

Regulatory Impact Statement

Proposed Mineral Resources (Sustainable Development)

(Extractive Industries) Regulations 2019

September 2019

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**This Regulatory Impact Statement (RIS) has been prepared in accordance with the *Subordinate Legislation Act 1994* to facilitate public consultation on the draft Mineral Resources (Sustainable Development) (Extractive Industries) Regulations (proposed Regulations). A copy of the draft proposed Regulations is provided as an attachment to this RIS.**

**This RIS was prepared by the Department of Jobs, Precincts and Regions with assistance from Ernst & Young (EY) ABN 75 288 172 749.**

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**Abbreviations**

‘the Act’ – *Mineral Resources (Sustainable Development) Act 1990*

‘the current Regulations’ – Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010

‘the proposed Regulations’ – Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019

‘the department’ – Department of Jobs, Precincts and Regions (prior to 1 January 2019 known as the Department of Economic Development, Jobs, Transport and Resources)

CBA – cost-benefit analysis

DEDJTR - the Department of Economic Development, Jobs, Transport and Resources

ERR – Earth Resources Regulation

EES – Environment Effects Statement

GSV – Geological Survey of Victoria

ISOU – Infringements System Oversight Unit

MCA – Multi-criteria Analysis

‘The Minister’ – the Minister of Resources, currently Jaclyn Symes MP – Member for Northern Victoria

OCBR – Office of the Commissioner for Better Regulation

Penalty unit – equivalent to $161.19 for the year 2018–19.

PV – present value. Present value ‘discounts’ the value of money in future years to allow it to be valued in today’s terms.

RIA – regulatory impact assessment

RIS – Regulatory Impact Statement

RRAM – Resource Rights Allocation Management System

r. – regulation

s. – section

SARC – Scrutiny of Acts and Regulations Committee

VGR – Victorian Guide to Regulation

# Executive summary

Extractives Industries Regulatory Reform

The Victorian Government is currently engaged in a major program of reform for earth resources regulation. Following the finalisation of the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019, the process is now focusing on the development of the Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019. It is this secondary piece of legislation that is the subject of this Regulatory Impact Statement (RIS). In recent years, two key documents have been published that are integral to Victoria’s extractive industries: The Commissioner for Better Regulation’s *Getting the Groundwork Right* and the State Government’s *Helping Victoria Grow – Extractive Resources Strategy*. These documents have been closely considered during the development of the proposed Regulations, and to further the Government’s commitment to a modern, fit-for-purpose regulatory regime built around increased investment and community confidence. The proposed Regulations are attached in Attachment A. The Office of the Chief Parliamentary Counsel has provided a letter of settlement on the proposed Regulations, seeAttachment B.

Background – Extractives Resources Strategy

Demand for extractive resources in Victoria was high in 2017- 2018 and growing. If this high growth rate continues, total extractives production is expected to increase to more than 100 million tonnes per annum by 2050 – nearly double annual production levels compared to 2017.[[1]](#footnote-1) Residential and commercial development along with transport and energy infrastructure are all key drivers for extractive material demand.

Considering the increasing demand for extractive resources, the Victorian Government’s Extractive Resources Strategy, *Helping Victoria Grow,* aims to reduce regulatory burden and plans for the development of extractive resource projects to meet Victoria’s essential infrastructure needs.

The purpose of the Strategy is to:

* Prioritise the need to ensure a sufficient supply of extractive resources
* Provide secure and long-term access to extractive resource areas
* Implement improvements to streamline regulatory approval processes
* Raise community understanding about the role of extractive resources in supporting Victoria’s growing population
* Encourage leading-practice approaches to sustainability, environmental management and community engagement, and
* Support innovation in exploration, extraction and the end use of landforms after quarrying.[[2]](#footnote-2)

Objectives of regulation

The overall purpose of extractive resources legislation is to encourage mineral exploration and economically viable extractive industry which make the best use of, and extract the value from, earth resources in a way that is compatible with the economic, social and environmental objectives of the state.[[3]](#footnote-3) The *Mineral Resources (Sustainable Development) Act 1990* (the Act) establishes a regulatory framework that provides for:

* An efficient and effective process for licensing and approvals; co-ordinating applications; rights allocation decision-making for mineral and stone resources; and economically efficient royalties, rental, fees and charges
* A legal framework aimed at ensuring:
* Risks to the public, environment and infrastructure are identified and eliminated or minimised as far as reasonably practicable
* Consultation mechanisms are effective
* Extracted land is rehabilitated
* Appropriate compensation is paid for the use of private land for exploration or mining
* Conditions in licences and approvals are enforced
* Dispute resolution procedures are effective.

The objectives of the proposed Regulations are to create an efficient framework for the collection of information to allow for the efficient and effective management of the economic and environmental risks and to increase public confidence in extractive activities in Victoria.

The Regulations seek to do this by prescribing information to operationalise the Act for:

* Various procedures relating to work plans and extractive industry work authorities
* Matters relating to royalties
* Fees, forms and other matters authorised by the Act
* Prescribe certain offences as infringement offences.

Options

When regulations are remade, the *Subordinate Legislation Act 1994* requires that a RIS considers other practicable means of achieving the objectives of the proposed statutory rules, including other regulatory as well as non-regulatory options.[[4]](#footnote-4)

The core sections of the Regulations that support the operation of the Act, and are the subject of this RIS, are:

* Work plans
* Rehabilitation plans
* Reporting requirements.

The proposed Regulations also continue to prescribe other matters relating to royalties, fees, forms, record keeping and infringements with some minor and technical changes from the current Regulations. There are no amendments to the rates of fees and royalties in the Proposed Regulations and this RIS does not assess the current level of fees, rents, royalties or levies because fees, rents, royalties or levies will be reviewed after July 2020 (see discussion below). Changes to infringements are discussed in section 7.3.

Recognising the regulatory burden on the extractive industries sector and the objectives of the Act, multiple options were identified for these areas.

For each of the sections of the Regulations outlined above, there are two options considered: the status quo (the continuation of the current Regulations) and the proposed Regulations.

The main changes from the status quo in the proposed Regulations are:

* Wording changes surrounding requirements for risk management plans (as part of work plans)
* Requirements to include objectives in rehabilitation plans that would act as performance measures
* Annual reports must include resource estimates as well as production data.

**Assessment of options – decision tool**

The RIS process seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on businesses and the community. The keystone of this process is to compare the options of each proposal to see which has the highest net-benefit.

Typically, costs imposed on business are the most suitable to assess quantitatively, while other costs and benefits can be more difficult to estimate in monetary terms. In this RIS efforts are made to identify the monetary costs to business of the options. This will provide a reasonable estimate of the regulatory cost imposed on business for elements of the regulations. Given the limited availability of data to quantify benefits, the overall assessment of the regulations uses a multi-criteria analysis (MCA) decision tool.

Each option has been assessed by balancing its relative benefits and costs.

Benefits in this document mean the effectiveness of the option to achieve the overarching objectives of the Act (to encourage economically viable mining and extractive industries that make the best use of resources, compatible with the economic, social and environmental objectives of the State), and this is the criterion used to represent the benefits of the options.

Costs in this document are of two types: those imposed on businesses in the regulated sector; and those borne by government. The former includes administrative (‘red tape’), substantive compliance, and delay costs.[[5]](#footnote-5) The latter refers to the monetary cost to government (and therefore taxpayer) of administering the regulations. Such funding comes from general taxation revenue. In the context of this RIS, it does not cover activities for which the government recovers costs directly from the beneficiary of those services.

Effectiveness is scored between 0 and +10. A score of 0 means that the option does not further the objectives of the Principal Act in any way, relative to the base case of no regulations supporting the Act. A score of +10 means that the option furthers the objectives of the Act to the optimum extent possible. A negative score is not possible for effectiveness, as no option would be considered which was contrary to the objectives of the Principal Act.

Costs are scored from –10 to +10. A score of 0 means that the option does not add any regulatory costs over the base case. A score of –10 means that the option imposes costs significantly higher than the base case. A positive score would be given where the regulations reduce costs relative to the base case. This might happen in a situation where the regulations clarify what would otherwise be an ambiguous (and therefore more demanding) requirement arising from the Principal Act. While theoretically possible, it is unlikely that any option would return a strongly positive score.

**Preferred option**

Table 1: Regulatory options considered (preferred option in bold)

| **Regulatory burden** | **Options** | **MCA Net Score** |
| --- | --- | --- |
| Work plan requirements | Option A.1 – Status quo  **Option A.2 – Proposed amendments** | +0.2  **+1.6** |
| Rehabilitation plan requirements | Option B.1 – Status quo  **Option B.2 – Proposed amendments** | +0.9  **+1.8** |
| Reporting requirements | Option E.1 – Status quo  **Option E.2 – Proposed amendments** | +0.8  **+2.1** |

Option A,2 (Amendments to work plan information requirements) is preferred to Option A.1 (Status Quo) on the basis that it is more effective in achieving the objectives of the Act because it provides greater clarity to work authority holders than the current Regulations and is outcome-focused,

Option B.2 (Amendments to rehabilitation plan information requirements) is preferred to Option B.1 (Status Quo on the basis that requiring more information in rehabilitation plans will better identify future risks so that rehabilitation liability can be more accurately estimated This will better support the objectives of the Act, protect the public and infrastructure and reduce financial risks for the State.

Option C.2 (Amendments to annual reporting requirements) is preferred to Option C.1 (Status Quo) on the basis that requiring resource data (in addition to production data) to be included in annual reports will enable the future supply of resources to be more accurately estimated. Better data will help ensure the ongoing supply of extractives resources needed for public transport, infrastructure and housing.

Once the preferred options were assessed, the current Regulations were examined for clarity and ease of compliance. The Regulations were redrafted to be streamlined and simplified. The preferred options are incorporated in the attached draft Regulations – the Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019.

In the 2017-18 financial year, Victoria’s 881 extractive industries work authorities delivered a total reported sales value of $947.8 million.[[6]](#footnote-6) The estimated regulatory burden imposed on work authorities by the Regulations during this year was up to $10.3 million per year, which is close to 25% of the overall regulatory burden imposed on work authorities (the overall burden includes costs imposed by other regulatory frameworks such as native vegetation offsets and the Cultural Heritage Management Plan).[[7]](#footnote-7) The difference between these figures does not represent the costs and benefits of the regulation but illustrates the appropriate order of magnitude of these figures.

**Small business impact & competition assessment**

For the preferred option the proposed Regulations related to work plans are likely to decrease the burden on small businesses while the proposed Regulations in other areas are likely to increase this burden.

Simplifying work plan requirements (the preferred option) reduces burden on all businesses, but small businesses may benefit disproportionately as these businesses which lack administrative economies of scale available to larger businesses. However, these requirements have no impact on some very small businesses which are not required to provide work plans under the Act.[[8]](#footnote-8)

Additional reporting requirements impose a burden on all small extractive industries businesses (unlike work plans, all businesses are required to meet these reporting requirements). In addition to the economies of scale reasons outlines above, these additional requirements may also require small businesses to explore their land more fully to collect data on reserve amounts. This is likely to impact small businesses disproportionately as larger businesses are more likely to be monitoring reserves already and only face the additional administrative burden.

Any regulatory proposal needs to be scrutinised carefully to assess whether it is having an adverse impact on the ability of firms or individuals to enter and participate in the market. The Act, and by extension, the Regulations contain several proposals that may restrict competition. The requirement for firms to hold a work authority restricts the eligible number of players in an industry (although this does not place restrictions on the ability of additional parties to apply for a work authority). Work plans associated with work authorities also specify the location of activities and the nature of activities to be undertaken.

As part of the National Competition Policy legislative review process, the Victorian Government examined the Act for competition restrictions. While the review found that the main restrictions on competition contained in the legislation relate to granting exclusive rights to explore or exploit a given area of land, there were also restrictions identified in relation to the approval of work plans before the commencement of work and land rehabilitation requirements. The review concluded that small number of restrictions on competition contained in the legislation were necessary to achieve the objectives of the legislation and are justified in the public interest.[[9]](#footnote-9)

**Fees, rents, royalties and levies**

**This RIS does not assess the current level of fees, rents, royalties or levies.** The level of fee units will continue at their current rates (subject to annual indexation) until at least 1 July 2020. This is in line with the recommendation from the Commissioner for Better Regulation in the *Getting the Groundwork Right* report, which recommended that the department begin to increase cost recovery for ERR’s regulatory activities no earlier than 1 July 2020.

This will allow the department to:

* Embed improvements to the regulatory system currently being implemented;
* Consult with industry and other stakeholders on the right model for cost recovery; and
* Establish a clear baseline on the efficient cost base for ERR.[[10]](#footnote-10)

Once these actions are completed, the intent is to amend the Regulations to implement the preferred model for cost recovery, including examining the royalty methodology, and establish fees that reflect the efficient cost base.

**Public consultation**

The Department welcomes feedback from all interested members of the public on any matters they feel would improve the proposed Regulations.

The consultation period for this RIS will be for 28 days, with written comments required by **21 October 2019**.

As noted above, the draft Regulations have not been finally ‘settled’ and improvements or changes may be made as a result of public comments. While members of the public are free to comment on any matters concerning the proposed Regulations, the Department would be particularly interested in hearing from stakeholders about the changes outlined in Table 2 below.

