



# **MINERALS COUNCIL OF AUSTRALIA, VICTORIAN DIVISION**

**2013-14 VICTORIAN PRE-BUDGET SUBMISSION**

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28 MARCH 2013

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## EXECUTIVE SUMMARY

The Minerals Council of Australia, Victorian Division (MCA Victoria) makes this submission to inform the development of the Victorian State Government's 2013-14 Budget and policy platform.

This submission focuses on specific issues facing the Victorian economy and therefore the Victorian minerals industry. It does not make comment on macro-economic issues and commodity outlooks at the national and international level and therefore it should be read in conjunction with the MCA's Commonwealth Pre-Budget Submission available at [http://www.minerals.org.au/news/2013\\_14\\_pre\\_budget\\_submission/](http://www.minerals.org.au/news/2013_14_pre_budget_submission/).

This submission does however make comment on the impacts of Commonwealth Government policies and laws on the Victorian minerals industry.

MCA Victoria makes a number of recommendations to the Victorian Government in this submission. These recommendations reaffirm and build on those made in the previous pre-budget submission and are grouped according to the following themes:

### **Regulatory Reform**

- Actively measure, monitor and publicly report on reductions in red tape
- Respond to the EDIC Parliamentary Inquiry recommendations and develop a reform timeline
- Assess the range of recommendations arising from reviews/inquiries undertaken by previous governments and determine what will be progressed or where alternate reforms are proposed
- Work towards a whole-of-government, one-stop-shop approval authority
- Ensure 'whole-of-government' decision making that approve projects on merit and that are timely
- Reignite Stage 2 reforms to the *MR(SD)A*
- Empower VCEC with a role in monitoring and reporting on regulatory reforms
- Review the technical skills needs of Departments and Agencies to better align with industry practice

### **Taxes and Royalties**

- Continue to deliver low WorkCover premiums
- Ensure WorkSafe is resourced to be able to continue to lead the nation on safety and health performance
- Maintain a competitive royalty rate that encourages investment

### **Coal Allocation**

- Announce a formal coal tender
- Establish a formal consultative group to plan for infrastructure to support development of the coal fields
- Inform Victorian's about the potential for Victoria to achieve significant economic and social benefits from utilisation of our coal resources

### **Coal Seam Gas/Biogenic Methane**

- remove the ban on exploration licences for coal seam gas
- acknowledge Victoria's potential as a gas producer

### **Climate change and Energy**

- Further rationalise the State's energy and climate policies and programs
- Continue to support pre-competitive research and development that will unlock the potential for coal development

### **Geoscience**

- Agree to and implement the EDIC Parliamentary Inquiry recommendation to establish a PACE style program

- Work closely with Geoscience Australia to unlock further research opportunities for Victoria

**Environmental Approvals**

- Move the Native Vegetation Management Framework to a risk-based platform that enables flexibility in achieving the outcomes
- Complete reforms to the *EEA* and bring risk and proportionality to the fore of the assessment process
- Take a leadership role in the development of bilateral approvals under the *EPBC Act* to improve the efficiency and effectiveness of project approvals

**Water reform**

- Engage the Victorian minerals industry in the water planning process and review of the *Water Act*
- Reduce regulatory overlap
- Publish a single, all of Government Guideline on Water and Mining that includes clarity of leadership amongst regulatory agencies in relation to mining and water
- Amend S30A of the *EP Act* to enable a better response to flood events
- Incorporate the MCA Water Accounting Framework into water licencing and reporting requirements

**OHS Reform**

- Commit to adopting the Model Work Health and Safety Regime
- actively participate in the review of the Model regime and drive the development of a single national work health and safety regime, administered by State and Territory Governments

**Workplace relations**

- Acknowledge the employment opportunities in an expanding minerals industry
- Recognise Melbourne and Regional Victoria as a source of skilled workers to the minerals industry
- Advocate for amendments to the *Fair Work Act* that promote direct relationships between employers and employees

**Indigenous Affairs**

- Fulfil the commitment to accurately identify areas of cultural heritage significance rather than relying on arbitrary proxies
- Draft amendments to the *AHA* to remove prescription and enable flexibility in meeting the needs of TOs and industry
- Ensure the probity of RAPs so as to maintain the integrity of the Aboriginal Heritage regime
- Ensure that the Victorian minerals industry is consulted on benefits payments under the LUAA

## INTRODUCTION

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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 (MCA Victoria) 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.

## 1. OVERVIEW

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### 1.1 VICTORIAN MINERALS INDUSTRY

The Victorian minerals industry is often separated into the coal sector and the metalliferous sector. The metalliferous sector is dominated by a number of operating gold mines and mineral sands mining.

#### **Coal**

Victoria's vast brown coal (lignite) resources provide the energy for about 85 per cent of electricity generation. 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 the second largest in the world (behind Russia). The three Victorian mines power 5 coal-fired power stations. In addition, the Anglesea mine to the west of Melbourne supplies brown coal to Alcoa's Anglesea Power Station. There is also a small brown coal mine at Bacchus Marsh.

Several projects are proposed to utilise brown coal for new industries, including urea, char, gas and liquids.

#### **Gold**

Victoria is a world recognised gold province hosting a variety of deposit styles. Gold production from Victoria's thirteen goldfields accounts for two per cent of all the gold that has been mined throughout the world.

Despite its prospectivity, much of Victoria remains unexplored using modern techniques. GeoScience Victoria's assessments indicate that it is likely that there are multi-million ounce deposits in the state that remain undiscovered. Most of these are under thin Tertiary cover, which emerging exploration techniques should be able to penetrate.

The Victorian gold mining sector is reliant on a small number of major mines and, therefore any reduction in output from these sites dramatically affects the State's overall gold production.

There are additional exploration and smaller scale gold operations, including at Bendigo, Walhalla, Costerfield, Maldon and Alexandra.

#### **Mineral Sands**

Victoria's mineral sand endowment includes an estimated 8 million tonnes of rutile and 6 million tonnes of zircon. Mineral sand exploration and production is focused on the Murray Basin, in the State's west.

Activity is focused around Douglas, Kulwin and Minyip.

### Base metals

Strong global base metal prices have attracted applications to resume exploration for base metal deposits in eastern Victoria. Base metal projects that are under investigation in Victoria and include the reopening of the copper-zinc mine at Benambra and the potential development of molybdenum mine in north-east Victoria. Exploration into the potential for iron exports from Victoria is also occurring.

## 1.2 CONTRIBUTION TO THE STATE

The Australian mining sector (excluding oil and gas) accounts 7.9 per cent of the Australia's GDP. In 2011-12, the value of minerals exports increased more than 7 per cent to \$163 billion, equivalent to 51 per cent of Australia's total goods and services exports<sup>1</sup>.

Of this, Victoria's minerals sector produced \$642.6million (excluding brown coal<sup>2</sup>) of product in 2010-11 (primarily gold and mineral sands). During the same period, investment in project developments was \$719.2 million and private industry expenditure on exploration grew to \$64.6 million<sup>3</sup>.

Production in 2010-11 included:

- 66.7 Mtpa lignite (4 mines)
- 186k oz. of gold (3 significant mines plus several small mines)
- 188ktpa zircon, 209ktpa rutile and 82ktpa ilmenite (2 mines)

The industry paid \$45M in Royalties in 2010-11.

The industry directly employs nearly 7,000 people, and a further 20,000 jobs are estimated to be created indirectly through the flow on effects of the industry's activities<sup>4</sup>.

The Victorian minerals sector is small and contributes least to the State economy when compared with other Australian jurisdictions.

**Figure 1** - Mining value added 2010-11 (latest data)<sup>5</sup>



<sup>1</sup> MCA 2013-14 Pre-Budget Submission

<sup>2</sup> Brown Coal is currently not traded and thus has no direct market value in the way other minerals do. In the past the Department of Primary Industries (DPI) has used a range of estimated values: \$8/tonne in 2003-04; \$12.56/tonne in 2004-05; and \$18.88/tonne in 2007-08. The metrics used to calculate the contribution of the coal sector do not capture the inherent value that the coal represents to Victoria via the electricity that is generated with it. Further work is required to be able to quantify the value of the resource as cost effective electricity has been a key factor in Victoria's economic development.

<sup>3</sup> Latest data courtesy of Department of Primary Industries, 2010/2011 Statistical Review- Victoria's Mineral, Petroleum and Extractive Industries, 2012.

<sup>4</sup> Sinclair Knight Merz, 2012, *Economic Performance of the Victorian Mining and Minerals Sector*

<sup>5</sup> ABS Australian National Accounts State Accounts 5220.0 2011-12

The State continues to lose market share and is not seen as a prospective or attractive place to invest. However, the Melbourne central business district is booming. Melbourne is one of a few international mining capitals. A number of international head offices of mining houses are located here, including the world's largest mining house. Wherever international headquarters are, the support and service sectors follow. Melbourne has a wealth of expertise focused on the international, national and State industry. Large businesses in insurance, financial services, technical services, engineering, and equipment and materials manufacturers all call Melbourne home.

In 2012, MCA Victoria engaged Sinclair Knight Merz (SKM) to undertake a study of the impact of the minerals industry on the Victorian economy. SKM utilised 2010-2011 data and a range of multipliers to calculate the direct, indirect and induced impact of the Victorian minerals industry. SKM defined these as:

- Direct Impacts – The impact directly resulting from the operations or development of the mining industry
- Indirect Impacts – The impacts resulting 'indirectly' from the mining industry or industrial support impacts - how other industries both support and are supported by mining
- Induced Impacts – The impacts that are 'induced' by additional consumer spending, or consumption impacts, from the wages and income paid to employees resulting directly in mining industry and indirectly employed as a result of supporting industries

The study revealed that in 2010-2011 the direct impact of the industry accounted for \$1.7 billion in Value Added to the Victorian economy, \$722 million of which was Employee Wages and Income paid to nearly 7,000 FTE positions. When Direct, Indirect and Induced contribution of the industry is included in the assessment of it became clear that the total contribution of the minerals industry to the Victorian economy however is much greater.

In 2010-2011 the total contribution of the industry to the Victorian economy, including direct, indirect and induced impacts was \$4.2 billion in total value-add worth of goods and services, including nearly \$2.1 billion in wages and salaries paid to a total of 27,502 FTEs. The total output generated by the industry in Victoria was \$9.6 billion.

**Table 1:** Victorian Minerals Industry Economic Impacts (2010-11)<sup>6</sup>

	Direct	Indirect	Induced	Total
Value Added (\$M)	1,715	1,460	996	4,179
Employee Wages and Income (included in Value Added) (\$M)	722	815	543	2,080
Total Output (\$M)	3,746	3,587	2,281	9,614
Total Employment (FTE)	6,978	12,361	8,163	27,501

**The substantial contribution of the mining sector to Victoria's economy is indisputable.**

The Government has now acknowledged Melbourne and Victoria as an international centre for mining with the announcement in 2012 that Melbourne will host an international mining conference in 2014.

This conference will place the spotlight on the State and will also enhance the profile of the extraction industry residing within Victoria. It is an opportunity to encourage investment in the sustainable development of the State's minerals.

