in response to the specific recommendation made in this area relate to language and environmental emphasis in that triple bottom line approach.

The VCEC report promotes ecologically sustainable development (ESD) as enunciated under the Intergovernmental Agreement on the Environment. This piece of work is not what the minerals industry considers to be a balanced approach to the triple bottom line. MCA considers SD as the three pillars of the environment, community and economy equally in ensuring balanced outcomes.

It is correct to identify that some statutes in Victoria apply the ESD principles. It is equally correct that some apply the SD principles such as the *Minerals Resources (Sustainable Development) Act*.

The ESD principles are fundamentally designed to ensure that we have sustainable ecological processes. The SD principles are designed to ensure we have sustainable communities, environments and economies. The SD principles are the triple bottom line approach. It is the SD principles that are consistent with the Governments triple bottom line approach to Cabinet decision making, not the ESD principles.

It is for these reasons that MCA has concerns with the recommendations discussed below.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

## Principles for future regulation recommendations

### Draft recommendation 13.1

That because there will be variations in how ecologically sustainable development (ESD) principles are applied generally to environmental regulation:

- departments and agencies involved in the development and implementation of environmental regulation publish how they apply or intend to apply ESD principles to particular sectors and regulations, and that this be supported by practical examples of good decision-making
- the Commissioner for Environmental Sustainability oversight the development of a community of practice to exchange ESD implementation skill and best practice.

**NOT SUPPORTED – Need to recognise that ecologically sustainable development ( ESD) is not sustainable development (SD). SD is the triple bottom line which is Govt. Policy. ESD has an emphasis on the ecology with the other two pillars subordinate. This is not a balanced approach for effective regulation.**

### Draft recommendation 13.2

That the Victorian Government amend the *Victorian guide to regulation* to ensure that policy makers and regulators have proper regard to the principles of ecologically sustainable development (ESD) by:

- referring to the objectives and principles of ESD
- requiring, where a proposed measure has significant ESD impacts, the consideration of the objectives and principles of ESD in the development and implementation of regulation as part of the regulatory impact statement  
(RIS) process
- providing guidance on how to comply with the RIS adequacy requirements given the above changes.

**NOT SUPPORTED – Should be SD as per the MRSDA not ESD.**

#### Draft recommendation 13.3

That the Victorian Government amend the *Victorian guide to regulation* to provide further guidance and tools for dealing with uncertainty in the development and implementation of environmental regulation, including measures that might invoke the precautionary principle. The government should also build the capacity of agents to apply these techniques in developing and implementing environmental regulation.

**AGREED**

## **14. Climate Change Issues**

Climate change is one of the most compelling challenges confronting the global community. An effective response must not only be genuinely global in scale, but also sustainable over the long term, and Victoria must be an integral part of that effort. VCEC is correct to identify that all regulatory instruments involved in the establishment of clean coal technologies and renewable sources of energy must be efficient and effective so as not to impede that development.

The MCA response to the specific recommendations posed in the draft VCEC report is presented below:

### **Regulatory barriers to adjustment recommendations**

#### Draft recommendation 14.1

That the Victorian Government promote in relevant national forums removal of regulatory impediments to the introduction of renewable energy sources of power generation, such as barriers to distributed energy generation.

**NO COMMENT**

#### Draft recommendation 14.2

That the Victorian Government:

- apply time limits to each stage of the environmental assessment and planning permit processes for wind projects, some of which would be statutory and others negotiated at the start of the process. There could be protocols for giving advance notice of delays and revisions to the agreed schedule.
- report publicly the time taken for each stage of the process and reasons for any delays
- ensure that performance against these timelines is assessed regularly by an independent agency, such as the Victorian Auditor-General.

**AGREED – But why don't the processes apply to all development, not just wind farms.**

#### Draft recommendation 14.3

That in any revision of building efficiency regulations, the Victorian Government seek opportunities to make these regulations performance based rather than prescriptive.

**NO COMMENT**

#### **Draft recommendation 14.4**

That the Victorian Government include in the Timber Industry Strategy a new approvals process for the establishment of plantations, in which accredited operators would be deemed to comply with planning provisions. The process should be based on accreditation and ongoing compliance with an enhanced Code of Forest Practice and consistent with best practice principles of regulation.

**NO COMMENT**

#### **Draft recommendation 14.5**

That in preparing the Timber Industry Strategy the Victorian Government considers options for improving the regulation of native forests, such as separating land management, regulation and policy mechanisms, for delivery by separate agencies.