Table 2: Summary of changes in the proposed Regulations

| **Area of regulations** | **Current state** | **Change** | **Policy objective** | **Impacts** |
| --- | --- | --- | --- | --- |
| **Work Plan – Risk Management Plan** | Stakeholder and regulator feedback suggest that the current Regulations are overly prescriptive and lack necessary flexibility to allow operators and the regulator to respond to obligations in a timely, cost effective way  Not scalable  Implementation has caused delays and uncertainty | Regulations clarify requirements and result in more outcome-based risk management plans  Risk management plans must include measures and performance standards that can consistently be reviewed | Outcomes-based and risk-based approaches (*Getting the Groundwork Right*)  Compliance for industry | Reduced regulatory burden  Risks are managed effectively and proportionately |
| **Rehabilitation plan** | The rehabilitation framework in the Act is largely conceptual, with vague requirements that are difficult to apply and measure consistently, which poses the following issues:   * information required for a rehabilitation plan is unclear, with limited context, scope or clarity for the prescribed components, compliance standards, and basis for certification of completed rehabilitation; * no assessable parameters for progressive rehabilitation; and * long-term risks arising from rehabilitated land are included only vaguely under the work plan requirements. | Creates requirements for new or varied work plans that a rehabilitation plan must:   * identify a post-quarrying land use and achieve a safe, stable and sustainable rehabilitated land form capable of supporting that use; * set out objectives and completion criteria that will be used to measure rehabilitation success (how a safe, stable and sustainable land form will be achieved); * set out rehabilitation milestones; and * identify risks arising from a rehabilitated land form that will not be self-sustaining and set out a management plan for those risks. | Strengthen rehabilitation, post-closure and engagement obligations (*Extractive Resources Strategy*)  Reduce the likelihood of risks for members of the public, the environment and surrounding land and infrastructure | Strengthened risk management  Potential increase in industry compliance costs for new or varied work plans. |
| **Reporting Requirements** | Information obligations for reporting spread across regulations and schedules (complex and difficult to manage)  Forms prescribed in schedules legalistic and inflexible | Reporting requirements streamlined and simplified where possible  Regulations include requirement to include information on resource estimates as well as production in annual reporting | Reporting requirements are the minimum required to permit the Government to efficiently and effectively administer the Act  Greater flexibility to design user friendly forms and processes  Greater strategy planning for the future availability of extractive resources | Minor increase in compliance and administrative costs. |
| **Infringements** | Infringements not available for some statutory offences  Infringements not available to enforce some key regulations. In these cases, an offence exists, whose penalty and enforcement mechanism may not be proportional to the activity without an infringement (e.g. failure to report a reportable event). | Added infringements to cover issues raised by compliance. | Proportionate penalties to encourage compliance  (Attorney-General's Guidelines to the Infringements Act 2006: Policy and Legislation) | Compliance with Attorney-General guidelines  Supports ERR compliance and enforcement strategy |

# Background

## Regulatory Impact Statement process

The Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010 (the Regulations) are made under the *Mineral Resources (Sustainable Development) Act 1990* (the Act) and are due to sunset on 27 January 2020.

The remaking process provides an opportunity to revisit whether regulations are still needed, and if so, whether there are ways to improve them.

Before new regulations are made, the *Subordinate Legislation Act 1994* requires:

The Act covers two sets of regulations:

* Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019
* Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010.

Regulations covering the mineral industries in Victoria have recently been remade.

In recent years the regulatory framework for the broader earth resources sector (entailing the mining and extractive industries) has come under scrutiny. The Commissioner for Better Regulation published *Getting the Groundwork Right – Better regulation of mines and quarries* in 2017, includes priority actions for implementation in the short, medium and longer term under six broad themes.

One of the major findings in the report was the need for regulation across both mining and extractives to be modern, responsive and outcome-based, while also continuing to cover the evolving trends of public and occupational health and safety, community amenity and environmental protection. This approach is articulated in the Government’s Extractive Resources Strategy, *Helping Victoria Grow,* which includes “efficient regulation” as one of the key strategy actions*.*

The Department of Jobs, Precincts and Regions (the Department) (formerly the Department of Economic Development, Jobs, Transport and Resources) undertook a targeted consultation process in November 2018 with parties in extractive industries who are likely to be directly affected by the proposed Regulations. The Department has now prepared the proposed Regulations for affected parties, other stakeholders and members of the public to review. Affected parties will have 28 days to consider the proposed Regulations and may make submissions to the Department by 21 October 2019.

To assist parties with review and comment on the proposed Regulations, the *Subordinate Legislation Act 1994* requires the preparation of a RIS for any regulations that impose a significant economic or social burden on a sector of the public, to be made available with the proposed Regulations. A RIS is also useful to support good decision making.

A RIS must include:

* A statement of the objectives of the proposed Regulations
* A statement explaining the effect of the proposed Regulations
* A statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options
* An assessment of the costs and benefits of the proposed Regulations and of any other practicable means of achieving the same objectives
* The reasons why the other means are not appropriate.

The Commissioner for Better Regulation provides an independent assessment of RISs, which are assessed against the *Victorian Guide to Regulation*. The Commissioner has determined that this RIS meets the requirements of the *Subordinate Legislation Act 1994*.

Following consideration of all submissions received in response to the proposed Regulations, a notice of decision and statement of reasons will be published. Once the Regulations are made, copies of all submissions are provided to the Parliament’s Scrutiny of Acts and Regulations Committee (SARC). SARC examines these submissions to check that the Department has considered the views of stakeholders.

The scope of this RIS includes an assessment of regulatory options for the extractive industries associated with procedures relating to:

* Work authorities
* Work plans
* Rehabilitation plans
* Reporting requirements
* Infringement offences.

It does not include an assessment of fees or royalties included in the current Regulations – these will be assessed separately and no sooner than 1 July 2020 (see Section 2.6). Finally, this RIS does not examine the mineral resources industry – this is covered by the Mineral Resources (Sustainable Development (Mineral Industries) Regulations 2019, for which a RIS was completed in March 2019.

## Authorising provision

Section 124 of the Act establishes the authority to make regulations to operationalise key elements of the Act. It includes the authority to make regulations with respect to:

* The rate or method of assessment, and the times of payment of royalties
* Applications for an extractive industry work authority and variation of an extractive industry work authority
* The manner of marking out and surveying the boundaries of land and the time within which it must be done
* The information to be contained in a work plan or in a notice of variation of an approved work plan
* Prescribing requirements for holders of extractive industry work authorities that relate to geotechnical or hydrogeological risks to public safety, the environment or infrastructure
* Prescribing infringements for which an infringement notice may be served and the penalties for any infringement
* The health and safety of members of the public in relation to work done under an extractive industry work authority
* Requirements with respect to the disclosure of interests by persons to whom section 118 applies
* Requiring the payment of fees for anything done under the Act or the Regulations and prescribing those fees
* Prescribing forms, and any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

## Victoria’s extractive resources

‘Extractive resources industry’ refers to the production of hard rock, clay, sand and gravel by quarries, which is mostly used for constructing houses, public infrastructure and private sector developments.

### The extractive resources industry

As at 30 June 2018, there were 881 current work authorities for quarries granted under the Act, while 491 quarries produced a total of 57.9 million tonnes of rock in the 2017-18 financial year. This production delivered a total reported sales value of $947.8 million, an increase of 11.6% ($98.5 million) year on year.[[11]](#footnote-11)

In contrast to minerals which the Crown owns, if extraction activity occurs on private land the material can be privately owned. Extractive resources are owned by the Crown if they are located on Crown land or below the depth of the title (generally 50 feet) if they are on private land.[[12]](#footnote-12) Royalties from operations involving Crown-owned extractives totalled $6.2 million in 2017-18.[[13]](#footnote-13)

Nearly 500 companies hold work authorities across Victoria, ranging from national companies to independent and family-owned businesses. It is estimated that around 75% of the State’s production comes from 20 companies, while four major companies are responsible for around 55% of all production.[[14]](#footnote-14)

The extractive resource sector is important to Victoria’s economy and supports other industries – in particular the $23 billion building and construction industry – due to the diversity of extractive resource uses. Products from extractive industries constitute approximately 35% of costs for typical construction projects, and approximately 2,710 people are directly employed in the extractive resource sector.[[15]](#footnote-15)

A breakdown of sales volume and sales value from 2014-15 to 2017-18 is shown in Table 3, as well as the number of current work authorities. Sales volume and value have both risen over this period, while the number of current work authorities has remained relatively stable.

Table 3: Sales volume and (nominal) value by year

| **Financial Year** | **Current Work Authorities** | **Production Volume (Million tonnes)** | **(Nominal) Sales Value ($m)** |
| --- | --- | --- | --- |
| 2017-18 | 881 | 57.87 | 947.76 |
| 2016-17 | 888 | 57.42 | 849.27 |
| 2015-16 | 888 | 47.30 | 785.47 |
| 2014-15 | 887 | 50.00 | 751.90 |

Source: Earth Resources Regulation Statistical Reports 2014-15 to 2017-18

Table 4 outlines the State’s production volume and sales value by product type:

* Clay products include brick, stoneware pottery and tile/pipe
* Limestone products include products for agriculture (spread onto paddocks or soil), cement and lime
* Miscellaneous products include dimension stone, soil and other products that do not fall under other categories
* Multi-size products include fill, road base and road-sub base
* Sand products include concrete sand, fine stand foundry sand and industrial filters
* Single size products include aggregate and armour.[[16]](#footnote-16)

In 2017-18, the State’s highest production volume and sales value products were single size products followed by multi-size products. Limestone products were the State’s highest value products on a per million tonne basis, followed by single size products. This is shown in Table 4 below.

Table 4: Production and sales volume by product type, as at 31 October 2018

| **Product** | **Production Volume (Million tonnes)** | **Sales Value ($m)** | **Sales value per million tonnes ($m)** |
| --- | --- | --- | --- |
| Clay | 1.0 | 3.1 | 3.1 |
| Limestone | 0.8 | 19.9 | 24.9 |
| Miscellaneous | 4.6 | 50.5 | 11.0 |
| Multi size | 20.5 | 276.3 | 13.5 |
| Sand | 9.4 | 169.9 | 18.1 |
| Single size | 21.6 | 428.0 | 19.8 |
| **Total** | **57.9** | **947.8** | **16.4** |

Source: Earth Resources Regulation Statistical Report 2017-18, Table 3.2

Extraction volumes of hard rock are greater than those of soft rock, and the sales value is greater. This is shown in Table 5 below. Hard rock includes products such as basalt, gneiss, granite, hornfels, quartzite, rhyodacite, schist, slate and trachyte, while soft rock includes clay and clay shale, limestone, sand and gravel, scoria, sedimentary, soil and tuff.[[17]](#footnote-17)

Table 5: Production and sales volume by rock type, as at 31 October 2018

| **Rock Type** | **Production Volume (Million tonnes)** | **Sales Value ($m)** | **Sales value per million tonnes ($m)** |
| --- | --- | --- | --- |
| Hard Rock | 35.0 | 626.2 | 17.9 |
| Soft Rock | 22.9 | 321.5 | 14.0 |
| **Total** | **57.9** | **947.8** | **16.4** |

Source: Earth Resources Regulation Statistical Report 2017-18, Table 3.3  
  
In 2017-18, the extractive resource sector generated $6.2 million in royalties for the Government, an increase of $0.3 million (5%) from 2016-17.[[18]](#footnote-18) In 2018, demand for extractive resources in Victoria tracked at levels higher than previously forecast due to an increase in major transport infrastructure investment and strong housing demand. If this trend continues, total extractives production is expected to increase to more than 100 million tonnes per annum by 2050 – more than double annual production levels compared to 2016.[[19]](#footnote-19)

With this increasing demand for extractive resources, the need to ensure ongoing availability of resources becomes all the more important. Forecasts indicate that central and fringe areas of metropolitan Melbourne are at risk of experiencing significant supply shortfalls by 2026, with the local government areas of Melbourne, Wyndham, Melton and Whittlesea potentially experiencing the greatest shortfalls.[[20]](#footnote-20)

As Table 6 below illustrates, there is a clear link between local government areas with strong estimated average annual population growths and the greatest projected supply shortfalls. The State’s top five local government areas for anticipated shortfalls are all in the top eight projected average annual population growth rates to 2036. Given that the transportation of extractive resources is expensive, planning ahead to identify future supply in areas of high demand is a priority for the State.[[21]](#footnote-21) This also aligns with the objectives of the Act, and in particular the allocation of extractive industries resources for the benefit of the general public.[[22]](#footnote-22)

Table 6: Local government areas with the greatest projected extractive resources supply shortfalls and corresponding average annual population growth rates

| **Local government area** | **Projected supply shortfalls to 2026 (tonnes)[[23]](#footnote-23)** | **Average annual population growth rate, 2018 to 2036[[24]](#footnote-24)** |
| --- | --- | --- |
| Melbourne | 1,000,000 – 2,000,000 | 3.1% |
| Wyndham | 1,000,000 – 2,000,000 | 3.3% |
| Melton | 1,000,000 – 2,000,000 | 4.3% |
| Whittlesea | 1,000,000 – 2,000,000 | 2.8% |
| Hume | 500,000 – 1,000,000 | 2.4% |

### Extractive Resources Strategy

The Victorian Government’s Extractive Resources Strategy, *Helping Victoria Grow,* aims to reduce regulatory burden and sets out actions to support the development of extractive resource projects to meet Victoria’s essential infrastructure needs. The six key objectives of this strategy are:

* Take immediate short-term action to ensure a sufficient supply of extractive resources is available to meet Victoria’s immediate infrastructure construction requirements
* Provide secure and long-term access to extractive resource areas of strategic importance to the State
* Maintain and improve Victoria’s competitiveness and provide greater certainty for investors in the extractive resource sector
* Prioritise and implement improvements to streamline regulatory approval processes in the short term
* Raise community understanding about the role of extractive resources in supporting Victoria’s growing population and build confidence in the regulatory performance of the sector
* Encourage leading-practice approaches to sustainability, environmental management and community engagement
* Encourage and support innovation in exploration, extraction and the end use of landforms after quarrying.[[25]](#footnote-25)

Extractive Industry Interest Areas (EIIAs) are a key element of this strategy. EIIAs were established to raise awareness that extractive industries are a potential land use (in some areas) and to facilitate the protection (from competing land uses) of stone resources within the Melbourne Supply Area and other regional centres around Greater Geelong, Ballarat, Latrobe and Bendigo.[[26]](#footnote-26)

The concept of EIIAs applies to land identified as likely to contain extractive resources of sufficient quantity and quality to support commercial extractive industry operations with the aim of preventing sterilisation of areas of resource potential by other land uses.[[27]](#footnote-27) An EIIA does not provide statutory protection for extractive resources, allow as-of-right development of extractive resources nor imply that extractives development be limited to EIIA.[[28]](#footnote-28) It was envisaged that regular updates would be made to the EIIA based on new geoscience data, knowledge and interpretations and changes in land use and planning reforms. The extent to which the EIIA have been adopted by all local government areas across the Melbourne Supply Area is unclear. The extractives industry still uses EIIAs to define areas of extractives resource potential.