<sup>6</sup> Sinclair Knight Merz, 2012, *Economic Performance of the Victorian Mining and Minerals Sector*

## 2 EXPENDITURE AND PRODUCTION

Annual Australian mining capital expenditure has grown markedly in recent years to exceed \$82 billion in 2011-12 – approximately 5 per cent of GDP. From a quarterly peak in June 2012 of more than \$25 billion, mining investment eased 3 per cent in the September quarter. However, based on the August 2012 capital expenditure survey, mining capital expenditure is still expected to increase to \$119 billion in 2012-13. Exploration expenditure across the range of commodities (except minerals sands and diamonds) continues to increase.

### 2.1 EXPLORATION

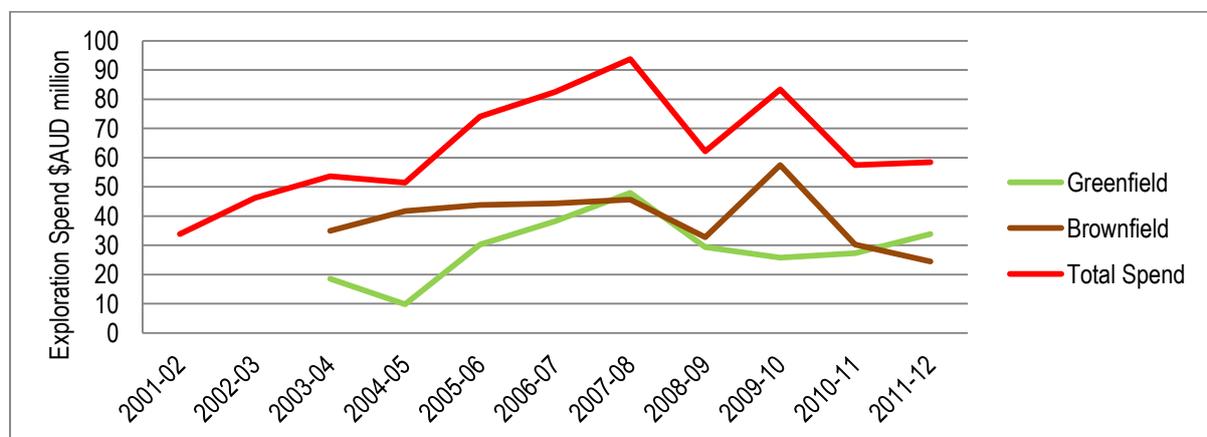
Exploration expenditure across Australia decreased from to \$1,061.1 million in June 2012 to \$823.9 in December 2012. On a year on year basis, Victoria's exploration spend in 2012 was \$44.1million, 47 per cent lower than the \$65 million that was spent in 2011. This rate of decline was second only to the Northern Territory although the total spend of the NT remained more than treble that of Victoria. Tasmania spent slightly less (\$40.1 million) on minerals exploration than Victoria<sup>7</sup>.

Exploration is the core activity that sustains the minerals industry, without discovering new deposits and expanding identified reserves, existing supplies would be exhausted rapidly. Encouraging exploration in Victoria will be the driver which sustains and enhances the minerals industry in the State. The greatest threat to the future of the Victorian minerals industry and its ability to continue adding value to the State's economy is the decline in discovery of new resource deposits.

Minerals exploration is categorised into two distinct types: brownfield and greenfields. Brownfields exploration is conducted within geological terrain that is within close proximity to known ore deposits and existing mines, essentially expanding the size of the proven resource. Brownfields exploration can take advantage of existing mine infrastructure and therefore reduced development costs.

Greenfields exploration occurs in locations with unexplored or underexplored geology using geo-scientific modelling and pre-competitive data to predict where deposits may be and then surveying and drilling to clarify the location of these predicted deposits and the viability of extracting the resource. By its very nature greenfields exploration is highly speculative and expensive, with low success rates meaning there is often no return on investment. However, despite this, greenfields exploration remains the cornerstone of the minerals industry.

**Figure 2:** Victorian Minerals Exploration<sup>8</sup>



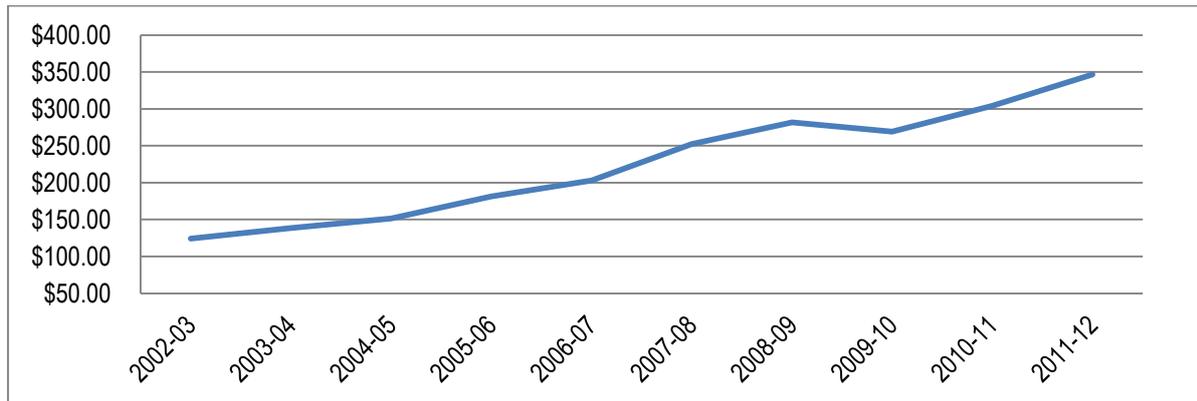
<sup>7</sup> ABS: 8412.0 - Mineral and Petroleum Exploration, Australia, Dec 2012

<sup>8</sup> Graph compiled from ABS data: 8412.0 – Minerals and Petroleum Exploration Note: ABS figures for type of exploration do not exist prior to 2003-4.

The high risk nature of Greenfield exploration results in low expenditure with only minor or, temporary increases when sites undertake specific drill programs. Additionally, brownfields exploration has also decreased markedly over the last decade. Specific reasons for the decline in exploration can vary from mineral to mineral. Total exploration expenditure in Victoria between 2001 and 2011 rose from \$33.9m to \$58.4m, a 72 per cent increase. However, when underlying inflation is taken into account the increase in exploration spend in 2001 dollars was actually only 30 per cent<sup>9</sup>.

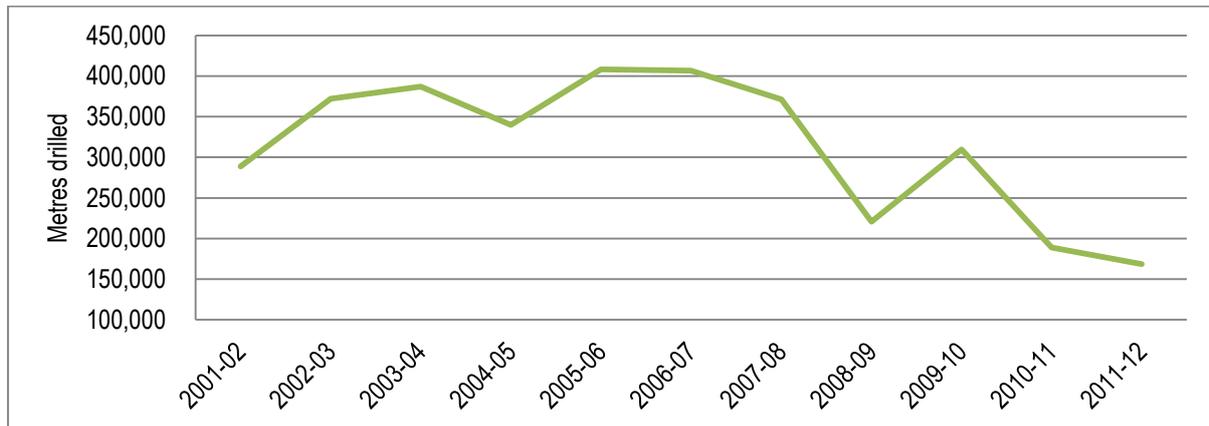
Australian Bureau of Statistics (ABS) data while available at the national level for number and cost of metres drilled, data is not available at the state level to enable a breakdown of the metres drilled for exploration in Victoria. However, by cross-referencing national data on exploration spend and total metres drilled, there has been a steady increase in the cost of exploration drilling per metre.

**Figure 3:** Cost per metre drilled nationally<sup>10</sup>



If the national metres drilled cost is analysed against the expenditure in Victoria, there is a continual decline in metres drilled in Victoria.

**Figure 4:** Estimated metres drilled in Victoria<sup>11</sup>



After growth of less than half a per cent in 2009-10, mineral exploration expenditure in Australia increased 32 per cent in 2010-11 to \$3 billion. Minerals energy resources are a significant part of this with coal experiencing the largest growth in the past year. Table 2 shows exploration expenditure by mineral sought. Every commodity except minerals sands and diamonds recorded significant additional expenditure. The largest increases were in

<sup>9</sup> Calculated using ABS exploration expenditure data from (8412.0 – Minerals and Petroleum Exploration) and Reserve Bank of Australia inflation calculator.

<sup>10</sup> Calculated from 2002-2012 releases of ABS 8412.0 – Minerals and Petroleum Exploration - Expenditure and metres drilled.

<sup>11</sup> Calculated by dividing national total exploration spend by total metres drilled to get an approximate cost per metre. The Victorian total exploration was then divided by the national approximate cost per metre amount.

exploration for coal (up 62 per cent) and base metals including increases of 60 per cent for copper and 46 per cent for silver, lead and zinc.

Victoria, specifically, has the potential to increase its market share of exploration for bulk commodities.

**Table 2:** Australian Mineral exploration expenditure – by mineral sought

	2010-11 (\$m)	2011-12	per cent change
Copper	323.0	442.6	37.0
Silver, lead, zinc	75.5	87.5	15.9
Nickel, cobalt	270.9	265.4	-2.0
Gold	652.1	768.0	17.8
Iron ore	664.9	1150.6	73.0
Mineral sands	26.1	N/A	N/A
Uranium	213.9	153.6	-28.2
Coal	519.7	834.3	60.5
Diamonds	8.9	N/A	N/A
Other	196.3	199.2	1.5
<b>Total</b>	<b>2951.3</b>	<b>3953.0</b>	<b>33.9</b>

Stimulation of precompetitive exploration through continuing to invest in the gathering and analysis of data by GeoScience Victoria is essential. Almost all other Australian jurisdictions are very active in this space and in Tasmania, WA and SA it has been a major supplement and catalyst for greenfield and brownfield exploration.

Numerous studies into the barriers for mineral exploration have been conducted over the past few years. In addition to the Victorian Parliamentary Inquiry which we discuss later, the Australian Government recently asked the Productivity Commission to undertake a 12-month inquiry into the non-financial barriers to mineral and energy resource exploration<sup>12</sup>.