**NO COMMENT**

## **15. Conclusion**

The MCA commends the exceptional work of VCEC in reviewing and assessing the substantial number of environmental statutes in Victoria. We also acknowledge the comprehensive consultation phase that enabled stakeholders to examine ideas for improved environmental management both through regulation and policy development.

The MCA strongly supports the VCEC position presented in the draft report that a new approach to ensure sound regulatory design and practice is required that intrinsically focuses on outcomes.

It is clear in this submission that the MCA supports the overwhelming majority of the recommendations in VCEC's draft report. While we have identified some gaps, we also acknowledge that some of these gaps relate to the policy rather than the legislative framework. For example, regarding native vegetation, we expect some considerable amendments to policies in the Native Vegetation Management Framework resulting from the White Paper on Biodiversity and Land Management as well as the Royal Commission into the Black Saturday bushfires. Similarly, the conflict between the EPBC Act and state environmental effects processes will primarily be resolved at the political level through COAG negotiation. Following policy revisions we will then focus on how best to achieve the policy intent through the regulatory framework.

A critical factor identified in the draft paper is the need to monitor the effectiveness of environmental regulation. The MCA believes that this will go a long way to reducing regulatory burden where no outcomes are measurable and ensuring that regulatory frameworks are continually reviewed for best practice. Furthermore the capacity and resources of the regulator will not only enable these reviews to occur but will also enable greater stakeholder interaction to encourage environmental performance.

Environmental impact assessment is the most significant external (to the proponent) process for minerals project approvals and the source of considerable regulatory burden through delays and cost imposts.

The VCEC proposal for strategic or thematic assessments is not supported by MCA. Minerals projects are invariably very site and commodity specific and we see no efficiency gain in thematic assessments.

Whilst it is acknowledged that the EES process has been improved in recent years it continues to be plagued with numerous regulatory design and implementation inefficiencies. The VCEC report is absolutely correct in identifying this regulatory burden as an area requiring reform. We further agree that the proposed reforms to the EES process will save considerable expense for mining project proponents, mainly through improved timelines.

MCA strongly recommends that VCEC ensure that the Victorian Government establish a fast track plan for agreement to an approvals bilateral under the EPBC Act. MCA is concerned that the VCEC draft report has failed to grasp the considerable efficiency that could accrue through a strong response to integration of the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (EPBC Act) into the Victorian environmental impact assessment process.

Equally, we acknowledge that whilst the specific VCEC recommendations aimed at improving the efficiency in managing native vegetation are all sound, MCA is concerned that this area of extreme regulatory uncertainty and burden is not being dealt with more strongly. In many ways MCA considers that the native vegetation recommendations are disappointing. MCA's disappointment relates to the solutions proposed being focused on the involvement of local Councils in the regulatory process. All planning schemes exempt exploration and mining from the native vegetation regulations as these are managed directly through the mining regulatory process. Therefore solutions are required in how the Department of Primary Industries (DPI) and indirectly the Department of Sustainability and Environment (DSE) regulate native vegetation on mining sites through the mining work plan approval process, rather than through the planning process.

The review of EPA environmental red tape by VCEC is important and generally supported. However, MCA is disappointed that the Draft Report failed to make a recommendation for the EPA to finalise the long outstanding draft regulation on noise in rural Victoria.

It is no surprise that VCEC has identified the regulation of the minerals industry as the only industry to be awarded specific attention in the draft report. The minerals industry is one of the most, if not, the most regulated industries in the State. This excessive and complex regulatory environment is prime for efficiency gains. MCA seeks considerable relief from ineffective and inefficient regulation of the minerals industry. We, however, do not seek a diminution of the environmental impacts.

The MCA strongly recommends that principles of Sustainable Development underpin all legislative frameworks and decisions of regulators to ensure that consideration is given to the economic, environmental and social objectives of the Government. Limiting decision-making to what is termed in VCEC's Draft Report "Ecological Sustainable Development" fails to give consideration to the equally important policy imperatives of economic and social development.

The minerals industry has long considered the economic, environmental and social impacts of minerals development and the MCA recommends that the Government's entire regulatory system must also give regard to these three factors, in the same way that the Government develops its policy according to the triple-bottom line.

The implementation of good regulation is dependent upon implementation by good regulators. MCA considers that it is critically important that the regulatory agencies are adequately resourced and staffed by competent individuals. The VCEC report would benefit from an assessment of institutional capacity of the regulators.

ENDS