Figure 1 below shows EIIAs in Victoria in yellow and supply from different areas. It also shows local government areas in terms of supply of extractive resources, with higher ranked areas represented by darker shades. The top 20 areas in terms of supply are shown as “Top 20 Strategic Resources Areas”.[[29]](#footnote-29) Several projects are underway to refine the EIIAs and implement the strategy.

Figure 1: Extractive Industry Interest Areas (EIIAs) and Critical Supply Local Government Areas[[30]](#footnote-30)



## Legislative framework

The Minister for Resources is responsible for administering the *Mineral Resources (Sustainable Development) Act 1990* (the Act).

*Mineral Resources (Sustainable Development) Act 1990*

The Act is the primary legislative instrument that regulates Victoria’s mining and extractive industries. It does this by establishing a legal framework aimed at, among other things, ensuring:

* Mineral and stone resources are developed in ways that minimise adverse impacts on the environment and the community
* Consultation mechanisms are effective and appropriate access to information is provided
* Land which has been used for extraction is rehabilitated
* Conditions in work authorities and approvals are enforced.

Sections 1 and 2 of the Act set out its purpose and objectives***.*** The purpose of the Act (Section 1) is to encourage economically viable mining and extractive industries that make the best use of resources, compatible with the economic, social and environmental objectives of the State.

Under Section 2, the objectives of the Act are:

* Establish a legal framework aimed at ensuring that mineral and stone resources are developed in ways that minimise adverse impacts on the environment and the community
* To recognise that the exploration for, and extraction of, mineral resources and stone must be carried out in a way that is not inconsistent with the *Native Title Act 1993 of the Commonwealth* and the *Land Titles Validation Act 1994*.

The Act defines an extractive industry and makes it an offence to carry out extraction on any land without a current extractive industry work authority. The Act further defines conditions of extractive industry work authorities, establishes the work authority holder’s duty to consult with the community, periods of work authority, variations of work authority, transfer of a work authority and cancellation of work authority.[[31]](#footnote-31)

Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010

The Regulations operationalise key elements of the Act. For example, it defines what information is required in relation to reportable events at quarries.

As per Section 1 of the Regulations, the objectives of the Regulations are to prescribe:

* Various procedures relating to work plans and extractive industry work authorities
* Matters relating to royalties
* Fees, forms and other matters authorised by the Act
* Certain offences as infringement offences.

The Act and Regulations together establish processes to regulate extractive resources industries in an economically efficient manner that provides the maximum benefit to the public. This is primarily regulated through work authorities and reporting requirements.

Furthermore, the Act and Regulations manage risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under an extractive industry work authority. This aims to ensure that those risks are identified and are eliminated or minimised as far as reasonably practicable, and that land is rehabilitated. This is regulated through ‘work plans’, which detail the precise works that a work authority must undertake and how risks will be eliminated or minimised as far as reasonably practicable.[[32]](#footnote-32) The Minister cannot grant a work authority to undertake works without an approved work plan.[[33]](#footnote-33)

Additional subordinate instruments made under the Act

In addition to the Regulations, there are two other forms of subordinate instrument made under the Act – Ministerial guidelines and codes of practice. The Department also publishes a considerable amount of (non-statutory) guidance material.

The Act empowers the Minister to make guidelines relating to any of the objectives or purposes of the Act, to further explain the implications of the Act and Regulations for applicants.[[34]](#footnote-34) A person who proposes to apply for a work authority to carry out extraction must submit a work plan in line with these guidelines to Earth Resources Regulation (ERR).

The Act also empowers the Minister to make codes of practice.[[35]](#footnote-35) Currently, a code of practice exists for small quarries (*Code of Practice for Small Quarries*), where quarries may not require a work plan because they are a) less than five hectares in area and less than five metres in depth and b) no blasting or native vegetation clearance are required to comply with this code.

Roles of the Minister and the Department

The Minister holds responsibilities for aspects of extractive industry work authorities, including:

* Granting or varying authorities
* Providing consent to transfer authorities
* Cancelling authorities
* Creating and varying the conditions on extractive industry work authorities.

The Minister must also be notified of information relating to injuries that occur during work done under the authority, information relating to reportable events at quarries and reports relating to declared quarries (there are currently no declared quarries)[[36]](#footnote-36).

As stated in the Act, the Minister cannot grant a work authority unless he or she is satisfied the applicant has entered into a rehabilitation bond under section 80. The amount of a rehabilitation bond is determined by the Minister through an assessment of likely costs inset out in the approved work plan. The Minister may return a bond to the authority holder once satisfied that the land has been rehabilitated. If not satisfied, the Minister may carry out rehabilitation using finances from the bond.

For areas of Crown land, the Crown land Minister may provide consent to a person to search for stone on a given area of stone land.

The Department Head is responsible for approving work plans from extractive industry work authorities. An approved work plan is a precondition for the grant of an extractive industry work authority.

The work plan must include information such as:

* The nature and scale of extractive industry activities
* Any potential risks to the environment, the public, land, property or infrastructure in the vicinity of the activities
* A risk management plan
* A rehabilitation plan
* A community engagement plan
* The prescribed quarry stability requirements and processes if the work authority relates to a declared quarry.

The Act states that the Department Head must approve or refuse to approve a work plan within one month after the work plan is lodged. They are also required to approve any variations to a work plan and can direct the authority holder to submit an application for approval of a variation. In the latter situation, the Department Head must give the authority holder written notice of the proposed variation, and the reasons for it, to give the holder an opportunity to comment on the proposal). The approval, or refusal to approve, the variation must occur within 28 days of the application being lodged, and the Department Head must consult with the municipal council in whose municipal district the land is situated before approving any variations.

## Earth Resources Regulation (ERR)

Earth Resources Regulation (ERR), a unit of the Department, acts as their operational delegate and in practice ERR is responsible for regulating Victoria’s earth resources activities, including quarrying. ERR’s roles include licensing, work plan approvals, risk management, enforcing compliance and stakeholder engagement. Overall, ERR aims to streamline regulatory processes so that the community’s expectations are met in a timely way and at the lowest cost to business. Much of ERR’s focus over the past few years has been on implementing a risk-based approach to regulation, particularly through approvals processes.

ERR operates under several Acts and regulatory instruments and has the following responsibilities relevant to extractive industries:

* Allocating and approving work authorities to extract or remove stone from land
* Assessing and approving extraction operations works and rehabilitation (through work plans)
* Compliance and enforcement activities
* Other functions such as stakeholder engagement and education.

Departmental officials in ERR perform functions delegated by the Minister and Department Head. ERR has an annual recurrent budget of approximately $8.4 million.

## Analysis of base-line regulatory costs

In October 2018, the Department engaged ACIL Allen Consulting (ACIL Allen) to analyse regulatory costs imposed by the minerals and extractive industries regulations (not the overarching Act). This report provided a benchmark from which improvements or reductions in regulatory burden could be measured. As part of ACIL Allen’s consultation, stakeholders identified several causes of regulatory burden, including the prescriptive nature of the regulations and duplicative reporting. They considered possible regulatory improvements could include a ‘simplification of regulations with a focus on outcomes and performance’ and improved guidance to industry.[[37]](#footnote-37)

ACIL Allen found that the regulatory burden imposed on work authorities by the Regulations was up to $10.3 million per year, which is close to 25% of the overall regulatory burden imposed on work authorities (the overall burden includes costs imposed by other regulatory frameworks such as native vegetation offsets and preparation of Cultural Heritage Management Plans).[[38]](#footnote-38) Regulatory burden imposed outside these regulations includes planning system requirements and native vegetation offsets. [[39]](#footnote-39) This red tape cost information has informed the proposed Regulations and the development of this RIS.

Table 7 summarises the regulatory costs across the extractive industries:

* Administrative costs: including costs associated with reporting to government e.g. preparation of work plan and work plan variation, securing necessary planning approvals, preparation of annual report and record keeping required under the Regulations[[40]](#footnote-40)
* Substantive Compliance costs: refer to costs incurred because of ongoing testing, monitoring and complying with regulatory obligations e.g. lodgement of a rehabilitation bond, native vegetation offsets, reporting on injuries and incidents and an ongoing rehabilitation bond interest expense.[[41]](#footnote-41)

Table 7 shows that administrative costs imposed by the Regulations are considerably higher than substantive compliance costs. Reporting requirements for extractives are mostly contained in the Regulations, rather than the legislation. Substantive compliance costs are mostly contained in the Act and through other legislative requirements, such as native vegetation obligations and the local government planning scheme.

While these figures provide a useful indication of the areas that impose regulatory burden, they should be viewed with caution. The input data was self-reported and there is some evidence that industry found it difficult to differentiate between costs imposed by the Regulations and costs imposed by other legislation. Nevertheless, the costing analysis provides a very useful reference point to target potential reform where the regulatory burden appears high.

Table 7: Total Annual regulatory cost imposed on the extractive resource industry ($ thousand)

| **Tenement type** | **Costs imposed by the regulatory framework** | | **Costs imposed by other regulatory frameworks** | | **Total** |
| --- | --- | --- | --- | --- | --- |
| **Administrative costs** | **Substantive compliance costs** | **Administrative costs** | **Substantive compliance costs** |
| Work Authorities (441) | $6,500 - $7,000 | $3,100 - $3,300 | $100 - $400 | $11,400 - $33,400 | $21,100 - $44,100 |

Source: Table B.2, Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs, ACIL Allen

# The nature and extent of the problem

The overall purpose of the Act is to encourage economically viable extractive industries which make the best use of resources in a way that is compatible with the economic, social and environmental objectives of the State. Without regulations, achievement of the Act’s objectives becomes more difficult (or, the Act may even become inoperable because there are manner and other prescribed requirements which are unable to be met without Regulations) and there would be a number of problems including:

* Confusion around information to be included in applications and reporting, which can lead to increased:
* Risks for the environment, members of the public and surrounding land and infrastructure; and
* Administrative costs for industry and the Department (through back and forth communications)
* Poorly designed rehabilitation plans due to a lack of information, which poses risks to the environment, members of the public and surrounding land and infrastructure
* Lengthy and costly processes to prosecute an individual or work authority holder for committing an offence which is in breach of the Act
* No payment of fees, so government would be unable to recover costs of its regulatory activities for private benefit.

This chapters sets out problems related to specific areas of the current regulations. These areas are:

* Work authorities
* Work plans
* Rehabilitation plans
* Reporting requirements
* Infringements.

Additional regulations on fees, rents, royalties and levies are not considered in this RIS in line with the recommendations of the Commissioner for Better Regulation from 2017.

## Work authorities

The Act sets out requirements for the granting of a work authority. The Department Head may grant a legal ‘person’ (such as an individual or company) a work authority to conduct extraction activity in a certain area, provided that they are satisfied that the person:

* Has an approved work plan
* Has entered into a rehabilitation bond
* Has complied with any relevant planning scheme and obtained any necessary planning permit under that planning scheme
* Has obtained all the necessary consents and other authorities required under the Act
* Has obtained the consent of the Crown Land Minister in the case of Crown Land.[[42]](#footnote-42)

The conditions that the Minister can impose on the extractive industry work authority may relate to rehabilitation, protection of the environment, groundwater and amenity in the area; ensuring the safety of the public; and the payment of royalties and fees.[[43]](#footnote-43)

The Act also sets out requirements relating to the work authority holder’s duty to consult with the community, notify the Chief Inspector of reportable events, vary an application if a quarry is declared, carry out extractive industry activities for the period of the work authority, provide information on any variations, transfers or the cancellation of a work authority, surrender a work authority or appoint a quarry manager or person to manage the extractive operation and the application of a permit under the *Planning and Environment Act 1987*.[[44]](#footnote-44)

The regulations set the fees for extractive industry work authorities, such as fees for applying for, requesting a variation of, or transferring a work authority. Without regulations authority holders may assume that there is no fee payable, which could lead to large numbers of applications or, alternatively, multiple queries to clarify requirements. As a result, there may be an additional administrative burden for the Department, and a loss of time and resources for applicants.