Specifically, the Commission is asked to:

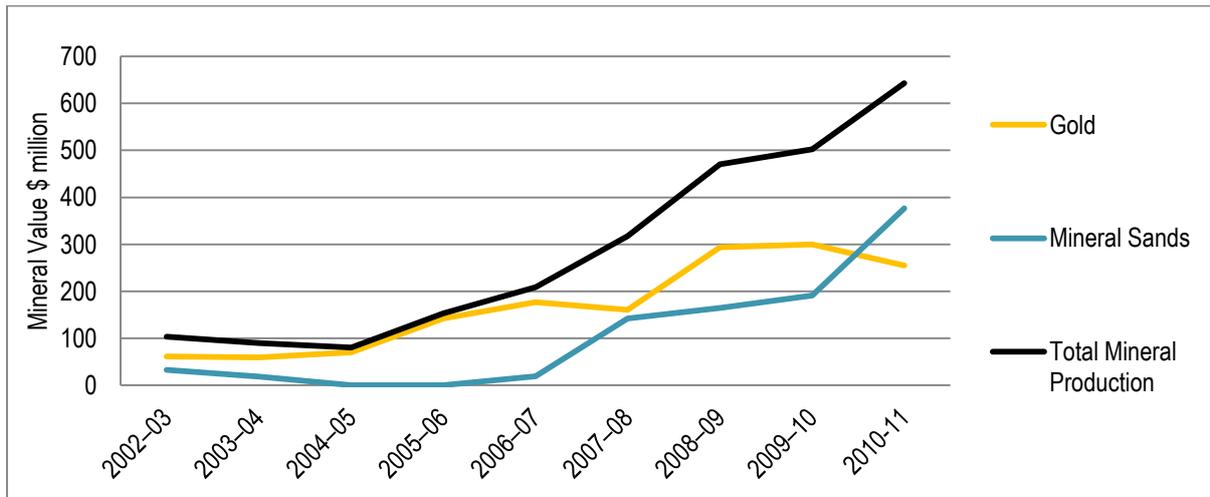
- determine if there is evidence of unnecessary regulatory burden and if there is, make recommendations on how to reduce or eliminate these burdens
- examine the complexity and time frames of government approvals processes for exploration, and potential for delay due to appeals both within and across jurisdictions
- examine areas of duplication between and within Local, State, Territory and Commonwealth regulation that can be triggered throughout an exploration project
- examine costs of non-financial barriers (including regulatory and related costs)
- consider options to improve the regulatory environment for exploration activities, having regard to regulatory objectives
- assess the impact of non-financial barriers on international competitiveness and economic performance of Australia's exploration sector.

## 2.2 MINERAL PRODUCTION

The Victorian minerals industry is typically separated into the coal sector and the metalliferous sector. The metalliferous sector is dominated by a small number of operating gold mines and mineral sands mining. The total value of Victoria's mineral production was approximately \$642 million in 2010-11 (excluding brown coal).

<sup>12</sup> <http://www.pc.gov.au/projects/inquiry/resource-exploration/issues>

**Figure 5:** Gross value of Victorian mineral production<sup>13</sup>

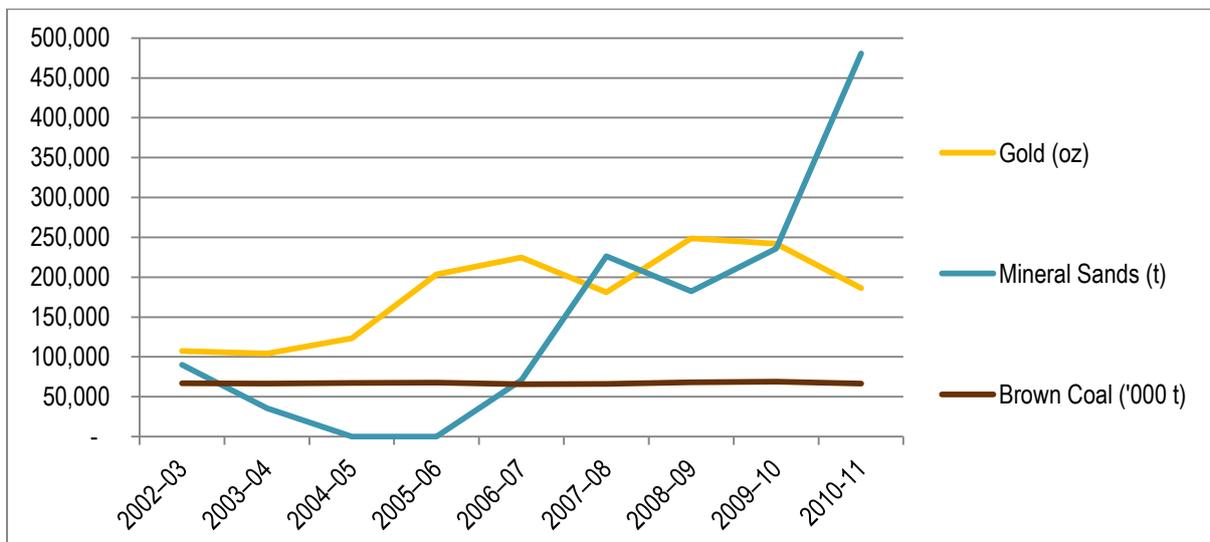


The dominance of the Victorian industry by gold declined markedly in 2010-11 as production decreased by 23 per cent. The decline in production was indicative of the Victorian gold mining sectors reliance on a small number of major mines. As the Fosterville, Stawell and Bendigo mines produced 99 per cent of all gold mined in Victoria in 2010-11, any reduction in their output dramatically affects overall gold production.

Gold prices have almost tripled since 2001-02; this dramatic increase in the gold spot price has offset declines in Victorian gold production in terms of industry value. However, given the significant increase in costs over the past decade, margins remain low for Victorian gold producers.

Production of mineral sands continues to significantly trend upwards. The Victorian industry’s vulnerability to the fluctuations within the gold sector, both in terms of the gold price, production volumes and rising production costs was positively offset by the dramatic increase in both the value and production of heavy mineral sands.

**Figure 6:** Victorian mineral production – selected commodities<sup>14</sup>



Brown Coal is currently not traded on the commodities markets nor is it exported; as such it has no market dictated price in the way other minerals do. The value of Victoria’s brown coal is prescribed by its use to

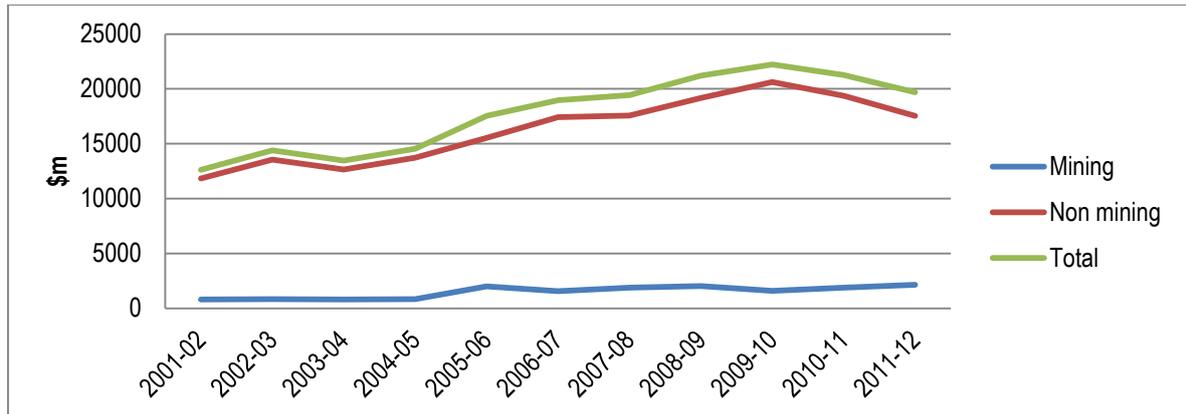
<sup>13</sup> Compiled from DPI Statistical Review reports 2002 to 2011.

<sup>14</sup> DPI Statistical Review 2011.

generate power. The Department of Primary Industries (DPI) has used a range of estimated values in the past although the calculation process of these values was unclear and failed to reflect the implied value power generators place on the input. As there is no price on Victoria's brown coal at present there are no coal production value figures.

The mining industry continues to dominate investment growth in Australia with the industry's capital expenditure eclipsing that of the rest of the economy in late 2011. In Victoria however, the picture is rather different with the mining industry only making up a minor proportion of investment in the State.

**Figure 7:** Victorian Capital Expenditure<sup>15</sup>



## 2.3 MINERAL DEVELOPMENT POTENTIAL

Victoria faces a range of issues when compared to the other mainland jurisdictions of Australia. Two in particular - a small land mass with the second largest population of the country; this same land being well endowed with economically recoverable mineral resources and an abundance of brown coal.

Building on the existing exploration and mineral developments Victoria is prospective for a range of new mineral development opportunities.

### Coal

A number of companies are actively working at developing coal projects for power generation, gas, urea and diesel production. Several other projects are at conceptual stage. Some of these projects could commence by 2020 with lifetimes in excess of 40 years. New coal technology demonstration projects are likely to start earlier.

Future large-scale industries based on the coal resource could include coal conversion to diesel, methanol, ammonia, urea, coal char, dried coal and electricity co-generation.

### Alternate fuel types

#### Coal Seam Gas

There may be potential for a coal seam gas (CSG) industry in Victoria for the generation of electricity and to produce derivative products. The Queensland CSG industry has grown rapidly, whilst the Victorian industry is yet to get off the ground. A significant barrier to this industry is groundwater – there is an insufficient number of groundwater licences available for purchase.

#### Coal gasification

Gasification of coal can produce synthesis gas (syngas, a mixture of predominantly carbon monoxide, carbon dioxide and hydrogen). This syngas can be used in the development of a range of products.

<sup>15</sup> Ibid ABS 5625.0.

### **Alternate coal uses**

Chars and cokes can be derived from brown coal for pyrometallurgical applications, to produce reductants and carburising chemicals and as a general carbon source for other applications.

Calcium loaded char has applications in water & waste treatment and as an ion-exchange medium. In the future, brown coal may even be refined into a purer form of carbon for use in production of a myriad of carbon products including carbon fibres, carbon anodes, activated carbons, filter aids, pigments, graphite lubricants and conductors and formed carbon materials<sup>16</sup>.

Carbon, in the form of a brown coal based fertiliser, as a soil conditioner is also highly prospective.

### **Base metals**

Victoria is regarded as a greenfield area for base metal exploration, however geological links between parts of Victoria and the highly prospective Mt Read Volcanics on the west coast of Tasmania, together with geological analogues, provide new incentives for exploration.

Copper, lead, zinc, molybdenum and nickel are present across Victoria.

### **Gold**

Victoria remains highly prospective for gold. GeoScience Victoria's Gold Undercover Initiative has shown that there may be 73 million ounces of gold still to be discovered in northern Victoria<sup>17</sup>. New exploration and mining technology and continued high gold prices are necessary ingredients for the industry to expand.

### **Uranium/thorium**

The exploration for uranium or thorium is prohibited under section 5 of the *Nuclear Activities (Prohibitions) Act* 1983. This Act requires amendment to allow for the exploration of both minerals to identify any economic opportunities for the State of Victoria.

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<sup>16</sup> DPI Fact Sheet: Our Coal Our Future – Future opportunities for brown coal.

<sup>17</sup> <http://new.dpi.vic.gov.au/earth-resources/industries/minerals/metals>

### 3. CONSTRAINTS ON GROWTH

With expanding industries across the nation and the emergence of new economies gearing up to supply the growing demand for resources<sup>18</sup>, **Victoria – a once proud mining State - is at risk of being left behind. For good.**

#### 3.1 VICTORIA'S INTERNATIONAL STANDING

In MCA Victoria's submission to the Economic Development and Infrastructure Committee's *Inquiry into Greenfields Mineral Exploration and Project Development in Victoria*, [http://www.minerals.org.au/news/inquiry\\_into\\_greenfields\\_mineral\\_exploration\\_and\\_project\\_development\\_in\\_vict/](http://www.minerals.org.au/news/inquiry_into_greenfields_mineral_exploration_and_project_development_in_vict/), we discussed at length the barriers to exploration and mineral development in Victoria faced by investors and companies.