## Work plans

The Act requires that a person who proposes to apply for an extractive work authority lodge a work plan with the Department Head that includes:

* The information prescribed by the Department Head (which may include quarry stability information)
* A rehabilitation plan for the land proposed to be covered by the work authority
* A community engagement plan.[[45]](#footnote-45)

The Act also allows for variations to a work plan.[[46]](#footnote-46) This can be done by the Department Head directing the holder of an extractive industry work authority to submit an application, or a variation can be requested by the holder of an extractive industry work authority. The Act requires that the variation application contain the prescribed information.[[47]](#footnote-47)

Without regulations, applicants may have a lack of information regarding:

* The fee requirements for lodging work plans and applying for variations
* The prescribed information required to be included in a work plan or an application for a variation.

If applicants are not aware of the costs of lodging a work plan, they may assume that a fee is not payable and lodge a large number of work plans, or may make queries to the Department to clarify requirements. This could lead to an additional administrative burden for the Department and a loss of time and resources for applicants.

In the absence of regulations applicants may not be informed of the information required by the Department to assess an application. This may result in multiple iterations of applications, delays and inconsistencies across applications. Poor quality or variable information may also lead to greater challenges in administering work plans.

The granting of a work authority when adequate information has not been provided in a work plan poses risks to employees, infrastructure, the community and the environment. Some of the risks could include:

* Inadequate width of access tracks
* Insufficient use of gates and fences
* Negative visual impact of a quarry from surrounding and frequently used roads or vantage points
* Visual, dust and noise impacts for adjacent land-users
* Negative effects on surrounding community facilities
* Insufficient protection of Aboriginal heritage sites
* Damage to native vegetation
* Soil and land erosion
* Mismanagement of topsoil, reducing its revegetation value
* Future slope failure, posing safety risks
* Potential source of noxious weeds, pest animals and plant disease
* Water contamination
* Adverse health effects from the presence of slimes
* Increased risk of fire in the area
* Potential release of hazardous materials and fuels or lubricants.[[48]](#footnote-48)

## Rehabilitation plan

The Act obligates holders of work authorities to rehabilitate land in accordance with the approved rehabilitation plan (a component of the work plan)[[49]](#footnote-49), with a general obligation to undertake the rehabilitation progressively (while doing work).[[50]](#footnote-50)

The Act also requires an applicant to enter into a rehabilitation bond prior to starting work. A rehabilitation bond acts as a financial security that ensures that rehabilitation can be undertaken by the Department should the operator be unable to meet their rehabilitation obligations. The Act gives the Minister the option of imposing a further rehabilitation bond on the holder of a work authority if he or she feels the bond is insufficient.[[51]](#footnote-51)

Under the Regulations, the rehabilitation plan requirements are largely enabling, which make them difficult to interpret, administer and measure consistently.

In the absence of regulations, applicants lack guidance on the types or details of information to be included in a rehabilitation plan. Poor quality, inconsistent or incomplete information in a rehabilitation plan may make it difficult for the Minister to assess rehabilitation costs and increase the administrative burden. As a result, the bonds may be insufficient to incentivise rehabilitation and protect the State from the costs of rehabilitation in the event of default by the work authority.

Poor quality rehabilitation reports also pose health and safety and environmental risks. People’s safety could be in danger if they are in an area where a quarry used to be, and the rehabilitation has been inadequate. Extraction can impose costs on the environment: it can disrupt native flora and fauna, affect aquifers and waterways, and results in a permanent change to the earth. When these costs are not ‘internalised’ by the operator through rehabilitation and post-closure management, they are imposed on the community. This is a type of market failure know as an ‘externality’.[[52]](#footnote-52)

Conversely, rehabilitation that is well planned and executed creates an asset in the landscape with a range of future beneficial uses.

The rehabilitation process is less efficient when the necessary planning does not take place. Potential consequences could include:

* Lack of planning around the possible end use of the site
* Poorly designed and maintained drainage works, which can lead to flooding and erosion
* Steep slopes are left behind, which are at high risk of erosion and could result in serious injury
* Insufficient soil ripping, which will help the soil to ‘key’ to the underlying material
* Negative visual impacts and increased risk of erosion, the spread of dust and the invasion of weeds if rehabilitation works do not occur whilst extractive industry activity takes places
* Insufficient revegetation, which can be used to minimise the visual impact of a quarry
* Requiring machinery to be transported back to a site once extractive industry activity has finished so that rehabilitation works can be completed
* Lack of ongoing management and maintenance of land in the future can undermine rehabilitation work that has been completed.[[53]](#footnote-53)

## Reporting requirements

Under the Act, the holder of an extractive industry work authority must provide prescribed information for work undertaken at the prescribed times.[[54]](#footnote-54) Information provided by authority holders to government serves several purposes. Information provision under the Act informs the public and specifically ensures that holders of work authorities meet their obligations and report risks.

Without regulations authority holders are unable to comply with the Act, no reportable events would be specified and holders of work authorities may not be required to provide in annual reports and returns. This could lead to misreported, or a lack of, information surrounding extracted resources, injuries from work done under an authority, reportable events and risks at declared quarries. Not only could this be a problem in the short-term, but in the longer-term humans and the environment could be at significant risk. For example, the Regulations state that information must be reported if there is an uncontrolled outburst of gas.[[55]](#footnote-55) If reporting requirements were not clear (in the scenario that there were no Regulations in place), the incident may not be reported and employees and people in surrounding areas could suffer significant health problems.

As noted above, holders of work authorities may not disclose adverse events unless they are defined in regulation as reportable events. As a result, the Department may not receive adequate information and may receive many queries from holders of work authorities. This would increase the administrative burden for the Department, and results in a loss of time and resources for holders of work authorities.

Without regular reporting of extractives production and reserves government cannot effectively ensure a pipeline of raw construction materials to support Victoria’s growing population, which in turn makes it difficult to achieve the Act’s objective of ‘an effective administrative structure for making decisions concerning the allocation of extractive industries resources for the benefit of the general public.[[56]](#footnote-56)

Victoria’s information repository on the nature of the State’s geology is a significant public asset. Information provided by extractive businesses to the Government serves several purposes, consistent with the objectives of the Act. Information provision under the Act informs the public and specifically ensures that holders of work authorities meet their obligations and report risks.

Within Government, the information is used both by ERR and by the Geological Survey of Victoria (GSV). GSV is the State’s custodian of over 160 years of geological information. GSV delivers geoscience information and data through several mechanisms, including the GeoVic website (and associated corporate data system), an online publication repository and the GSV drill core library in Werribee.[[57]](#footnote-57) These sources of data and information record a significant volume of traffic from a variety of clients. As this body of publicly available information serves a public good, the costs of maintaining it are met by the Government, rather than cost recovery from industry or the public.

## Infringements

The Act defines a number of offences relating to the obligations of holders of work authorities. Offences under the Act include searching for stone on Crown land or private land without consent, carrying out extractive industry activity without authority, failing to comply with extractive industry work authority conditions when carrying out activity and failing to comply with a requirement to enter into a further rehabilitation bond.[[58]](#footnote-58)

Inspectors have powers to serve an infringement notice on anyone they have reason to believe may have committed an offence under the Act.[[59]](#footnote-59) Inspectors can also take specified actions to remedy contravention or non-compliance, prohibit the doing of a certain activity or class of activity, order the supply further plans or other information and to undertake monitoring, surveys, audit or assessment.[[60]](#footnote-60)

The Act also includes penalties for each offence. Different penalties apply for individuals and corporations.

Without regulations, these offences would be subject to the powers given to inspectors under the Act, which only allows for prosecution through the courts. This would involve longer processing times and a greater administrative burden for the Department and the industry and is less suitable for minor offences. Infringement notices are an important part of the enforcement of the legislation, and this task would not be possible for the Government if Regulations were not in place.

## Fees, rents, royalties and levies

This RIS does not assess the current level of fees, rents, royalties or levies. The level of fee units will continue at their current rates (subject to annual indexation) until at least 1 July 2020. This is in line with the recommendation from the Commissioner for Better Regulation in the *Getting the Groundwork Right* report, which recommended that the department begin to increase cost recovery for ERR’s regulatory activities no earlier than 1 July 2020.

This will allow the department to:

* Embed improvements to the regulatory system currently being implemented;
* Consult with industry and other stakeholders on the right model for cost recovery; and
* Establish a clear baseline on the efficient cost base for ERR.[[61]](#footnote-61)

Once these actions are completed, the intent is to amend the Regulations to implement the preferred model for cost recovery, including examining the royalty methodology, and establish fees that reflect the efficient cost base.

The Act establishes the authority to make regulations with respect to, amongst other things, the rate or method of assessment and the times of payment of royalties, and for the payment of fees for anything done under the Act or the Regulations and prescribing those fees.[[62]](#footnote-62) The rates for royalties and fees are prescribed in the Regulations.[[63]](#footnote-63)

This exercise will itself be subject to a full RIS and public consultation.

# Objectives of the Regulations

## Legislative purpose and objectives

The purpose of the Act is to encourage mineral exploration and economically viable mining and extractive industries which make the best use of, and extract the value from, earth resources in a way that is compatible with the economic, social and environmental objectives of the state.[[64]](#footnote-64) The Act came into force in 1990 and has undergone incremental amendment over the years to reflect changes in the expectations of society, such as the inclusion of the principles of sustainable development and community consultation in 2006 and risk-based work plans in 2015. In summary, the Act establishes a regulatory framework that provides for:

* An efficient and effective process for licensing and approvals; co-ordinating applications; rights allocation decision-making for mineral and stone resources; and economically efficient royalties, rental, fees and charges
* A legal framework aimed at ensuring:
* Risks to the public, environment and infrastructure are identified and eliminated or minimised as far as reasonably practicable
* Consultation mechanisms are effective
* Extracted land is rehabilitated
* Appropriate compensation is paid for the use of private land for exploration or mining
* Conditions in licences and approvals are enforced
* Dispute resolution procedures are effective.

The principles of sustainable development are at the forefront of consideration in the legislation, which prioritise community wellbeing, present and future economic development and protection of the environment.

## Objectives of the proposed Regulations

The objectives of the proposed Regulations are to create an efficient framework for the collection of information to allow for the efficient and effective management of economic and environmental risks and to increase public confidence in extractive activities in Victoria.

The Regulations seek to do this by prescribing information to operationalise the Act for:

* Various procedures relating to work plans and extractive industry work authorities
* Matters relating to royalties
* Fees, forms and other matters authorised by the Act
* Prescribe certain offences as infringement offences.

## Government policy

In June 2018, the Government released *Helping Victoria Grow – Extractive Resources Strategy*. The strategy outlines the importance of securing Victoria’s extractive resources as the state continues to grow. These resources are integral in the development of new infrastructure in areas with rapid population growth.

The strategy acknowledges that there are potential challenges for the industry. As Victoria continues to grow and infrastructure is developed in new areas, building over the top of extractive resources is a risk. Identifying potential locations for extraction requires geoscience data and research, and land containing significant extractives resources may be inadequately sterilised by development in the absence of this information. In the longer term, this could prove critical as demand for extractive resources increased and potential supply shortfalls arise which may limit economic growth and infrastructure projects. It is also not economic to transport extractive resource products over long distances, so identifying potential sources for materials close to areas of development is a priority. The strategy lays out an approach on how these factors will be considered in the short and long-term.[[65]](#footnote-65)

There are six broad themes in the strategy:

* *Resource and land use planning –* strengthening the security of future extractive resources through improved forward planning for resources and land use
* *Transport and local infrastructure planning –* informing freight transport and infrastructure planning for the delivery of quarry resources to market
* *Efficient regulation –* helping to build greater industry certainty, confidence and investment in the sector
* *Confident communities –* building community awareness and acceptance in the extractives sector
* *Environmental sustainability –* promoting sustainability and environmental stewardship in the sector
* *Innovative sector –* promoting innovation in the sector, including facilitating innovative end land use for quarries post-closure.

The Government has committed to invest $15.7 million over two years to address Victoria’s growing need for extractive resources as investment in infrastructure reaches record levels. This includes funding for:

* The earth resources regulator to manage demand pressures and deliver regulatory reforms
* Strategic resources assessments and land use planning in collaboration with local governments, an extractives geoscience program and improved community and industry engagement.

In July 2017, the Treasurer directed the Commissioner for Better Regulation to undertake a Continuous Improvement Program with ERR. The project was tasked with identifying practical steps for improving regulation of the earth resources sector in Victoria. In December 2017 the Department established the Regulatory Transition Taskforce (RTT) to give effect to the Commissioner's recommendations and to drive further improvements to regulatory arrangements.

In May 2018, ERR released *Statement of Operating Change: Our New Approach to Earth Resources Regulation* (statement). This statement focuses on outcomes that minimise costs to businesses, meet community expectations and support government objectives. Specifically, the statement includes a plan that will:

* Progressively implement the actions approved by the Victorian Government in response to the Commissioner for Better Regulation’s recommendations in Getting the Groundwork Right - Better Regulation of Mines and Quarries
* Apply a proportionate approach in regulating sites by focusing on what matters the most to eliminate or minimise risks to people, the environment and infrastructure
* Build confidence in the regulatory system by developing clear approvals guidelines and assessment steps for our staff, referral authorities and industry, so each application is considered, and the process is understandable
* Simplify the regulatory requirements and processes to apply to undertake or vary the work the sector undertakes. Streamlining and simplifying the approvals process and improving guidance on application requirements.