Government has not yet responded to the inquiry and the issues noted by the MCA continue to represent barriers to the development of Victoria's rich natural endowment.

##### Fraser Institute Survey

The Fraser Institute recently released its annual survey of Mining Companies for 2012-13<sup>19</sup>. Notwithstanding Victoria's improvement over last year's result, the State continues to fare poorly (with a Policy Potential Index of 66.0 out of 100 and ranked 24 out of 93 jurisdictions) and was ranked lower than Western Australia, South Australia and the Northern Territory.

Victoria rated 57 of 96 jurisdictions for current mineral potential assuming current regulations and land use restrictions. This is compounded by the perception that Victoria is not geologically prospective - rated 86 of 96 for mineral potential assuming no land use restrictions in place and assuming industry "best practices".

This year's improved result should not be taken as a reversal of Victoria's decline in policy potential index score (out of 100) and in world ranking seen over the preceding 5 years. Victoria has climbed the rankings due to the significant challenges faced in NSW and Queensland as a result of arbitrary policy and regulatory regimes.

**Table 3 – Victoria's performance over time**

Year	Rank	Score
2006-07	12/65	76.7
2007-08	29/68	53.0
2008-09	29/71	57.1
2009-10	30/72	57.0
2010-11	31/79	56.9
2011-12	44/93	52.1
2012-13	24/96	66.0

For Victoria's attractiveness to industry to improve, regulatory reform is essential.

<sup>18</sup> Refer to the MCA Federal Budget submission.

<sup>19</sup> <http://www.fraserinstitute.org/research-news/display.aspx?id=19401>

Since 1997, The Fraser Institute has conducted an annual survey of metalliferous mining and exploration companies to assess how mineral endowments and public policy factors such as taxation and regulation affect 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 93 jurisdictions around the world, on every continent except Antarctica, including sub-national jurisdictions in Canada, Australia, and the United States.

### 3.2 REGULATORY BURDEN

Most Governments express aspirations to reduce the burden of unnecessary regulation on business. Governments at both Commonwealth and State levels, and from both sides of politics, have committed to reduce red tape. The MCA is supportive of the Victorian government's appointment of a Commissioner for Red Tape to deliver on its commitment to reduce red tape by 25 per cent.

Over the previous decade there have been several Parliamentary inquiries and governmental reviews which have examined the regulation of the minerals industry. A plethora of potential improvements have been identified by these inquiries and to reduce the regulatory burden without compromising policy outcomes. These processes have identified numerous opportunities to improve regulation, however implementation of these reforms has not been as quick or complete as anticipated. In addition, other regulatory increases have more than offset the few implemented reductions.

MCA engaged KPMG<sup>20</sup> to undertake an independent review of Victorian Government regulatory changes affecting the minerals industry.

#### Red tape

KPMG found that the amount of regulation has continued to grow – based on two proxy measures that are used to provide an indication of the extent of change to regulation, namely the number of times the Act has been amended; and the change to the number of pages of legislation.

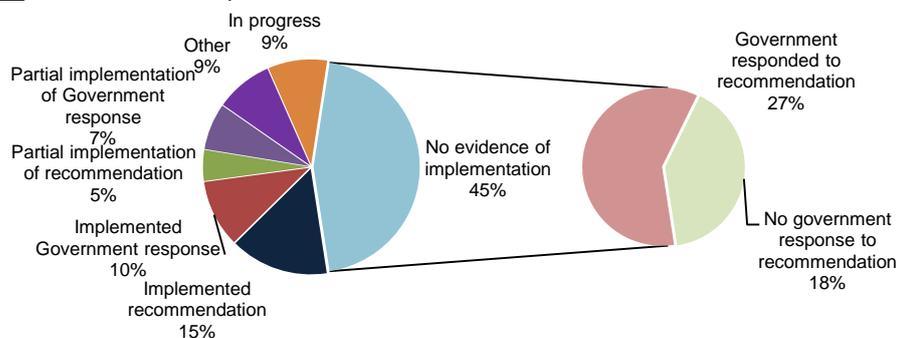
There has been a steady progression of amendments of the *Mineral Resources (Sustainable Development) Act* between 2004 and 2011. The Act has been amended 37 times in that period and over that time, the volume of pages increased by 57 per cent from 192 to 332 pages.

#### Assessment of implementation of reform reviews

Successive State Governments have launched independent inquiries, commissioned reports, and undertaken extensive consultations to reduce unnecessary regulatory burden on the minerals industry. KPMG reviewed seven Victorian Government inquiries, reports and papers and identified 126 recommendations or commitments to actions intended to improve the regulation affecting the minerals sector. Where possible the Government response to each recommendation was documented.

The available information suggests that overall 24 per cent of the recommendations or the actions outlined in the government response have been implemented, a further 12 per cent are partially implemented, and 10 per cent are in progress. There is no public evidence of implementation regarding 45 per cent of the recommendations. In 9 per cent of cases the Government response rejected the recommendation, or did not commit to a specific action.

**Figure 8:** assessment of implementation of recommendations



<sup>20</sup> A review of regulatory change affecting Victoria's mining sector – 2011, KPMG

The Victorian minerals industry has participated in dozens of inquiries and reviews over the past decade, each being conducted at the portfolio level, focusing on single issues. The Victorian Competition and Efficiency Commission (VCEC) has also done some excellent work, however as with portfolio reports, we see little change in the policy or regulatory environment.

In addition to the Government's response to EDIC, MCA Victoria is seeking responses to these other inquiries.

Industry simply asks the Government to implement the recommendations of these various inquiries and reviews. Many recommendations come at no or little cost but would see an extraordinary impact on efficiency and effectiveness of government processes and encouragement of investment in minerals projects.

## 4. POLICY and REGULATORY PRIORITIES

### Realising the opportunity of the mining boom for Victoria should be a significant factor in the 2013-14 State Budget.

The minerals industry's priorities as stated in the MCA 2013-14 Commonwealth pre-Budget submission are:

- **Roadmap for fiscal sustainability** – Improving the long-term structural health of the Budget remains critical, notwithstanding cyclical impacts on the budget bottom-line. To ensure this is done in a way that supports growth and productivity, the focus should be on cutting poor quality spending, not higher taxes.
- **Efficient capacity building** – Efficient public sector investments and targeted policy reforms are needed to overcome current and future capacity constraints in social and physical infrastructure and skills, given the structural changes taking place in the Australian economy. Priorities should include skills development and improved infrastructure, especially in regions where governments have abrogated their core responsibilities to deliver citizenship entitlements.
- **Lifting the speed limits to national growth** – by building the pool of skilled labour, through market responsive education and training in vocations and professions and enabling the ready import labour where there are critical skills shortages; and unfettered access to foreign direct investment and globally competitive suppliers – will ease the inflationary pressures on labour costs, energy (diesel fuel) and raw materials costs.

Australia should continue to promote international trade and investment liberalisation. The accent should be on beyond-the-border trade restrictions, services and, in particular, investment.

- **Best practice regulatory reform** – reforms are urgently needed to poorly developed and administered regulation at all levels of government. Inefficient and overlapping regulation is creating higher costs and uncertainty for the minerals industry in the key areas of:
  1. project approvals – Federal/State relations should be streamlined to institute strategic land use assessment and planning, and to limit the Commonwealth to a strategic oversight and enforcement role while devolving assessment and approvals processes to the States;
  2. water market access – the minerals industry should be included in water planning and entitlement regimes and the development of a national water trading market;
  3. occupational health and safety – nationally uniform, risk-based and consistent legislation should be introduced across jurisdictions, sectors and industrial activities; and
  4. infrastructure regulation reform – market based solutions should provide closer alignment between the owner and those with a direct economic interest in the operation of the logistics chain.
- **Stable, predictable, efficient and internationally competitive taxation system** – Notwithstanding significant reforms to Australia's taxation system over several decades, it remains complex, economically inefficient and administratively complex across all aspects – personal income tax, the tax/social security

interface, business tax arrangements including resource rents, and indirect taxes both the GST and State taxes and royalties.

Australia's tax system should fairly balance the need to protect the taxation revenue base with the principles of a good tax system – efficiency, fairness (horizontal and vertical equity), simplicity, transparency, and with low compliance costs. The tax system should enhance competitiveness in providing a climate conducive to improved investment within and into Australia and from Australia for Australian-based entities and individuals, and should not impede organisational restructuring.

- **Workplace arrangements should be flexible for both employers and employees, encouraging direct collaborative relationships, promoting productivity and safety and health** – The Federal Government's Fair Work Act contains substantial flaws, principally restrictions on legitimate individual agreements, expanded scope of subject matter in agreements beyond those directly relevant to employment arrangements, expanded union right of entry (that goes beyond worker interest to union claims of coverage) and broader than necessary Good Faith bargaining rules.
- **Reconciling climate change policy and energy security** – Reducing greenhouse gas emissions and the carbon intensity of the Australian economy need not compromise the international competitiveness of trade exposed industries nor the incentive to invest in new energy capacity – electricity generation, gas and transport fuels.

Pricing carbon through a market mechanism in a manner which is both in sync with the development of low emissions technologies and aligned with a comprehensive global protocol (which at minimum contains an understanding of the imperative to act and agreement by all to respond) is superior to Australia's current array of policies – the Clean Energy Future (carbon tax), the Renewable Energy Target and the plethora of state based initiatives.

The carbon pricing scheme has little more intent than a massive tax and redistribution chum of compensation. It will impose costs on key trade exposed industries that overseas competitors will not face – while failing to reduce emissions, or improve the economy's carbon competitiveness in the event of a future carbon constrained world.

- **Deep benchmarking for global competitiveness** – The Federal Government's Asian Century White Paper establishes a broad framework and aspiration for enhanced Australian prosperity, but it is not compelling on the mechanisms to drive and enable higher productivity. The Productivity Commission should be given a sweeping mandate for 'deep benchmarking' of Australia's international competitiveness with an enhanced focus on Asian benchmarks.

The State Government's leadership in the Commonwealth debates on economy-wide policy settings (including energy and climate change policy, taxation, land use and workplace regulation) is needed.

Consistent with this framework, the Victorian State Budget Victoria needs to specifically focus on Victoria's competitiveness and promote flexibility and growth.

Victoria is at risk of losing its minerals industry and the Government needs to commit to the development of a sustainable minerals industry to help underpin the economic prosperity of the State.

## 4.1 STATE WIDE REGULATORY REFORM

### Project Approvals

Variability in the content, administration and enforcement of project approvals and environmental protection processes carries large costs for no appreciable environmental gain. This represents a major barrier to the effective and efficient operation of the minerals industry as companies must manage their operations according to sometimes conflicting regulatory regimes within the State. Multiple layers of regulation create artificial barriers to market access for land and water.

The MCA does not advocate a reduction in social or environmental standards. We do however seek greater efficiency, effectiveness and consistency. We see the resources and competency of the industry regulators as a critical area for attention. We also seek a whole-of-government approach to project approvals so as to avoid the need to satisfy every relevant agency individually. Improving the institutional arrangements under which regulators operate can further have a big impact on reducing red tape.