# Options

When regulations are remade, the *Subordinate Legislation Act 1994* requires that a RIS considers other practicable means of achieving the objectives of the proposed statutory rules, including other regulatory as well as non-regulatory options.[[66]](#footnote-66)

The Subordinate Legislation Act Guidelines note that, “[i]n most cases, when a responsible Minister is considering making a statutory rule or legislative instrument, the authorising Act or statutory rule will dictate what kind of instrument may be created.”[[67]](#footnote-67) This may indicate that alternative legislation be followed, or new legislation be created.

In the case of the *Mineral Resources (Sustainable Development) Act 1990*, this guidance is relevant for options considered in this RIS. For example, the Act states that, “If… a person carrying out an extractive industry is not required to have a work plan, the Minister may impose a condition requiring compliance with a Code of Practice on the extractive industry work authority for that extractive industry operation.”[[68]](#footnote-68)

This section of the RIS considers regulatory and non-regulatory options to achieve the objectives which rectify current problems.

## Non-regulatory options

Non-regulatory options alone would not achieve the objectives of the Act. These options could include:

* Public information and education campaigns to inform individuals and work authorities of the details to be included in applications and reports
* Further incentives for completing effective rehabilitation of the quarry and surrounding land (such as through the return of finances to the work authority in addition to the remaining rehabilitation bond)
* Industry adopts a voluntary code of practice
* Greater enforcement of offences outlined in the Act.

Non-regulatory options on their own are often less effective, not enforceable or there is a significant cost to government of enforcement. In addition, some of the problems outlined in Chapter 2 can clearly not be solved through the use of non-regulatory options. For example, without Regulations in place the overall enforcement process would be more complex as individuals and work authorities would have to be prosecuted through a Court of Law for offences committed that are outlined in the Act.

The inability of non-regulatory options to achieve the stated objectives means they are not considered further (apart from the base case) in the options development and analysis (see Table 8). The options will be revisited in the implementation of the final Regulations where they can assist compliance and understanding of any new requirements, for example information and education campaigns.

Table 8: Summary of non-regulatory options considered when preparing a RIS

| **Non-regulatory option** | **Why the option has not been considered further** |
| --- | --- |
| **Public information and education campaigns to inform individuals and work authorities of the details to be included in applications and reports** | * There would be no strict guidelines for individuals and work authorities to follow * Not all operators would engage with information and education campaigns, meaning that there would be widespread inconsistencies with applications and reports. |
| **Further financial incentives for completing effective rehabilitation of the quarry and surrounding land (such as reduced royalties)** | * The potential financial gain from the incentive may not outweigh the additional cost of rehabilitation * Significant additional cost to the State Government. |
| **Industry adopts a voluntary code of practice** | * The rate of compliance would (or could) likely decrease significantly from current levels * Increased risk of impacts to the land where quarries are located, as well as, the surrounding environment, members of the public and infrastructure. |
| **Greater enforcement of offences outlined in the Act** | * Significant additional cost to the State Government (to employ additional inspectors and prosecute more people through a Court of Law). |

## Base case – What will happen if the regulations are not remade

The base case is the situation where the Regulations sunset, and the Act remains in place—becoming the sole regulatory instrument for work authorities that carry out activities on land that has an area exceeding five hectares and a depth exceeding five metres, and where native vegetation is required to be blasted or cleared (if a work authority does not meet these criteria, they must abide by the Code of Practice for Small Quarries. The base case provides the basis against which options can be assessed and compared. In the absence of any government action, the base case would be represented by the positions set out in Table 9. While the base case is included in the set of options, these are not desirable because of the provisions in the Act that require some form of regulatory intervention (see Chapter 2). For this reason, the base case is set out to provide a basis for analysis but is not itself analysed as a potential option for implementation.

Table 9: Base case - Regulatory position if the Regulations are not remade

| **Regulation** | **Base case** |
| --- | --- |
| **Work plans** | The Act states that a person who proposes to apply for an extractive industry work authority must lodge a work plan with the Department Head, with exceptions if the land has an area not exceeding five hectares and a depth not exceeding five metres and that the extractive industry does not require blasting or the clearing of native vegetation.[[69]](#footnote-69)  The Act states that the work plan must contain certain information such as:   * The nature and scale of extractive industry activities * Risks and risk management activities * A rehabilitation plan * A community engagement plan * The prescribed quarry stability requirements and processes (if the extractive industry work authority relates to a declared quarry).[[70]](#footnote-70),[[71]](#footnote-71)   The holder of an extractive industry work authority who proposes to vary an approved work plan or is directed by the Department Head to lodge an application for approval of a variation of a work plan must lodge an application for approval of a variation with the Department Head.[[72]](#footnote-72) Without regulations there would be no specific requirements as to the information required for each element of the work plan. |
| **Rehabilitation plan** | Without Regulations, work authority holders would have to comply with details outlined in the Act in relation to rehabilitation plans. All work plans must include a rehabilitation plan for the land proposed to be covered by the work authority.[[73]](#footnote-73)  The holder of an extractive industry work authority must rehabilitate land in accordance with the rehabilitation plan approved by the Department Head and the conditions in the work authority.[[74]](#footnote-74)  A rehabilitation plan must take into account:   * Any special characteristics of the land * The surrounding environment * The need to stabilise the land * The desirability or otherwise of returning agricultural land to a state that is as close as is reasonably possible to its state before the work authority was granted * Any potential long-term degradation of the environment.[[75]](#footnote-75)   The plan must be prepared by the applicant for the extractive industry work authority after consultation with the owner of the land (if the land is private land).[[76]](#footnote-76) |
| **Reporting requirements** | The only requirements for work authorities to provide information outlined in the Act relate to work done under the work authority and reportable events.  The holder of an extractive industry work authority must (in the prescribed form and at the prescribed times) furnish to the Minister the prescribed information relating to work done under the extractive industry work authority.[[77]](#footnote-77) The ‘prescribed information’ is only found in the Regulations, and not in the Act.  The holder of an extractive industry work authority who carries out an extractive industry at a quarry must report to the Chief Inspector in accordance with the regulations a reportable event at the quarry as soon as practicable after the reportable event occurs. A ‘reportable event’ means an event prescribed as a reportable event for the purposes of the section in the Act.[[78]](#footnote-78)  Without regulations there would be no regular sector wide reporting and the Minister would be required to request specific information (such as production) on a case by case basis directly from authority holders under the Act. No regular time frames would be set for reporting. |

## A. Options for work plans

### Option A.1 – Status quo

Under this option, additional information relating to work plans such as fees and prescribed information is included in the Regulations to support the relevant sections of the Act. This information is the same as is included in the current Regulations.

Table 10: Regulations relating to work plans – Status quo

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Prescribed information in a work plan and variation of a work plan** | **Information to be contained in work plans:**  The description of proposed work in a work plan must include:   * A location map of the work plan areas and surrounding areas, drawn at an appropriate scale * A general description of geological information pertaining to the proposed work, including stratigraphy, any adverse geological structures, the types of stone to be extracted and the estimated stone resources and reserves * A general description of the quarry operations * A site map, drawn at an appropriate scale, showing the general layout of the quarry and associated facilities and infrastructure * A description of sensitive receptors (including their location), in relation to the environment, any member of the public, or land property of infrastructure in the vicinity of the proposed work.   Other information required in the work plan relates to:   * Identification of quarrying hazards * Identification and assessment of risk * Risk management plan * Rehabilitation plan * Community engagement plan.   If the site is a declared quarry, additional information required in the work plan includes:   * Any additional geological information that is relevant to the stability of the declared quarry, including a plan showing cross-sections and long sections of the proposed extraction area of the declared quarry * An assessment of the geotechnical and hydrogeological risks for the declared quarry * A description on the control measures that will be implemented to eliminate or reduce the geotechnical and hydrogeological risks to an acceptable level including a description of any proposed groundwater control system and particulars of other measures to ensure the stability of the quarry, associated infrastructure and adjacent land * A plan for monitoring the stability and groundwater management of the declared quarry * A description of the process for reviews of the assessment, plan, actions and control measures referred to relating to declared quarries.[[79]](#footnote-79)   **Risk management plan:**  A risk management plan must:   * Specify the control measures to eliminate or minimise, as far as is reasonably practicable, the identified risks associated with quarrying hazards * Specify the objectives, standards or acceptance criteria that each control measure or a combination of control measures will achieve * Include a monitoring program that will measure performance against all the specified objectives, standards and acceptance criteria * Specify arrangements for reporting on performance against all the specified objectives, standards and acceptance criteria.[[80]](#footnote-80)   **Information to be contained in application for variation of work plan:**  Prescribed information to be to be contained in an application for variation of a work plan includes:   * A description of any new or changed quarrying hazard arising from the proposed changes to the work set out in the work plan that significantly increases the risks posed to the environment, to any member of the public or to land, property or infrastructure in the vicinity of the relevant work * The information that relates to, and is applicable to, identification and assessment of risk and risk management in relation to any new or changed quarrying hazards * The information that relates to, and is applicable to, the rehabilitation plan * The information that relates to, and is applicable to, the community engagement plan * In the case of work to be carried out in a declared quarry, the information that relates to, and is applicable to, the prescribed information for a declared quarry (outlined above) * A description of how the proposed variation to the work plan relates to the current approved work plan.[[81]](#footnote-81) |

### Option A.2 – Proposed Regulations

The proposed Regulations prescribe less information to be included in a work plan, with the main change being wording changes surrounding requirements for risk management plans. This is to reduce the regulatory burden on industry when completing work plans.

Table 11: Regulations relating to work plans – Proposed Regulations

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Prescribed information in a work plan and variation of a work plan** | **Information to be contained in work plans or applications for variation of work plan:**  This information is the same as what is included in the Option A.1. - Status quo.  A rehabilitation plan and community engagement plan would still need to be completed under this option.  However, if the site is a declared quarry, there is no requirement for a work plan to include additional information.  **Risk management plan:**  Under this option, a risk management plan must have:   * Measures to be applied to eliminate or minimise the risks as far as reasonably practicable * Performance standards to be achieved by either individual measures or some combination of measures * Management systems, practices and procedures that are to be applied to monitor and manage risks and compliance with performance standards * An outline of the roles and responsibilities of personnel accountable for the implementation, management and review of the risk management plan.   Performance standards are specific expectations that are to be achieved through an action (or actions) taken to seek certain outcomes. |

## B. Options for rehabilitation plans

### Option B.1 – Status quo

Under this option, the Regulations support the information provided in the Act relating to the details of a rehabilitation plan and places greater emphasis on planning for ongoing and final rehabilitation. This information is the same as is included in the current Regulations.

Table 12: Regulations relating to rehabilitation plans – Status quo

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Rehabilitation plan** | A rehabilitation plan must:   * Address concepts for end utilisation of the proposed quarry site * Include proposals for progressive rehabilitation, stabilisation and revegetation * Include proposals for landscaping to minimise the visual impact of the quarry site * Include proposals for the final rehabilitation and closure of the site, including the security of the site and the removal of plant and equipment.[[82]](#footnote-82) |

### Option B.2 – Proposed Regulations

Under this option, the Regulations provide requirements to include objectives that would act as performance measures. This would in turn make rehabilitation plans more enforceable. There would be a 12-month transition period in place for these additional requirements to be included in rehabilitation plans.

Table 13: Regulations relating to rehabilitation plans – Proposed Regulations

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Rehabilitation plan** | In addition to the requirements for a rehabilitation plan in Option B.1. - Status quo, under this option a rehabilitation plan must:   * Identify proposed post-quarrying land uses and a safe, stable and sustainable land form to support that future use[[83]](#footnote-83) * Include rehabilitation objectives * Include criteria for measuring whether rehabilitation objectives have been met * Include a description of, and schedule for, rehabilitation milestones[[84]](#footnote-84) * Include an identification and assessment of any relevant risks that the rehabilitated land may pose.[[85]](#footnote-85)   This option also proposes a 12-month transition for these requirements, and the changes only apply to new or varied work plans. |

## C. Options for reporting requirements

### Option C.1 – Status quo

Under this option, a far greater level of detail is provided to work authority holders surrounding information to be included in reporting through the Regulations. In effect, the Regulations prescribe all the information that is not outlined in the Act. This information is the same as is included in the current Regulations.

Table 14: Regulations relating to reporting requirements – Status quo

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Reporting requirements** | **Annual report:**  The holder of an extractive work authority must outline information relating to the period - stone that has been extracted or sold, the rock and product type of stone extracted, the total quantity produced and the value of total sales at the gate in the prescribed form set out in Schedule 2 in the Regulations and no later than 31 July following the end of the financial year to which the information relates.[[86]](#footnote-86)  **Information relating to injuries arising out of work done under work authority:**  In relation to any injuries arising out of work done under an extractive industry work authority, the prescribed form is in writing accompanied by a statutory declaration signed by the holder of the authority verifying that the contents of the summary are true and accurate; and the prescribed information is a summary of statistics of any injuries arising out of work done under the authority within the periods of 1 January to 30 June and 1 July to 31 December. The prescribed time is no later than four weeks after the end of the period to which the information relates.[[87]](#footnote-87)  **Information relating to reportable events at quarries:**  In relation to any reportable event arising out of work done under an extractive industry work authority, the prescribed form of furnishing the information is in writing; and the prescribed information is the date, time and place of the event, a description of the event and the steps taken to minimise the impact of the event.  If the Minister so requests, further details may be required such as the impact (or likely impact) of the event on public safety, the environment or infrastructure, any known or suspected causes of the event and details of actions taken to prevent a recurrence of the event.  A ‘reportable event’ includes an event abnormal to expected that results, or may result, in significant impact on public safety, the environment or infrastructure, an explosion or major outbreak of fire; slope failure, unexpected creep, progressive slope collapse or failure of slop stability control measures and an injury to a member of the public caused by the carrying out of the extractive industry or associated operations.[[88]](#footnote-88)  **Report relating to declared quarries:**  The holder of an extractive industry work authority that relates to a declared quarry must prepare a report in writing in respect to each period of 6 months ending on 30 June or 31 December or as otherwise defined. The holder must provide the report to the Minister within 3 months at the end of the period. The report must include the outcomes of reviews of the assessment, plan and controls for the management of geotechnical and hydrogeological risks for the declared quarry; the results of the monitoring plan set out in the work plan; and a description of activities taken to implement the declared quarry stability controls and the groundwater control system set out in Part 2 of Schedule 1 (relating to declared quarry stability requirements and processes) and any recommended changes to the work plan.[[89]](#footnote-89) |

### Option C.2 – Proposed Regulations

The major change in the proposed Regulations relative to Option C.1. – Status quo is that annual reports must include resource estimates as well as production data (with a 12-month transition period for this requirement). This is to ensure better achievement of the Act’s objective of effective resource allocation decisions, as well as fulfilling the Victorian Government’s priority to undertake strategic planning for the State’s extractive resources.

Table 15: Regulations relating to reporting requirements – Proposed Regulations

| **Area of legislation** | **Details in the Regulations** |
| --- | --- |
| **Reporting requirements** | Reporting must be completed electronically.  **Annual report:**  As well as reporting on production data required under Option C.1. - Status quo, annual reports must include data on resource estimates of the amount of stone resource available for extraction at a later date. The information that is required includes:   * Estimate of amount of stone resource available for later extraction (selecting either proven or probable) * Resource estimate (selecting either inferred, indicated or measured) * Rock and commodity in-situ and ex-situ densities (to convert between volume and tonnage) * Stratigraphic unit * Depth drilled * If the work authority is undertaking activities on crown land.   This option proposes a 12-month transition period for these requirements.  The requirement to provide estimated stone resources and the amount of resource available for later extraction in work plans is still in place in the proposed Regulations. The estimations in work plans, however, are initial estimated made before work commences.  **Information relating to injuries arising out of work done under work authority:**  Same as C.1. - Status quo, but there is no requirement to include a statutory declaration.  **Information relating to reportable events at quarries:**  Same as C.1. - Status quo.  **Report relating to declared quarries:**  Same as C.1. - Status quo. |

# Assessment of options

The RIS process seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on businesses and the community. The keystone of this process is to compare the options of each proposal to see which has the highest net-benefit. Ideally, where there is data available, this would be done using a quantitative cost-benefit analysis (CBA).

Typically, costs imposed on business are the most suitable to assess quantitatively, while other costs and benefits can be more difficult to estimate in monetary terms. In this RIS efforts are made to identify the monetary costs to business of the options. This will provide a reasonable estimate of the regulatory cost imposed on business for elements of the regulations. Given the limited availability of data to quantify benefits, the overall assessment of the regulations will be made using the multi-criteria analysis (MCA) decision tool, described below.

## Assessment method

Each option has been assessed by balancing its relative benefits and costs. These are as follows:

Benefits in this document mean the effectiveness of the option to achieve the overarching objectives of the Act (to encourage economically viable mining and extractive industries that make the best use of resources, compatible with the economic, social and environmental objectives of the State), and is the criterion used to represent the benefits of the options. It encompasses the proposal’s ability to give practical effect to the regulatory objectives, including by correcting any market failures.

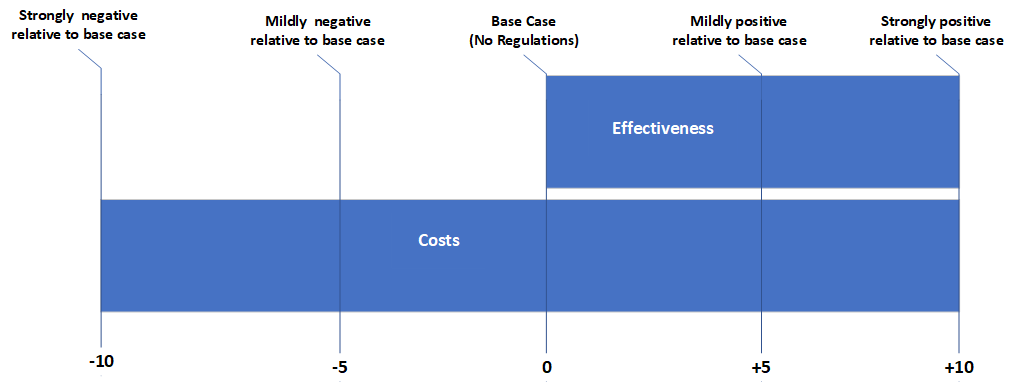
Costs in this document are of two types: those imposed on businesses in the regulated sector; and those borne by government. The former includes administrative (‘red tape’), substantive compliance, and delay costs.[[90]](#footnote-90) The latter refers to the monetary cost to government (and therefore taxpayer) of administering the regulations. Such funding comes from general taxation revenue. In the context of this RIS, it does not cover activities for which the government recovers costs directly from the beneficiary of those services.

## Scoring

The costs of each option can theoretically be readily expressed in monetary terms. In practice, however, it is often difficult to obtain adequate data to precisely identify the costs that an option would impose, and decision makers must rely on approximate or relative cost estimates. Effectiveness for these Regulations cannot be expressed in strict monetary terms, as the objectives of the Act relate to social and environmental values. For these reasons, this document employs an MCA.

Under this type of analysis, each option is scored against the criteria above (effectiveness, and costs - both to industry and government) relative to the base case as illustrated below:

Figure 2: Multi-criteria analysis scale used in scoring options



Effectiveness is scored between 0 and +10. A score of 0 means that the option does not further the objectives of the Principal Act in any way, relative to the base case. A score of +10 means that the option furthers the objectives of the Act to the optimum extent possible. A negative score is not possible for effectiveness, as no option would be considered which was contrary to the objectives of the Principal Act.

Costs are scored from –10 to +10. A score of 0 means that the option does not add any regulatory costs over the base case. A score of –10 means that the option imposes costs significantly higher than the base case. A positive score would be given where the regulations reduce costs relative to the base case. This might happen in a situation where the regulations clarify what would otherwise be an ambiguous (and therefore more demanding) requirement arising from the Principal Act. While theoretically possible, it is unlikely that any option would return a strongly positive score.

#### Weightings

Effectiveness and costs have each been weighted equally (50 per cent). However as there are two forms of cost (one to businesses, one to government) the 50 per cent weighting for costs has been further divided into 35 per cent for costs to business; and 15 per cent for costs to government. This reflects the relative importance that government places on lowering regulatory burden on businesses. A recent report has quantified the costs imposed by the current Regulations, through both administrative and compliance terms.[[91]](#footnote-91) These costs have been cited and considered where appropriate in this chapter.

The weightings for the criteria are outlined in Table 16.

Table 16: Criteria weightings

| **Criteria** | **Weighting** |
| --- | --- |
| Effectiveness | 50% |
| Cost to industry | 35% |
| Cost to government | 15% |

Once an option has been scored on all the above criteria, these are multiplied by the above weightings. The results are then summed. The option which returns the highest value is preferred.

#### Rate of compliance

Although not expected to make a significant difference to the scoring under any of the options, it is important to consider the rate of compliance. In short, this is the number of individuals or work authorities that fully adhere to the legislation. In some cases, people may consciously choose not to comply with legislation, however the rate of compliance may be impacted by the information provided in the Regulations and the consequent ability of authority holders to fulfil their roles (such as planning or reporting requirements) to a greater standard. For example, if the Regulations prescribe greater detail on the need to include objectives for rehabilitation to be able to assess milestones and other measures, the number of work authorities that complete effective rehabilitation – and in turn comply with the Regulations – is expected to rise.

## Options for work plans

Table 17 below shows the MCA criteria used to assess options of work plans. The criteria reflect the objectives in the Act for work plans.

Table 17: Assessment criteria – Work plan requirements

| **Criterion** | **Description** | **Weighting** |
| --- | --- | --- |
| **Benefit criteria** | | |
| Effectiveness | Effect of information provided in Regulations on work plans to support appropriate government decisions that ensure work done under a work authority does not pose a risk to members of the public, the environment, land property or infrastructure. | 50% |
| **Cost criteria** | | |
| Cost to industry | Cost, including time delays, to industry of preparing work plans and having them approved. | 35% |
| Cost to government | Cost to government of administering and enforcing the system, including in relation to the process to approve work plans. | 15% |

### Option A.1 – Status quo

The current Regulations provide further information to work authority holders and applicants regarding new and varied work plans. In this respect, they are an improvement from the base case. The information provided, however, does impose further costs on industry (through additional time required to prepare information) and the State Government (through additional questions from industry and extended approval processes).

Risk management planning has been a contentious issue as it has imposed additional costs on industry, which in some cases has led to work authorities postponing works that may require a new or varied work plan. In December 2015, legislative and regulatory changes were made that require operators to prepare a hazard assessment and risk management plan. This entails an assessment of hazards on the site, including the potential impact on significant community facilities, and information on how the risks will be managed. These requirements only apply to work plans that have been submitted since December 2015, and operators with work plans approved before this date are generally not required to prepare risk management planning if activity has not changed. The requirement to complete risk management planning has imposed further costs on industry, which has had flow on effects to other parties.

The Regulations are integral in providing work authority holders with additional guidance on the information that needs to be included in work plans. While the Act sets out high level details of information to be included, the Regulations are far more prescriptive. Without this detail in the Regulations, there would be a greater level of ambiguity and uncertainty surrounding the requirements for completing a work plan or a variation of a work plan.

Since the Act does not outline the information in detail that is required in a work plan (as seen in the Regulations), work plans submitted by work authorities may not have the same level of detail in the absence of the Regulations. This may mean that potential risks to the environment, members of the public or to land, property or infrastructure may not be included or described with the necessary level of detail, and thus eliminating or minimising these risks – an objective of the Act – may not be possible.

Concerns have been raised that, under this option, the work plan requirements outlined in the Regulations are overly prescriptive and can lead to additional burden for industry (through time spent developing the work plan).below summarises the assessment of this option against each of the MCA criteria.

Table 18 below summarises the assessment of this option against the MCA criteria

Table 18: MCA assessment of work plan requirements – Status quo

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | Relative to the base case (of no Regulations) the current Regulations are more effective as they provide greater clarity on the content of work plans than the Act alone. The work plan information requirements in the current Regulations elicit information from the regulated parties to enable workplans to be approved in accordance with the objectives of the Act. The approval of work plans mitigates risks posed to members of the public, the environment and surrounding infrastructure by extractive industries under the Act.  However, delays with approvals for work plans can impact these risks, as well as delay extraction. This could affect the ability of work authorities to meet demand for extractive resources, and in turn result in higher prices for other industries across Victoria.  In recent times, industry has expressed concerns that the information required in work plans is too prescriptive, detracting from the overall effectiveness of the Regulations.  In relation to risk management plans, there are industry concerns that the requirements are not aligned with the Act’s stated intention that work plans are proportionate to the nature and scale of work.  Risk management plans can reveal unidentified or poorly managed risks on site, but the high costs associated with preparing these plans are suggested to have discouraged some operators from completing them.[[92]](#footnote-92) This could pose risks to the environment, members of the public or infrastructure if these risks have not been identified or have been ignored.  The greater level of clarity provided with the Regulations, as well as risk management planning, means that this option provides a moderate increase in effectiveness compared to the base case. With more information provided by work authorities, the overall level of compliance (those completing work plans to the required standard) is expected to rise.  This criterion is given a score of +3 for this option. | 50% | +3.0 | **+1.5** |
| Cost to industry | The work plan approval information requirements in the current Regulations impose compliance and administrative costs to industry compared to the base case because they require information on other matters that are not specified in the Act e.g. a description of sensitive receptors (including their location), in relation to the environment, any member of the public, or land property of infrastructure in the vicinity of the proposed work. The current Regulations may pose additional costs to those applying for or varying work plans because there is uncertainty about what is required and what standards are to be met.  Feedback from industry has indicated that the current average time taken to process a work plan approval is three and a half years, and industry operators noted that (then) DEDJTR Work Plan Approvals was one of the top three issues limiting the expansion of their work authorities.[[93]](#footnote-93) These delays can affect the ability of work authorities to commence extraction and meet demand for extractive resources, leading to potential losses in revenue.  One recent example from a quarrying business indicated that the business incurred costs of $10,000 per day over a period of three months because it could not gain access to a site. This was due to delays of obtaining approval for a work plan variation.[[94]](#footnote-94)  The overall level of effort required by industry to meet the work plan requirements can be extensive, due to the overly prescriptive nature of requirements.  The requirement for authority holders to prepare a risk management plan as part of a work plan has caused issues. The costs associated with the preparation of these plans can be high, and some operators have deferred works that may require them to vary the work plan and complete a risk management plan.[[95]](#footnote-95)  With the requirements for work authorities to include additional information in work plans – including the completion of risk management planning – and potential costs of work plan approvals, this option results in a moderate increase in costs for industry compared to the base case.  This criterion is given a score of -5 for this option. | 35% | -5.0 | **-1.8** |
| Cost to government | The work plan requirements in the current Regulations reduce the costs to government compared to the base case (although not significantly), because the Regulations prescribe information relevant to the decision to approve work plans (that is not specified in the Act). It goes some way to providing work authority holders and applicants with further clarity around the requirements of a work plan, meaning that the likelihood of questions and queries being posed to the Department is reduced.  However, this is not strongly positive because the current Regulations do not provide clear guidance to industry about what is required in obtaining an approved work plan, creating a level of additional unnecessary cost to government in approving work plans (particularly in relation to risk management plans and variations).  This criterion is given a score of +3 for this option. | 15% | +3 | **+0.5** |
| **Total** |  |  |  | **+0.2** |

### Option A.2 – Proposed Regulations

The proposed Regulations provide better outcomes compared to A.1. - Status quo for the overall effectiveness of the Regulations as well as for industry and the State Government. The wording changes surrounding risk management requirements provide clarity to work authority holders and ensure that wording is outcome-focused, which better aligns with the objectives of the Act.