The activities of the minerals industry (exploration, mining and mineral processing) are regulated through a multitude of controls by all three tiers of government. However the State Government administers the majority of regulations impacting exploration and mining projects.

*A one-stop-shop for approvals has been under discussion for several years now – unfortunately industry has no further clarity on what this may look like and is concerned that competing Departments and Agencies will hinder the establishment of an effective approvals authority.*

Currently there is no single point of contact, or one stop shop for regulation or project approvals, nor is there a whole-of-government approach to regulation in the State. Generally, each regulatory agency operates in isolation to the others meaning that proponent must separately satisfy a multitude of government department and regulatory bodies – creating significant duplication and extended timelines.

The benefits of a whole of government administration of approvals would not only reduce the regulatory burden on industry it would reduce the costs of regulating the industry through removing duplication and improving efficiency. A consolidated regulatory environment would also provide improved conditions for regulatory compliance by creating a much clearer regulatory regime for industry to operate under. Currently the ability of operators to demonstrate compliance is hindered by the layers and layers of stand-alone regulatory instruments used to regulate a given activity.

The MCA is currently updating its 2006 audit of regulation affecting exploration and mining approvals. Preliminary findings of the study have indicated that aside from issues of duplication, there continues to be a lack of co-ordination and integration in the administration of processes under Commonwealth and State/Territory legislation. These issues are further exacerbated where Departmental restructuring occurs and there is a loss of continuity in the assessment administration.

### EDIC Parliamentary Inquiry

MCA Victoria applauded the Victorian Government in establishing the Economic Development and Infrastructure Committee Inquiry (EDIC) into Greenfields Mineral Exploration and Project Development in Victoria.

MCA Victoria made a comprehensive submission<sup>21</sup> to the Committee and gave evidence at the Committee hearings.

With the stamp of a Parliamentary Committee, the minerals industry hopes that this Inquiry will deliver a mature and proactive policy and regulatory approach to enhance the growth of the Victorian minerals industry, recapture

<sup>21</sup> [http://www.minerals.org.au/news/securing\\_the\\_future\\_of\\_the\\_victorian\\_minerals\\_industry/](http://www.minerals.org.au/news/securing_the_future_of_the_victorian_minerals_industry/)

market share and ensure a vibrant and sustainable minerals industry which can bring economic and social wealth to all Victorians.

The Committee's recommendations were broadly supported and included both regulation reform and improvements in regulatory practice and administrative burden. Many recommendations are considered core business of a regulator and industry notes that a number of other jurisdictions have completed or commenced these reforms.

The industry awaits the Government's response to the recommendations and furthermore recommends that a timeline for the implementation of the Government's response be provided along with the response, as previous experience with inquiries, as noted earlier, shows that such recommendations never reach fruition and have often been buried within the bureaucracy.

Given the largely incomplete reforms of the past decade, the industry is hopeful that the Government's impending response to the Parliamentary Inquiry can provide the additional impetus that is needed to achieve meaningful reform.

The role of VCEC should be further enhanced to include monitoring and reporting of progress on reform.

### **Reform of the Mineral Resources (Sustainable Development) Act 1990**

A review of the 20 year old *Mineral Resources (Sustainable Development) Act 1990 (MR(SD)A)* was commenced in 2009. The Stage 1 reforms, directed at tenement licencing arrangements, were passed by the Parliament in 2010 and came into effect on 1 February 2012.

The minerals industry did not agree with the amendments to the exploration licencing requirements but did support the other amendments proposed such as the introduction of a retention licence, the improved landowner consent provisions and the improved work plan approval processes.

The proposed changes to the exploration licence arrangements were claimed to be necessary to make Victoria more attractive to investors by increasing the turn-over of licences. The industry could not reconcile this Government objective with the current reality and remains extremely concerned that the new provisions create a sovereign risk issue for companies that have invested significant resources in assembling their exploration licence portfolios from a piecemeal of historic mining and exploration tenements.

MCA is pleased that the EDIC Inquiry recommended that the amendments made to the licencing regime be reviewed to remove the unwelcomed sovereign risks to the exploration licencing provisions.

The Stage 2 reforms focusing on work plan and project approvals processes were sold to industry as the benefits to counter the down side of some of the Stage 1 reforms. If approached in a manner to streamline the regulatory burden and break down the 'silos' of the bureaucracy; the reforms have the potential to improve the regulatory burden on the minerals sector.

In the final quarter of 2012, the Victorian Government chose to amend the enforcement provisions under section 110 of the *MR(SD)A*. The Victorian minerals industry actively opposed these amendments; however Government dismissed the industries concerns and proceeded to pass the amendments through Parliament. Unfortunately both the Government and the bureaucracy failed to understand the gravity of the concerns held by industry.

The Government committed to develop a 'protocol' on how these provisions will operate. MCA remains unsatisfied with the draft protocol – now reframed as Departmental Guidelines as they do not provide sufficient rigour and certainty to what are quite serious offence provisions. Contrary to the assurances given by the Government, the draft Departmental Guidelines fail to provide certainty to industry that these extraordinary new powers afforded to the government will not be misused.

The Victorian minerals industry does not contest the underlying objective behind the amendments to the *MR(SD)A*. The State should have the necessary powers to act on a perceived environmental or public safety risk when there are appropriate grounds to do so.

However we believe the legislation should allow for a full consultation process to address the many predicted consequences.

Industries concerns can be summarised by the following. The new provisions:

- remove the basic right of procedural fairness, contradicting the principle of natural justice
- extend the responsibility and liability of businesses to matters beyond their control.
- provide that third parties can be engaged to undertake work on a licence holders operation without consideration of safety, environmental, community or economic impacts and requires that a licence holder pay cost and compensation for these activities.
- incorporate transitional provisions that allow the new provisions to be applied retrospectively.

These provisions allow governments to unreasonably interfere in the operation of Victoria's minerals industry, and further deny the right to test these powers if they have been applied inappropriately or in error.

### **Regulatory practice**

As detailed in the 2012-13 pre-budget submission, a significant barrier to reform remains in some sections of the public service. For a number of years the technical resourcing of the staff within Departments has not kept pace with industry expectations and needs. These issues are not unique to Victoria; over time, all levels of government across the nation have become more generalist; however for an industry that is technical in nature this can be a barrier for developing the mineral wealth of Victoria, and as such, this requires attention. MCA Victoria seeks a whole-of-government, approval authority.

Administration of law also tends to be less than predictable and somewhat opaque. Certainty of process is critical. The relationship between various Agencies and Departments continues to be hostile and leads to inefficiencies, delays and patch protection. This has resulted in a lack of a whole of government approach.

The creation of a more efficient and streamlined regulatory environment would provide great benefits to local economies in regions with resource potential. Such a system would remove barriers for industry to invest in projects that could bring jobs and prosperity to many parts of Victoria. The reforms implemented by South Australia over the last decade and Western Australia more recently are prime examples of how effectively governments can successfully change the regulatory and policy environment to attract investment.

### **Red Tape Commissioner**

MCA Victoria is pleased that the Government has enlisted the State's first Red Tape Commissioner to consult with the business community to identify opportunities to reduce red tape and regulatory burden. Industry looks forward to assisting the Commissioner identify and prioritise reforms.

We are further pleased that in parallel, the Treasurer instructed key regulators to "find ways to cut more of the red tape strangling Victorian businesses". To be directed through Ministers issuing Departments with a Statement of Expectations that articulate the Government's priorities and objectives for each regulator, the Statements target specific priorities in matters of regulatory governance and practice.

The commitment to annual public reports on actions taken to fulfil these expectations; improved accountability and transparency of the regulator and move towards risk-based approaches are long overdue.

#### **MCA Victoria recommends that the Victorian Government:**

- Actively measure, monitor and publicly report on reductions in red tape
- Respond to the EDIC Parliamentary Inquiry recommendations and develop a reform timeline

- Assess the range of recommendations arising from reviews/inquiries undertaken by previous governments and determine what will be progressed or where alternate reforms are proposed
- Work towards a whole-of-government, one-stop-shop approval authority
- Ensure 'whole-of-government' decision making that approve projects on merit and that are timely
- Reignite Stage 2 reforms to the *MR(SD)A*
- Empower VCEC with a role in monitoring and reporting on regulatory reforms
- Review the technical skills needs of Departments and Agencies to better align with industry practice.

## 4.2 TAXATION AND ROYALTIES

Global competition for investment in the minerals industry is rapidly increasing. If Victoria is to benefit from its natural endowment and attract investment then the State must find ways to stand out from its competitors. State Government taxes are a key lever.

Victoria does not have the highest payroll tax in the nation; however the tax is a dead weight tax which acts as a disincentive to business growth. In effect it is a penalty tax on the creation of jobs. The Victorian Government has the opportunity to reduce this tax and encourage new businesses to establish themselves in Victoria and for businesses operating in the State to expand.

For some years Victorian employers have enjoyed low WorkCover premiums whilst continuing to improve safety and health performance. MCA Victoria is concerned that given the structural issues placing pressure on the State budget that the Government will continue draw a larger dividend from the scheme over the next few years for the and that employers will be asked to also wear increases in premiums in the event of any shortfall in WorkSafe's operating budget. With more money also being diverted away from WorkSafe activities into tenuously linked work health initiatives, Victoria's leadership in delivering improvements in safety and health could be under threat.

Royalties can be used as competitive advantage by States and Territories to attract exploration and mining companies.

The transfer of ownership of minerals from the Crown to the miner and the payment of a Royalty can be seen as a partnership. Without this partnership the State would derive no value for the resource, in terms of jobs, regional development or the direct financial benefits of royalties. The current Victorian mineral royalty rate in the existing Regulations of 2.75 per cent of the net market value of the resource is appropriate considering the financial and technical risks involved with minerals development. This royalty rate is competitive with other states ensuring that Victoria is not competitively disadvantaged. Until the Victorian gold sector is sustainable, gold should continue to be exempt from royalty payments to encourage exploration and investment. In addition, emerging resource industries such as coal seam methane, underground coal gasification, and engineered biogenic methane generation all require large capital outlays and significant technology risk. These industry sub-sectors should also be encouraged through a similar royalty holiday.

### **MCA Victoria recommends that the Victorian Government:**

- Continues to deliver low WorkCover premiums
- Ensure WorkSafe is resourced to be able to continue to lead the nation on safety and health performance
- Maintain a competitive royalty rate that encourages investment

## 4.3 COAL ALLOCATION

Victoria has world class lignite (brown coal) deposits. A substantial area of land is held by the Government in the Latrobe Valley for future allocation of the resource. The Government has committed to tender a portion of this land as a coal allocation. This coal allocation could potentially set Victoria's economic future for many decades.

Mineral developments have long lead times with a range of complex approvals to traverse, finance to be won and large construction projects to be designed, tendered and built before the first tonne of product can be extracted. In parallel transport corridors that include export routes need to be developed.

Early decisions are critical to ensure that investment decisions can be made for Victoria to benefit from the development of the resource.

MCA Victoria urges the Government to announce a coal tender at the earliest possible opportunity along and engage with industry on the associated infrastructure needs.

It is critical that Government communicates with Victorians on the value that can be created sustainably through the extraction of the resource.