The burden of completing work plans is marginally reduced for both industry and the State Government under this option, as information surrounding risk management requirements provide greater clarity. This should contribute to reduced work plan approval times, which helps to minimise delays in extraction activities commencing for industry.

Table 19 below summarises the assessment of this option against each of the MCA criteria.

Table 19: MCA assessment of work plan requirements – Proposed Regulations

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | With clearer requirements prescribed in the Regulations for work plans under this option, work plans are more outcome-focused and better aligned with the Act than A.1. - Status quo – hence providing a moderate increase in effectiveness in the proposed Regulations.  Wording changes of risk management requirements from work plans alleviate some burden on industry (although minor) from previous confusion and misunderstandings around information to be included.  These changes are not expected to affect the standard of risk management plans, so increased risk of extractive industry activities having a negative impact on members of the public, the environment and surrounding land and infrastructure is not a concern.  Overall, this option provides greater effectiveness of regulation as the work plan requirements are more outcome-focused. This is due to the inclusion of objectives and performance standards in risk management plans that are measurable to ensure that risks continue to be eliminated or minimised (one of the primary objectives of the Act).  The slight reduction in burden for industry to develop a work plan is not expected to affect compliance as work authority holders are still required to have the same level of information in work plans.  This criterion is given a score of +5 for this option. | 50% | +5 | **+2.5** |
| Cost to industry | This option is slightly more favourable to industry compared to A.1. - Status quo as the wording changes around risk management plans provide greater clarity to work authority holders. This may reduce the number of queries for the Department to improve the standard or work plans and reduce the work plan approval time (as risk management plans would generally be clearer). This last point may in turn decrease the risk of delays for work authorities in commencing extraction and the consequent loss of revenue.  While the impact of the proposed Regulations regarding work plans is still negative for industry (given the requirement to complete work plans as prescribed in the Regulations) compared to the base case, it is marginally less burdensome than A.1. - Status quo.  This criterion is given a score of -4 for this option. | 35% | -4 | **-1.4** |
| Cost to government | As in A.1. - Status quo, this option is less costly for government compared to the base case due to greater clarity for industry and less queries from work authority holders for the Department. The positive impact is, however, marginally greater than in A.1. - Status quo because of the reduction in time taken to approve work plans (due to increased industry clarity with risk management requirements).  This criterion is given a score of +3.5 for this option. | 15% | +3.5 | **+0.5** |
| **Total** |  |  |  | **+1.6** |

### 

### Summary of scores

The MCA assessment indicates that Option A.2 (the proposed Regulations) is preferred.

Table 20: Work plans - Summary of scores

| **Option** | **Net score** |
| --- | --- |
| Option A.1 – Status quo | +0.2 |
| **Option A.2 – Proposed Regulations** | **+1.6** |

## Options for rehabilitation plans

Table 21 below shows the MCA criteria used to assess options for rehabilitation plans. The criteria reflect the objectives in the Act for rehabilitation.

Table 21: Assessment criteria – rehabilitation plan requirements

| **Criterion** | **Description** | **Weighting** |
| --- | --- | --- |
| **Benefit criteria** | | |
| Effectiveness | Effect of information provided in rehabilitation plans to support appropriate government decisions that ensure extracted land is rehabilitated and risks to the environment, members of the public, property and infrastructure are managed. | 50% |
| **Cost criteria** | | |
| Cost to industry | Costs, including time delays, to industry of preparing rehabilitation plans, having plans approved, and of complying with Government regulation of rehabilitation works. | 35% |
| Cost to government | Cost to government of administering and enforcing the requirements, including the processing of approvals. | 15% |

### Option B.1 – Status quo

Overall, this option results in a positive impact compared to the base case due to additional information provided to operators for inclusions in rehabilitation plans. This can result in reduced risks of impacts on members of the public, the environment and surrounding land and infrastructure. The additional information is, however, unclear around specific information to be included in the plans and can even result in unidentified risks that can eventuate from poor rehabilitation. This may mitigate the positive impact for members of the public, the environment and surrounding land, property and infrastructure.

While the Act sets out information that must be included in a rehabilitation plan, the Regulations prescribe further information that would further support the principles of sustainable development, particularly around environmental considerations.

In general terms, the current framework (Act and Regulations) does not facilitate compliance certainty, best-practice rehabilitation planning, or allow the Department to make an informed, consistent assessment of rehabilitation plans, including a final assessment of whether rehabilitation is complete. This compromises risk management and reduces industry incentives to invest in rehabilitation planning and execution.

Key issues with the framework include:

* The requirements relating to rehabilitation planning and execution lack clarity and do not provide certainty to holders of work authorities regarding key decisions
* The legislation fails to sufficiently address residual risks that endure after rehabilitation is complete, such as where a final land form requires ongoing monitoring and maintenance or generates other safety, stability or sustainability issues.

Table 22 below summarises the assessment of this option against each of the MCA criteria.

Table 22: MCA assessment of rehabilitation plan requirements – Status quo

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | Option B.1. - Status quo provides some clarity (relative to the base case where the Act is the only regulatory instrument) on information to be included in rehabilitation plans. The Act requires several concepts to be considered in a rehabilitation plan but does not provide any outcomes or specifications.  The B.1. - Status quo rehabilitation plan requirements do not adequately elicit information from the regulated parties to ensure that rehabilitation plans can be approved in accordance with the objectives of the Act. Given that the requirements are conceptual rather than measurable, they do not facilitate enough level of detail to support an accurate assessment of overall rehabilitation liability. Due to difficulties in pricing uncertainty in the assessment, the liability assessments likely reflect only a portion of the true costs to rehabilitate, resulting in potential under-bonding and a significant financial risk to the State. It is possible that operators know more than the Department about the true risks (or cost) of rehabilitation at a quarry site, and there is incentive for operators to make proposals with low costs as bank guarantees require a line of credit with ongoing costs to operators. It is also possible though that, due to a lack of clarity in regulation, operators could be unknowingly misleading the Department with incorrect risk management information.  Current Regulations do not require rehabilitation plans to identify the post-closure risks arising from rehabilitated land (e.g. known costs and foreseeable risks associated with ongoing land management for a rehabilitated land form). In this sense, the Department may approve works without understanding the ongoing risks and costs to the community, environment, and the State.  Some of the potential impacts of poorly rehabilitated land post-closure include:   * Leaving behind steep slopes, which are at high risk of erosion and could result in serious injury * Insufficient soil ripping, which will help the soil to ‘key’ to the underlying material * Insufficient revegetation, which can be used to minimise the ongoing visual impact of a quarry into the future.[[96]](#footnote-96)   The current Regulations do not include progressive rehabilitation milestones, and it is difficult to give practical effect to the requirement in the Act that rehabilitation should occur in the course of doing work.  Despite these shortfalls, the additional information provided in the Regulations still leads to a moderate improvement in effectiveness than in the base case. It is expected that, with more information on how land should be rehabilitated, the number of work authorities who complete rehabilitation to the required standard (e.g. the rate of compliance) will improve.  This criterion is given a score of +2 for this option. | 50% | +2.0 | **+1.0** |
| Cost to industry | The Department considers that compliance and administrative costs to industry related to the preparation of rehabilitation plans are not excessive compared to the base case, because they do not require significant additional information relative to what is specified in the Act. However, the information requirements are unclear under the current system, which may create additional unnecessary costs to industry, for example requiring multiple revisions of a proposed rehabilitation plan before it is approved.  It is possible that the additional requirements outlined in the Regulations for progressive and final rehabilitation, such as future security of the site, may impose costs on operators that are additional to rehabilitation bonds.  The conclusion is that there may be a minor increase in costs to industry relative to the base case due to the need to comply with additional rehabilitation requirements.  This criterion is given a score of -1 for this option. | 35% | -1.0 | **-0.4** |
| Cost to government | The current rehabilitation plan requirements provide more detail to industry on information to be included in rehabilitation relative to the base case, meaning that approved plans are more likely to be adequate to meet the objectives of the Act. It is expected that this will reduce the likelihood of the Department having to follow up with authority holders to obtain more information regarding rehabilitation and reduce costs to government.  The Department uses rehabilitation plans to assess rehabilitation costs and set rehabilitations bonds. The current Regulations provide some assistance to the Department in assessing rehabilitation costs relative to the base case (requirements in the Act alone). Therefore, the current Regulations provide some assistance in minimising the risk that rehabilitation bonds will be insufficient and the Government will have to pay for rehabilitation costs.  Overall, the reduced risk of the Government having to pay rehabilitation costs and reduced follow up on rehabilitation plans result in a small reduction in costs to government. Hence, this criterion is given a score of +1.5 for this option. | 15% | +1.5 | **+0.2** |
| **Total** |  |  |  | **+0.9** |

### Option B.2 – Proposed Regulations

The addition of the need to include objectives and corresponding performance in the proposed Regulations is expected to result in more effective Regulations in comparison to B.1. - Status quo. With better identification of future risks, rehabilitation liability can be more accurately estimated, which helps to achieve the objectives of the Act and reduce the financial risks for the State.

The administrative burden for industry is greater than B.1. - Status quo under this option, due to the need to provide more information in rehabilitation plans. This burden may be somewhat mitigated through the proposed 12-month transition to these requirements and the changes only applying to new or varied work plans.

The State Government is better off under this option than in the base case, due primarily to cost savings from having to complete further works on extractive land in the future because of poor rehabilitation by authority holders.

Table 23 below summarises the assessment of this option against each of the MCA criteria..

Table 23: MCA assessment of rehabilitation plan requirements – Proposed Regulations

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | The proposed Regulations address many of the problems in B.1. - Status quo.  With the addition of requirements that are measurable (given that the plans must include objectives), more detailed and accurate information can contribute to the approval of rehabilitation plans that are better aligned with the objectives of the Act. For example, it is expected that this additional level of detail will allow rehabilitation liability to be more accurately estimated, which will lower the potential financial risk to the State.  The requirement to identify and assess risks that rehabilitated land may pose reduces the potential ongoing threats to members of the public, the environment and the surrounding land and infrastructure. In addition, rehabilitation milestones ensure that progressive rehabilitation takes place, and this gives practical effect to the requirement in the Act that rehabilitation should occur in the course of doing work.  These factors all contribute to the proposed Regulations being moderately more effective in achieving the objectives of the Act than B.1. - Status quo. Although these measures place additional burden on industry (see below), the proposed Regulations are not expected to impact the rate of compliance as work authorities need to have rehabilitation plans approved before they can progress.  This criterion is given a score of +5 for this option. | 50% | +5.0 | **+2.5** |
| Cost to industry | The proposed Regulations moderately increase the regulatory burden on industry compared to both the base case and B.1. - Status quo.  The requirement to include objectives and performance measures in rehabilitation plans is expected to increase the time taken to complete the plans.  There may be additional burden placed on smaller authorities under this option, given that they may not have the same level of resources to source and complete this information. For this reason, the Act states that authorities do not have to lodge a work plan (and hence a rehabilitation plan) if carrying out activities on land that has an area not exceeding five hectares and a depth not exceeding five metres, and they are not required to blast or clear native vegetation.[[97]](#footnote-97) Work authorities in this situation must abide by the Code of Practice for Small Quarries.  The impact of the additional requirements may be somewhat mitigated through the proposed 12-month transition to these requirements and the changes only applying to new or varied work plans.  This criterion is given a score of -3 for this option. | 35% | -3.0 | **-1.1** |
| Cost to government | In comparison to B.1. - Status quo, the proposed Regulations are expected to reduce the risk of rehabilitation costs due to insufficient information but increase the time spent reviewing and approving rehabilitation plans.  With more information being provided in plans of the ongoing risks of rehabilitated land, the Department can more accurately estimate the rehabilitation liability. This is expected to reduce the likelihood of the Government having to financially support rehabilitation works, providing a cost saving in the future.  Given the additional information to be included in rehabilitation plans, it is likely that the time taken for the Department to review the plans will increase.  The cost savings compared to B.1. - Status quo are expected to outweigh the increase in administrative burden from reviewing and approving rehabilitation plans, resulting in a more favourable outcome for the Government compared to B.1. - Status quo.  This criterion is given a score of +2 for this option. | 15% | +2 | **+0.3** |
| **Total** |  |  |  | **+1.8** |

### Summary of scores

The MCA assessment indicates that Option B.2 (the proposed Regulations) is preferred.