**MCA Victoria recommends that the Victorian Government:**

- Announce a formal coal tender.
- Establish a formal consultative group to plan for infrastructure to support the development.
- Inform Victorian's about the potential for Victoria to achieve significant economic and social benefits from utilisation of our coal resources

#### 4.4 COAL SEAM GAS/BIOGENIC METHANE

The decision to exploit the State's brown coal was a watershed in modern Victorian history. Victoria is faced with another watershed moment. It is the decision whether the state will further develop its brown coal resource by accessing the natural gas trapped within and near its seams.

Where there is seam of coal, there is also likely to be naturally occurring gas and while we don't know the full extent of Victoria's reserves, they are potentially as abundant as the brown coal itself.

There is nothing unusual or new about Coal Seam Gas (CSG) - it is little different to the product that has been extracted from Bass Strait for more almost 50 years. What is new is the location of this gas. While gas has been withdrawn from the seabed for decades it has only been done onshore for around the last 20 years.

CSG can be used like any other form of gas. It can feed directly into the grid for households and businesses for power and heat; it can also be transformed into liquid natural gas and exported.

Importantly, a new and vibrant Victorian coal seam gas sector would deliver significant benefits to the state, including:

- Energy security;
- Significant new taxes and royalties;
- New infrastructure and service industries particularly in regional communities;
- New jobs; and
- New water source

It is a resource that has the benefit to boost the prosperity of every Victorian.

In Victoria, CSG is classified as a mineral under the main piece of law<sup>22</sup> governing the sustainable development of mineral resources. CSG exploration and development in Victoria is undertaken within a very strong regulatory framework. The law places very clear duties on proponents relating to consultation, community engagement and landowner consent and compensation.

<sup>22</sup> Mineral Resources (Sustainable Development) Act 1990

These requirements have been in place for some time and are not new to the minerals industry. Indeed MCA Victoria actively supported this strong regulatory regime to ensure the minerals industry can continue to coexist with other land users as it has done for more than a century.

Given this, it was disappointing that in August 2012 the Victorian Government placed a temporary hold on any exploration licence that includes CSG as a prospect. Decisions on granting exploration licenses should be based on rigorous scientific assessment and best practice environmental management rather than external pressures.

Policy decisions not based on sound science and robust risk-based regulatory frameworks, but on a scare campaign, sends a very negative signal to potential investors.

The decision to rely on a national framework for CSG exploration is concerning and the outcomes of any framework may be delayed for years. If this were so, Victoria would be turning its back on an industry that could generate thousands of jobs and provide significant taxation revenue for the state.

Gas consumption across Australia is forecast to rise significantly in the years ahead. Nine-five per cent of gas consumed in New South Wales is produced outside of the state and Victoria could become a significant part of this supply chain.

MCA Victoria made a comprehensive submission in response to the National Harmonised Framework: Coal Seam Gas and looks forward to the Victorian Government lifting the ban on exploration licences for coal seam gas at the earliest possible time.

**MCA Victoria recommends that the Victorian Government:**

- Remove the ban on exploration licences for coal seam gas
- Acknowledge Victoria's potential as a gas producer

#### **4.5 CLIMATE CHANGE AND ENERGY**

The Federal Government has pushed Australia ahead of key competitor nations by implementing a carbon pricing scheme which has multiple serious flaws. Victoria is bearing a significant burden because of this flawed policy. The carbon pricing regime that the government has imposed is putting Australia at a competitive disadvantage. It is the world's most onerous carbon price regime. Additional inefficient policies, principally the Renewable Energy Target, are disadvantaging Australia compared with other countries and disadvantaging Australian industries and businesses. Most of Australia's competitors in the mineral industry will not price carbon for many years, if at all. Worst of all is that the overall approach is creating international competitive disadvantage for negligible environmental gain.

The timeframe that industry was granted to transition to the new regime was also the shortest compared to any other country or region which is implementing a carbon pricing mechanism. The safeguards for jobs in industries which will be impacted are also the weakest in the world.

The Australian price started from July 2012 at \$23 a tonne while European carbon units have been selling for around Euro 9 (just over A\$11) in early 2012. Far from streamlining the array of climate policy measures, the Clean Energy Future package increased the number of conflicting and contradictory policies.

Companies and industries operation in Victoria face additional requirements through the *Climate Change Act 2010*; the Environment Protection Agency's Environment and Resource Efficiency Plans; and the Water Management Action Plan. Together, overlapping state and federal reporting schemes create a complex reporting environment that presents a number of risks and challenges to Victorian companies. These regulatory requirements require the reporting of a number of environmental, greenhouse and energy performance parameters. However, the exact definitions of environmental, greenhouse and energy metrics, as well as the definition of which activities are to be reported, can vary between schemes.

The reporting processes for each scheme exhibit numerous points of difference, including:

- Governing body
- Reporting thresholds
- Definitions
- Reporting mechanism
- Registration and reporting deadlines

This represents significant regulatory burden and red tape. Further rationalisation of these policies and programs is required.

### **Investment in low emissions technologies**

MCA Victoria applauds the Victorian Government for its continued support for low emission technologies. The carbon capture and storage project developed by CO<sub>2</sub>CRC is world leading and stands to provide valuable real world evidence to demonstrate the potential for carbon storage.

Victoria has much to gain from leading the development of technologies that provide further opportunities for the development of the Victorian brown coal fields.

The ongoing anti-coal campaign by a number of green groups, land access campaigners, academics and unions to disrupt, delay and destroy coal mining projects represents a direct attack on Australia's national and Victoria's State interest<sup>23</sup>.

Continued Government support for coal as a viable and vital industry will be necessary as part of a long-term partnership to develop, demonstrate and commercialise critical technologies to expand the industry.

### **Advanced Lignite Demonstration Program**

MCA Victoria congratulates the Commonwealth and Victorian Governments on their announcement of the launch of the Advanced Lignite Demonstration Program (ALDP). Each government has committed \$45 million (for a total of \$90 million) to fund the development and deployment of pre-commercial emerging technologies that can improve the economic potential of lignite and reduce the emissions intensity of its use. The Pre-commercial technologies for coal upgrading and coal conversion which are eligible for funding under the ALDP include, but are not limited to:

- Drying
- Dewatering
- Char Production
- Separation
- Liquefaction
- Combustion
- Gasification

For technologies to be eligible for funding under the ALDP they must be able to clearly identify the product stream they are targeting and demonstrate a credible strategy to get it to the market. Only technologies that are relevant to Victoria's Latrobe Valley will be considered. This program is an important pillar for developing the State's abundant resource as well as a significant economic driver for the Latrobe Valley.

#### **MCA Victoria recommends that the Victorian Government:**

- Further rationalise the State's energy and climate policies and programs
- Continue to support pre-competitive research and development that will unlock coals potential.

<sup>23</sup> MCA Media Release 6 March 2012, [http://www.minerals.org.au/news/stopping\\_coal\\_exports\\_strategy/](http://www.minerals.org.au/news/stopping_coal_exports_strategy/)

#### 4.6 PRE-COMPETITIVE GEOSCIENCE

The State as the owner and steward of minerals resources has an imperative to understand what is beneath our feet. Geoscientific agencies across the nation invest in pre-competitive research programs to map the geology and identify areas of potential interest for further exploratory work.

Well-designed partnerships between Government and industry have unleashed significant discoveries of ore bodies – most notable is the South Australian Plan for accelerating exploration (PACE) program. Victoria commenced a drilling initiative a few years ago however the program was narrowly defined and did not adequately acknowledge the range of activities that could be undertaken as part of a drilling program. Industry encouraged the Government to redefine the program in line with the PACE program. Whilst there were a couple of notable discoveries, unfortunately the program was not successful in initiating further exploration and was closed off.

Other jurisdictions provide significant investment for precompetitive geoscience and MCA Victoria is encouraged that the Parliamentary Committee recommended that Government establish a *“framework for an integrated mineral resources initiative such as SA’s PACE (sic) to drive new minerals exploration to encourage investment and economic development.”*

**MCA Victoria recommends that the Victorian Government:**

- Agree to and implement the Parliamentary Inquiry recommendation to establish a PACE style program
- Work closely with Geoscience Australia to unlock further research opportunities for Victoria

#### 4.7 ENVIRONMENTAL APPROVALS

Throughout 2012, MCA Victoria engaged with Government on reforming a range of environmental regimes.

**Native Vegetation Management Framework**

MCA Victoria was previously involved in the development of the Government’s native vegetation policy which culminated in the 2002 release of the Victorian Government’s Native Vegetation Management Framework (the Framework).

From the outset, MCA Victoria supported the intent of the Framework. However industry has expressed considerable frustration over the inconsistent interpretation and implementation of it by government officials since its inception. The key issues surrounding the Framework were its implementation and the availability of offsets.

Unlike many other industries, the area in which the minerals sector operates is constrained by the location of the target resources. The Industry applies significant effort to firstly avoiding (where possible), mitigating and minimising its impacts and also invests heavily in the continuous improvement of rehabilitation practices. However, the ability to develop appropriate science based environmental (biodiversity) offsets to compensate for significant residual impacts remains an important management tool for many projects.

Compliance with the Framework has proven to be very costly for mine operators. These high costs have resulted from not only the requirement to purchase offsets on freehold land, but also as a result of the Framework’s inherent complexity which has required engaging consultants to work out how to deliver net-gain. In addition, delays in approvals along with multiple meetings with departmental personnel to reach a common understanding have created an additional unnecessary burden on business.

MCA Victoria is encouraged by discussions about moving the Framework on to a risk-based platform. The minerals industry has long advocated for risk-based approaches to regulatory regimes. As native vegetation clearance permits for the minerals industry are granted under the MR(SD)A, embedding a tiered, risk-based approach to processing applications for permits must be integrated into the MR(SD)A as well as the planning system. Improved data is essential to enable a risk based approach to processing applications.

The full use of sound science and credible information in the decision making process is supported. Resourcing the collection and consolidation of this data is a major challenge for the Government. While a significant body of biodiversity information currently exists, it may be held by a variety of land managers and regulators, including NRM bodies, industry, and conservation organisations.

Further flexibility in achieving the objectives of the Framework are required; including:

- extension of offsets on public land;
- establishing strategic reserves that require works to go beyond the duty or care required by the land manager could provide a significant ecological benefit at lower cost to the developer and the regulator; and,
- expansion of payment in lieu as is available to Vic Roads.

Offsets for native vegetation on Crown land, beyond normal government programs, must be available. In some cases industry will be able to provide better preservation of native vegetation on crown land than the government can, e.g. in alpine areas fencing off areas with very high conservation status to prevent brumbies and deer from entering.

To support the Native Vegetation Management Framework, increased investment in improving understanding how the biodiversity value of native vegetation is defined and measured is essential. The existing information and databases for native vegetation and EVCs do not provide sufficient detail and therefore clarity.

### ***Environment Effects Act***

In very broad terms the proposed reforms to the *Environment Effects Act* 1978 (*EE Act*) are consistent with MCA policy as outlined in our previous submissions to the Victorian Competition and Efficiency Commission's inquiry into Environmental Regulation and the EDIC inquiry and are generally in alignment with the Commonwealth *Environmental Protection and Biodiversity Conservation Act* 1999 (*EPBC Act*).

The first principle "Requirements for environmental assessment and management are to be transparent, efficient and effective, in the context of applying proportionate or risk-weighted effort & ensuring accountability for outcomes" is an important addition to the environmental impact assessment regime in its move to bring risk and proportionality to the fore of the assessment process. The change in focus to impacts rather than activities is also strongly supported.

There are however two areas of significant concern to industry: the removal of the right for a proponent to seek a review of Minister's decision before the Victorian Civil and Administrative Tribunal, and Costs recovery

The first point is concerned with the removal of procedural fairness from the Environmental Impact Assessment (EIA) process. The need to retain a clear separation between Parliament and the judiciary is critical with an independent judiciary having the power to hear challenges to Acts of Parliament. To remove the opportunity for vexatious litigants to abuse the review provisions, the current reform should be seen as an opportunity to rectify those concerns by drafting clear review provisions that maintain the review rights for the proponent.

The second key point of concern is that of cost recovery. MCA Victoria does not support cost recovery to fund the Government in carrying out its legislative responsibilities and considers the application of EIA and related approvals processes should instead be properly resourced from the Government's existing revenue base.

In its submission MCA Victoria urged the Government to prepare an exposure draft of the proposed legislation for comment as this reform will require significant amendment to the *EE Act*.

### **Commonwealth-State duplication and delays in the approvals system results in high costs**

A significant impact arises by the regulatory overlap between the Commonwealth's *EPBC Act* and the Victorian *EE Act*. Many of the matters to be assessed, and documentation required, are duplicated between State and Commonwealth impact assessment processes.

In 2009, both the Hawke Review of the *EPBC Act*<sup>24</sup>, and a study by researchers at the Australian National University (ANU)<sup>25</sup>, noted significant duplication and inefficiencies remaining in project approvals processes in Australia. The ANU study estimated a direct cost to all industries of up to \$820 million over the life of the *EPBC Act*, with little demonstrable improvement in environmental outcomes. Costs from the failure to appropriately align approval processes across different levels of government are considerably higher. The Productivity Commission has also concluded that the cost of project delays due to duplication and inefficiencies in regulatory systems “could total several billion dollars each year”<sup>26</sup>.

Concerns over duplication and delays have long been raised by both the minerals industry and the broader business community. In recognition of these concerns, in April 2012, the Council of Australian Governments (COAG) committed to implementing bilateral agreements between the Commonwealth and the States for assessment and approvals. This was to be completed under the existing provisions of the *EPBC Act*.

Over the course of 2012, significant effort was put into the development of the bilateral agreements. During this time a 'Framework of Standards for Accreditation under the *EPBC Act*' was developed to support the implementation of the bilateral agreements. Importantly, the framework provided flexibility to allow for partial accreditation of State/Territory processes supported by an assurance process to ensure compliance with the Commonwealth's standards.

At the December 2012 COAG meeting, the Commonwealth effectively walked away from progress on bilateral agreements in line with the earlier COAG commitment. The announcement was a setback to reforms which would remove duplication and streamline project assessment and approvals without compromising their integrity.

MCA Victoria considers the opportunity to develop approval bilateral agreements, supported by robust accreditation and assurance standards should be retained within the *EPBC Act*. Furthermore, the delegation of *EPBC Act* requirements to the States/Territories allows the Commonwealth to assume a more strategic role including: monitoring and reporting of EPBC listed entities; bio-regional planning (pre-emptive of development); and as standard setter for the harmonisation of State/Territory processes. This would target Commonwealth resources more appropriately and facilitate greater biodiversity outcomes at an overall lower cost to society.

It was greatly disappointing that the Commonwealth Government chose not to proceed with discussions on approvals bilateral agreements.

Victoria can take a leadership role in reigniting discussions for approvals bilateral agreements

### **Increasing sector-specific regulation/assessment**

The Commonwealth government is seeking to enhance its powers to intervene in the approvals process by amending the *EPBC Act*. Additional layers of assessment and review of proposed resources projects have been created through the development of various bodies such as the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). The MCA supports good science and leveraging greater expertise in the assessment of projects.

However, it will be important to ensure that the scope of these bodies (the use of which often incurs additional time for assessment), remains limited to the knowledge gap being addressed (i.e. water resource impacts) and projects referred remain relevant to the expertise of the advisory body. Further, it is important that the issues considered by independent expert bodies are not further duplication of work undertaken by proponents as part of their environmental impact statements.

<sup>24</sup> A. Hawke, *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*. Commonwealth of Australia, Canberra, 2009.

<sup>25</sup> A. Macintosh, *The EPBC Survey Project: Preliminary Data Report*. Australian National University, Australian Centre for Environmental Law, Canberra, 2009.

<sup>26</sup> Productivity Commission, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*. Productivity Commission, Canberra, 2009.

MCA Victoria strongly opposes the Commonwealth Government's planned changes to the *EPBC Act* relating to large coal mining developments and water resources. The proposed inclusion of a water trigger in the Act is a direct duplication of the role of the Independent Expert Scientific Advisory Committee and will lead to greater uncertainty and delays for large coal projects for no environmental gain.

The legislative power to add environmental safeguards to these projects in relation to their impact on water resources currently exists. There is no need to increase the regulatory burden on the sector.

The minerals industry is urging the Federal Parliament not to proceed with these unnecessary changes. MCA Victoria encourages the Victorian Government to strongly object to the proposed amendments

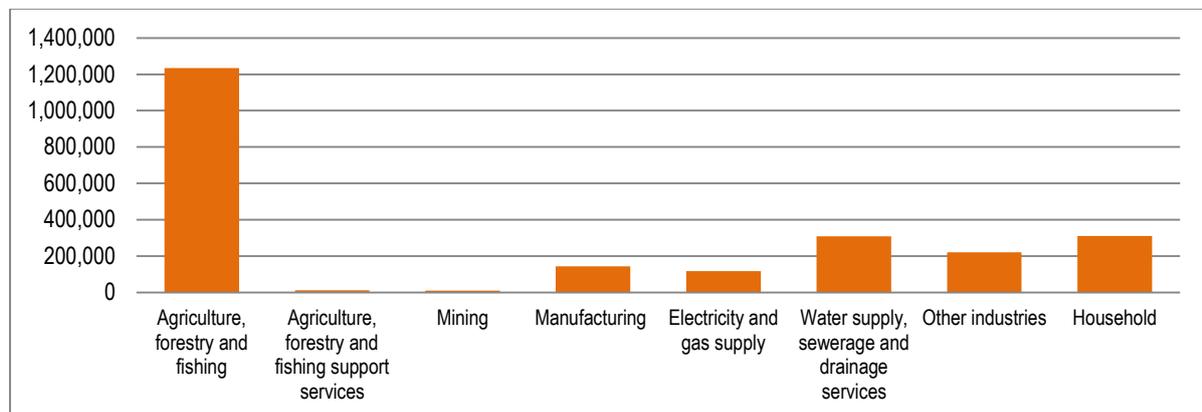
**MCA Victoria recommends that the Victorian Government:**

- Move the Native Vegetation Management Framework to a risk-based platform that enables flexibility in achieving the outcomes
- Complete reforms to the *EE Act* and bring risk and proportionality to the fore of the assessment process
- Take a leadership role in the development of bilateral approvals under the *EPBC Act* to improve the efficiency and effectiveness of project approvals.

#### 4.8 WATER

The Victoria minerals industry is not a significant water (surface water and groundwater) user or generator. 2010-11 water consumption by the mining industry in Victoria was just under 10,000ML, which equates to 0.4 per cent of the total water consumption in the State<sup>27</sup>. More than 50 per cent of this total allocation relates to dewatering around open cut coal mines in the Latrobe Valley (about 2 per cent of Victoria's groundwater allocation)<sup>28</sup>. The total volume of water entitlements in Victoria are approximately 6,000GL, comprising about 5,366GL surface water and 804GL groundwater entitlements.

**Figure 8: Water Consumption 2010-11 - Victoria ML<sup>29</sup>**



On a local scale, however, water issues can be critical to a mining operation, particularly if water is required (or needs to be extracted to make mining safe) and the resource is located in a fully allocated catchment.

The Victorian minerals industry needs to be recognised in the water planning process. Many regional water plans are being developed without consultation with the minerals industry. Industrial water users should be provided with the same opportunity for input to the water planning processes as environmental and agricultural water users.

<sup>27</sup>ABS – 4610.0 - Water Account, Australia, 2010-11

<sup>28</sup>MCA 2012-13 Pre-Budget Submission.

<sup>29</sup>ABS – 4610.0 - Water Account, Australia, 2010-11

## Water reform

The minerals industry in Victoria is currently required to comply with a wide range of water policy and regulatory tools which are managed by a number of Government agencies.

These include the requirement for licences to access and use surface or groundwater, as well as approval to construct dams, discharge water off-site and discharge of water to an aquifer. Some of these requirements are subject to area or catchment based plans, prepared to manage the resource.

Security of water supply of consistent quality and daily availability is essential to the viability of mining operations, particularly for mineral processing. In areas where water allocations are capped or restricted (e.g. seasonally), the use of reclaimed water (i.e. treated sewage) provides an opportunity for the minerals industry that should be encouraged.

In the 2012-13 State Budget the Government committed to reviewing the *Water Act 1989 (Water Act)*. To date the minerals industry has not been consulted on possible reforms.

Dewatering of mine pits following severe flooding, as experienced in the northern part of the State is confounded by regulations. S30A of the *Environment Protection Act 1970 (EP Act)* allows for emergency discharge of water, however untimely decisions by the Regulator can impact on the operator meeting the conditions of discharge as volumes in waterways change with the environmental conditions.

There is overlap of the *EP Act* with the provisions of the *Water Act* in terms of disposal of waste via a bore to groundwater. There is also overlap of the *EP Act* with the provisions of the *MRSD Act (1990)* in relation to approval for water treatment and discharge. The confusion exists as current operators considered that there was overlap between agencies even though this is not recognised by the agencies themselves.

It is a relatively common response of both the mining industry and regulators that there is inconsistency in the application of water requirements for miners within and across regulatory agencies. The different interpretations by Regulators regarding whether water is a waste, or a resource, exacerbates the confusion.

There are often perverse outcomes where industry is readily able to use hyper-saline water but are instead forced into a situation whereby the only option is to purchase ground water licences or draw from town water – resulting in a net loss to the State.

The water resources of the State are a traded commodity and thus are traded between existing licensee holders whether they are using the licenced amounts or not. The problem is that it costs very little to sit on a license and not use it and thereby the State gains no value from its productive capability. Furthermore the limit on the issuing of licenses presupposes that the State knows with a great deal of certainty how much water is available for productive use. Industry routinely identifies new sources of groundwater to the benefit of State and the local region. Unfortunately Departments do not appreciate the opportunities which exist for the mining industry to make positive contributions to the State's knowledge of the resources which they are charged with managing.

MCA Victoria has also long advocated for the removal of unnecessary barriers which prevent the on-supply or re-use of coproduced water for beneficial purposes. The potential beneficial re-use of co-produced water should be encouraged and any restrictions which prevent integrating this water into water sharing/planning arrangements should also be removed. This is of particular relevance in areas where water access is limited and only shallow aquifers are recognised within the water sharing plan.

There is a need for the minerals industry to be recognised in the water planning process. Many regional water plans are being developed without consultation with the minerals industry. In its September 2011 biennial assessment of NWI implementation, the National Water Commission again highlighted a lack of consideration of industrial water users' requirements. A key recommendation of the report is that "extractive industries are fully integrated into NWI-consistent planning and management regimes". Accordingly, MCA Victoria considers that

industrial water users should be provided with the same opportunity for input to the water planning processes as environmental and agricultural water users.

### **MCA water accounting framework**

There are increasing requirements for the minerals industry to provide water use, monitoring and management information to a variety of government agencies at different levels within government. In addition, mining operations are required to provide information for water markets, State Environment and Water regulators, investors and the community there are numerous national reporting requirements. An example of this complexity at the Commonwealth level is the EPBC reporting, ABS National Water Account, the Bureau of Meteorology (BOM) Water Accounting Standard (currently voluntary) and the emerging BOM Water Information Requirements.

Given the multitude of water reporting requirements, there is a clear case for reducing regulatory burden and streamlining water reporting. In addition, it is important to ensure any new water requirements are equitably applied to all relevant water users and recognise data already held by other government agencies or collected through voluntary industry initiatives.

The MCA has developed a comprehensive water accounting framework in recognition of the vital role of water in mining both as an asset that produces value, and as a shared natural resource that requires responsible stewardship. The MCA Water Accounting Framework (WAF) has been designed to allow sites to account for, report on, and compare site water management practices in a rigorous, consistent and transparent manner that can be easily understood. It has also been designed to align with the international Global Reporting Initiative (GRI) and the recently developed Australian Water Accounting Standard (AWAS). The main use of the WAF is to account/quantify water flows by source and destination. The benefit of the WAF is that it is built for purpose to provide consistent accounting and reporting of water at project sites.

MCA Victoria is encouraged that Victorian Government Departments are actively considering the incorporation of the Framework into policy and regulatory regimes.

#### **MCA Victoria recommends that the Victorian Government:**

- Engage the Victorian minerals industry in the water planning process and review of the Water Act
- Reduce regulatory overlap
- Publish a single, all of Government Guideline on Water and Mining that includes clarity of leadership amongst regulatory agencies in relation to mining and water.
- Amend S30A of the EP Act to enable a better response to flood events
- Incorporate the MCA Water Accounting Framework into water licencing and reporting requirements

## **4.9 OCCUPATIONAL HEALTH AND SAFETY**

Development of a Model Work Health and Safety (WHS) regulatory regime to replace existing State and Territory occupational health and safety law commenced in early 2009. The *Model WHS Act* was finalised in 2010. The Model regime incorporates a duty of care qualified by what is reasonably practicable, based on the principles of natural justice, whereby the burden of proof of contraventions is on the prosecution and that only the regulator can bring proceedings for an act of non-compliance.

MCA Victoria remains strongly supportive of the development and adoption of the *Model WHS Act*. MCA Victoria continues to see the implementation of national uniformed WHS regime as a significant opportunity to strengthen, not weaken, safety and health outcomes, including in the minerals sector.

While the model regime has been enacted in a number of jurisdictions, the Victorian Government has declared that it will not adopt the model regime. MCA Victoria is disappointed by this decision, particularly as WorkSafe Victoria and the employer and employee representative groups worked tirelessly to ensure that the modern,

preventative regime that exists in the State be reflected broadly in the *Model WHS Act*. The ability to deliver a nationally consistent WHS system is being compromised by this decision.

Despite the Victorian Government's decision, MCA Victoria continues to advocate that Victoria adopt the model regime and that the Australian minerals industry be entirely regulated within the *Model WHS Act* and Regulations and that no separate or additional laws be adopted in any jurisdiction.

The minerals industry operates extensively across borders and the MCA has long advocated for a single set of safety and health laws across the nation. Exploration and mining companies should not be required to administer a myriad of overlapping and duplicative requirements that distract from on the ground safety and health management.

MCA Victoria considers that the Model WHS Reform process provides the only mechanism to achieve a national safety and health regulatory regime for the minerals industry – the same rules across the country – a truly uniform approach to safety and health.

**MCA Victoria recommends that the Victorian Government:**

- Commit to adopting the Model Work Health and Safety Regime
- Actively participate in the review of the Model regime and drive the development of a single national work health and safety regime, administered by State and Territory Governments

#### 4.10 EMPLOYMENT AND WORKPLACE RELATIONS

At present Victoria does not face the chronic skills shortages other jurisdictions are experiencing. Victoria's workforce capabilities are regarded highly by the minerals industry on a global scale with Victoria ranking 9<sup>th</sup> of 96 in the availability of Labour and Skills the Fraser Institute's survey of Mining Companies. Thanks to the availability of a skilled workforce in Victoria an increasing number of people are using Melbourne and Regional Victoria as a base to fly-in fly-out (FIFO), both to other Australian jurisdictions and into South East Asia. Victoria can be a significant source of skilled workers that work elsewhere and bring their high wages back to Victoria. However, this does not mean that Victoria can rest on its laurels in regards to training and skills as the Victorian minerals industry requires a steady increase in skilled workers being attracted to the State in order to expand.

With Victoria experiencing a decline in employment opportunities, strains being felt by some sectors, along with a contracting global economy; expansion of the Victorian minerals industry represents an opportunity for increased economic output and highly paid jobs in rural and regional Victoria.

##### **Industrial relations**

The re-institutionalisation of third party involvement in workplace arrangements is compromising direct relationships between employer and employee, reducing flexibility and choice in the workplace. Key provisions of the *Fair Work Act 2010 (FWA)* have reintroduced an adversarial framework in workplace arrangements and allow an effective union veto over the prerogative of management to make commercial decisions in the best interests of the business.

The recommendations of the Commonwealth Government's FWA Review Panel merely tinker at the edges of reform, acting to reinforce union power and the bureaucratisation of workplace arrangements. A comprehensive review by the Productivity Commission is required.

The Victorian Government can play an important role in advocating for reform to the *FWA* to ensure that work place agreements are only be about employee entitlements and employer/employee responsibilities. There should be a clear definition of responsibilities and activities so third parties cannot seek to veto decisions of management. No one wants to see the highly disruptive activities that impact all Victorians when third parties seek to assume management's prerogative.

MCA Victoria applauds the Government's commitment to change the culture of the Victorian building and construction industry and promote productive and law-abiding work sites. The development of the Victorian Building and Construction Code, and the appointment of a State construction industry watchdog to enforce the code, (that requires bidders on State projects to ban unlawful or undesirable workplace practices and respect freedom of association) is applauded. That other Australian states are following Victoria's lead is confirmation that change is needed.

**MCA Victoria recommends that the Victorian Government:**

- Acknowledge the employment opportunities in an expanding minerals industry
- Recognise Melbourne and Regional Victoria as a source of skilled workers to the minerals industry
- Advocate for amendments to the *Fair Work Act* that promote direct relationships between employers and employees.

#### 4.11 INDIGENOUS RELATIONS

##### Aboriginal Heritage Act

In Victoria the physical footprint of the minerals industry is negligible. The actual percentage of the State's landmass that is used by the industry does not even register as a land use activity, according to a recent assessment on the proportion of Victorian land used for specific activities. However, the MCA recognises that almost half of Victoria is covered by exploration licences and as such it is reasonable to assume that the minerals industry will encounter areas of cultural heritage.

The Aboriginal cultural heritage management regime established under the *Aboriginal Heritage Act (AHA)* represented a vast improvement in providing certainty to stakeholders while ensuring protection of cultural heritage. Establishing Registered Aboriginal Parties (RAPs) as the "primary guardians, keepers and knowledge holders of Aboriginal cultural heritage" whereby a RAP is appointed by the Aboriginal Heritage Council (Council) has delivered a sound process for the protection of Aboriginal cultural heritage.

When the *AHA* was first proposed by the then Government, MCA was told that local councils would be resourced to prepare maps detailing areas of cultural heritage significance across the state. These plans would enable developers to assess areas of cultural heritage sensitivity with their proposed areas of major disturbance activity and therefore be in a position to plan the projects and assess whether or not a CHMP would be required. Unfortunately, the resources for local government mapping never materialised. Consequently, exploration projects are subject to arbitrary lines on maps of cultural heritage sensitivity and an almost universal requirement for mining projects to require a Cultural Heritage Management Plan. This is very disappointing and adds significant expense and delay.

There is a growing need for maps of cultural heritage significance to be prepared. MCA Victoria strongly recommends that the Government fulfil this commitment to accurately identify areas of cultural heritage significance rather than relying on arbitrary proxies. There may be other ways of achieving this outcome than through local councils, for example by funding RAPs or other land managers to draft these plans.

In August 2012 the Victorian Government announced the conclusion of the review of the *AHA*. The MCA is eagerly awaiting the opportunity to contribute to reforming the *AHA*.

##### Registered Aboriginal Parties

A Parliamentary Inquiry into the Establishment and Effectiveness of Registered Aboriginal Parties (RAPs) was undertaken throughout 2011 and 2012, with the Environment and Natural Resources Committee handing down its recommendations in November 2012. MCA Victoria is awaiting the Government's response to the recommendations of the Parliamentary Inquiry which is due for release in May 2013.

MCA Victoria considers that one of the most significant changes that the *AHA* made to cultural heritage regulation in Victoria was to align the RAPs with the Traditional Owners of the land, and the native title claim groups. We would not wish to see any diminution of this link as result from the Government's response to the Parliamentary Inquiry.

### **Traditional Owner Settlement Act**

As a matter of long standing national policy, the MCA does not involve itself directly in Native Title determination matters. We recognise this as a matter between the State, as owner of Crown land, and the Native Title claimants. We do however, take a very keen interest in agreement making under the future acts provisions of the *Native Title Act 1993 (C/th)* and subsequently the *Traditional Owners Settlement Act 2010 (TOS Act)*.

The minerals industry has been negotiating with Traditional Owners (TO) and their representative body Native Title Services Victoria (NTSV) for well over a decade. We have jointly established agreed practices and benefits for various activities that can be undertaken on Exploration Licences. This has been done through direct relationships between commercial partners.

Industry has been supportive of the development of the alternative to the Native Title determination process. We acknowledge that the lengthy time taken and significant costs required to reach a determination impacts on both TO and industry. However, the benefits expected by industry, Government and Traditional Owners have not manifestly materialised.

Unfortunately there has only been one Settlement Agreement signed since 2010.

MCA Victoria has actively engaged with Government throughout the development of the new regime however industry remains concerned that the Government is now inserted into the direct relationship between the industry and the TO, thus compromising our well established direct relationships.

The Land Use Activity Agreement (LUAA) under the TOS Act provides for binding conditions on proponents – not the State or TO - however is negotiated only between the Government and the TO (forming part of the overarching Recognition and Settlement Agreement (RSA)). Industry has no negotiation role in either agreement. Whilst the Government agreed that MCA Victoria be consulted on any future discussions on default benefits payments, industry remains very concerned that it still has a limited ability to influence the outcomes of the individual LUAA negotiation, thus leaving industry having to agree to (as default conditions) payments that will impact on the commerciality of a project.

In acknowledgement that the Government was now involved in future acts, the minerals industry received a commitment by Government that the Department of Primary Industries (DPI) would collect and distribute monies to the TO group. Unfortunately this commitment was not fulfilled and the burden remains with the industry.

#### **MCA Victoria recommends that the Victorian Government:**

- Fulfil the commitment to accurately identify areas of cultural heritage significance rather than relying on arbitrary proxies
- Draft amendments to the *AHA* to remove prescription and enable flexibility in meeting the needs of TOs and industry
- Ensure the probity of RAPs so as to maintain the integrity of the Aboriginal Heritage regime
- Ensure that the Victorian minerals industry is consulted on benefits payments under the LUAA