Table 24: Rehabilitation plans - Summary of scores

| **Option** | **Net score** |
| --- | --- |
| Option B.1 – Status quo | +0.6 |
| **Option B.2 - Proposed Regulations** | **+1.7** |

## Options for reporting requirements

The Act creates a general power for the Minister to require licensees to provide information in the prescribed form and at the prescribed times. The Regulations ensure that the Minister and the Department Head have enough information to administer the Act and enforce the conditions in licences and approvals.

Table 25: Assessment criteria - reporting requirements

| **Criterion** | **Description** | **Weighting** |
| --- | --- | --- |
| **Benefit criteria** | | |
| Effectiveness | Effect of information provided in reports on the ability for government to make appropriate regulatory decisions and act to maximise benefits to the State and communities, while minimising risks. | 50% |
| **Cost criteria** | | |
| Cost to industry | Costs to industry of reporting prescribed information to the government. | 35% |
| Cost to government | Cost to government of administering and enforcing the legislative and regulatory requirements. | 15% |

### Option C.1 – Status quo

This option provides work authorities with additional information on their reporting requirements, however without the Regulations there would not have been any prescribed requirements for completing reporting. The addition of reporting does provide the Department with greater levels of information surrounding activity and production which can be used to assess potential impacts on members of the public, the environment and surrounding infrastructure.

In the absence of reporting requirements, the objectives of the Act cannot be met as the Act itself does not articulate what information work authorities need to provide or set any timeframes for regular reporting. Without reporting regulations, it is unlikely that the Department would have enough information to effectively regulate the sector.

Without the Regulations, there would be no information prescribed for work authorities to follow to complete reporting. This means that, with the addition of reporting requirements, additional costs are imposed on industry to complete this reporting. This option does improve the likelihood of the Act’s objectives being achieved, as the Department receives more information from industry on production and current and potential risks.

Information provided by work authorities through reporting is integral to the State’s geological information database, which are beneficial for the Government, industry and the broader public (see Section 2.4 for more detail).

Improving information can improve the operation of markets. Therefore, the regulatory problem to be corrected relates to:

* The provision of information of certain events, and
* The public good aspect of information.

In the first instance, holders of work authorities may be unwilling to disclose certain events, such as those with occupational health and safety implications. In the second instance, there are no private market incentives for holders of work authorities to provide data on available resources or information to the Government; in fact, there are disincentives, since withholding information may confer commercial advantages.

In order to overcome this regulatory problem, the current regulatory framework puts in place a series of measures that require holders of work authorities to provide certain information.

Table 26 below summarises the assessment of this option against each of the MCA criteria.

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Table 26: MCA assessment of reporting requirements – Status quo

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | The current Regulations prescribe information that assists the Department in making decisions about future licence allocation, enforcing existing licences and managing risks to the public.  The positive impact is high compared to the base case of no reporting (there is no prescribed information in the Act) because without this data, society does not benefit from appropriate regulation of extractive resource development.  The requirement of work authorities to complete an annual report in the form that is prescribed in the Regulations (in Schedule 2) means that the Department know exactly what information it receives. This information can then be utilised to ensure that the objectives of the Act are being upheld.  One downfall of the Regulations in C.1. - Status quo is that there is no requirement to provide information relating to extractive reserves within work authorities. Without reserves information, effective resource allocation decisions (one of the Act’s objectives) cannot be made. The strategic importance of understanding future resources has been highlighted by the Victorian Government in the Extractive Resources Strategy[[98]](#footnote-98), and this can impact the allocation of resources and hence the administration of the Act.  The Regulations outline requirements to provide information relating to injuries and reportable events, which help to ensure that the impacts of any events or risks can be considered and eliminated (or minimised).  The current approach to reporting of rehabilitation work under a work authority (including a specific definition of ‘rehabilitated’ that is not used elsewhere) may create regulatory confusion against the broader concept of rehabilitation, limiting effectiveness.  Prescribed reporting requirements significantly increase effectiveness compared to the base case as the Department have a greater level of knowledge of activities taking place in extractive industries and can in turn make other changes (either regulatory or non-regulatory) to further achieve the objectives of the Act. The use of information from the reports is also critical for the continual development of the publicly available information repository, which is accessible for the Government, industry and the broader public.  This criterion is given a score of +5 for this option. | 50% | +5.0 | **+2.5** |
| Cost to industry | Although the base case does not require work authorities to complete reporting, it is likely that authority holders would already produce the majority of information required under this option. Details required in annual reporting (such as the quantity and characteristics of the extracted resource and the value of sales) would likely be kept by work authorities and reporting on injuries and major events would likely occur anyway. Given that many of the extractive resource entities are not publicly listed, they are not required to declare the resource as an asset in publicly available reporting. There may be a small additional burden to collate all the information, however it is expected that many work authorities would already produce the information.  The current Regulations are complex, with requirements spread across schedules and this has resulted in duplication of reports being provided by work authorities.  The inclusion of the annual report form in the Regulations provides industry with a specific guide to follow on the information to be included. This may save time that would have otherwise been spent on researching the required information.  The current approach imposes more cost on industry compared to the base case because it imposes information requirements that regulated parties must comply with. The average annual administrative cost for a work authority (which is predominantly composed of mandatory reporting outlined in regulation) is estimated to be $15,000 (the total administrative costs across all 441 work authorities is estimated to be up to $7 million per year).[[99]](#footnote-99) It is estimated that up to 95% of the $7 million in total administrative cost is a direct result of the Regulations.[[100]](#footnote-100)  The overall requirement to complete reporting in relation to a number of different elements of information increases the cost to industry compared to the base case.  This criterion is given a score of -4 for this option. | 35% | -4.0 | **-1.4** |
| Cost to government | This option has moderately higher administrative costs compared to the base case of no annual reports. Processing reports from regulated parties implies costs both in terms of staff time and in terms of capital costs for running IT systems to collect the data. There may be some cost reductions to the Government, as increased information will support regulation of the sector.  A lack of reserves information in this option limits the ability of the Victorian Government to take a strategic approach to resource allocation, as anticipated in the Extractive Resources Strategy.[[101]](#footnote-101)  This criterion is given a score of -2 for this option. | 15% | -2.0 | **-0.3** |
| **Total** |  |  |  | **+0.8** |

### Option C.2 – Proposed Regulations

The major changes in the proposed Regulations relate to the requirement to include resource estimates as well as production in annual reporting and the removal of the requirement to provide a statutory declaration with information relating to injuries.

These changes are expected to result in positive impacts for the overall effectiveness of the Regulations and the Government compared to C.1. - Status quo. With new data on extractive resources, GSV can continue to build up the State’s geological information. Further information helps to ensure that the objectives of the Act are being upheld, and the future supply of resources can also be more accurately estimated with the resources data.

Industry encounters greater administrative burden under this option compared to C.1. - Status quo, as work authorities must provide data on resources in annual reporting. This may be a difficult task for some authorities who may not yet have this data on hand.

Table 27 below summarises the assessment of this option against each of the MCA criteria.

Table 27: MCA assessment of reporting requirements – Proposed Regulations

| **Criterion** | **Assessment** | **Weighting** | **Assigned score** | **Total score** |
| --- | --- | --- | --- | --- |
| Effectiveness | In addition to the positive impacts in C.1. - Status quo, under this option the effectiveness of the Regulations is moderately improved due to the requirement to provide information on extractive resources.  The information on remaining resources furthers GSV’s broad database that is essentially a public good, as the information can be used by the Government and also by industry. Future supply of resources can be more accurately estimated, which may reduce the risk of any unexpected shortages (which may affect prices and impact other industries). As stated in the Extractive Resources Strategy, one of the priority actions is to “improve data collection and sharing by improving the availability of, and access to, critical data on current and forecast production and available resources, in order to inform strategic resource planning.”  Obtaining resources information is integral to the achievement of the Act’s objective of effective resource allocation decisions, as well as the Victorian Government’s priority to undertake strategic resource planning. With this information, the State can better forecast potential shortfalls and begin planning now for how to best deal with these issues. As illustrated in Section 1.3.1, a number of local government areas in the central and fringe areas of metropolitan Melbourne are projected to have significant shortfalls in the supply of extractive resources in the near future. With accurate resources information, the Government can better prepare for this and start seeking solutions to ensure that this does not present broader issues for other industries.  The requirement to provide estimated stone resources in work plans is still in place in the proposed Regulations, but including additional requirements in annual reporting ensures that estimates remain accurate and up-to-date.  The rate of compliance is not expected to be impacted by the changes to the Regulations, as all methods of the reporting are still requirements of work authorities.  The change in relation to remove statutory declaration requirements is unlikely to impact on the effectiveness of the reporting obligations.  This criterion is given a score of +7.5 for this option. | 50% | +7.5 | **+3.8** |
| Cost to industry | In comparison to C.1. - Status quo, the regulatory burden for industry is slightly greater under this option. This is due primarily to the requirement for work authorities to provide information on extractive resources. For some, this could be a particularly burdensome task as they may not yet have resources estimates data, and further drilling would be required to prove a resource.  This burden is somewhat mitigated by the proposed 12-month transitional period, which allows time for industry to prepare for the reporting changes that are coming in to place.  There may be additional burden placed on smaller authorities under this option, given that they may not have the same level of resources to source and complete this information. For this reason, the Act states that authorities do not have to lodge a work plan (and hence a rehabilitation plan) if carrying out activities on land that has an area not exceeding five hectares and a depth not exceeding five metres, and they are not required to blast or clear native vegetation.[[102]](#footnote-102) Work authorities in this situation must abide by the Code of Practice for Small Quarries.  It is expected that the majority of work authorities already collect information on available resources, with the potential for additional work to obtain more accurate and up-to-date information.  The overall impact for industry is negative as the requirement to provide – and in some cases source – data on extractive resources may be significant. The removal of the requirement to make statutory declarations will be a minor reduction in administrative burden to industry.  This criterion is given a score of -5.0 for this option. | 35% | -5.0 | **-1.8** |
| Cost to government | With additional information being provided by work authorities in reporting, the time that the Department spends reviewing this reporting may increase slightly. In addition, with resources data now being provided, there may be additional work for GSV to input this data into their database and update other resources (such as the website). This is expected to add a small burden for the Government but not by a significant amount.  The 12-month transitional period is expected to help ERR prepare for the incoming changes.  Overall, Government is expected to be moderately better off with the proposed Regulations as, despite the minor increases in administrative burden to deal with the new information, the potential impacts of better strategic resource planning are great.  This criterion is given a score of +2 for this option. | 15% | +0.5 | **+0.1** |
| **Total** |  |  |  | **+2.1** |

### Summary of scores

The MCA assessment indicates that Option C.2 (the proposed Regulations) is preferred.

Table 28: Reporting requirements - Summary of scores

| **Option** | **Net score** |
| --- | --- |
| Option C.1 – Status quo | +0.8 |
| **Option C.2 – Proposed Regulations** | **+2.1** |

# Preferred options

The proposed regulations will make several changes to the current regulations as described in Chapter 4, including:

* Minor changes to work plan requirements (reducing the amount of information required) to achieve an outcome-focus and better align with the Act
* Requiring rehabilitation plans to:
* identify a post-quarrying land use and construct a rehabilitation plan that achieves a safe, stable and sustainable final land form, to support that future use
* include rehabilitation objectives which will collectively measure whether a safe, stable and sustainable landform has been achieved
* include completion criteria i.e. standards that will be used to measure whether rehabilitation is complete
* include a description of, and schedule for, progressive rehabilitation milestones
* Include an identification and assessment of any relevant risks that the rehabilitated land may pose
* Requiring resource data (in addition to production data) to be included in annual reports. Electronic reporting will also be required for annual reports and the current statutory declaration requirement will be removed
* Prescribing new infringements (and extending some existing infringements to cover persons as well as corporations) to cover additional offences where prosecution is currently the only enforcement option and change penalty units.

## Expected impacts of the proposed regulations

The expected impacts of the proposed regulations include:

* Simplifying requirements for work plans will represent a move towards more outcome-focused regulation which is better aligned with the Act. As well as improving the effectiveness of regulations, this simplification is likely to reduce regulatory burden compared with A.1. - Status quo
* Clearer rehabilitation plan and long-term risk management requirements to better address externalities and manage risks associated with extraction. Information in rehabilitation plans would link to clear outcomes and include completion criteria and milestones
* Improved information requirements for rehabilitation plans and variations will ensure government obtains sufficient information to approve rehabilitation plans that meet the objectives of the Act
* Improved rehabilitation plans reduce risks to the community and environment from extractive operations
* The inclusion of progressive rehabilitation milestones will give practical effect to the requirement in the Act that rehabilitation should occur during the extractive activity
* Additional information requirements and milestones are likely to increase the regulatory burden faced by industry, although this may be mitigated to some extent by a transition period
* Additional reporting requirements will provide better information on extractive resources. This information will allow the Department to more effectively support the objectives of the Act. This information can be used to provide more assurance of supply and better-informed strategic resource planning (e.g. regarding the relative merits of alternative land uses)
* The requirement to provide additional information is likely to increase the regulatory burden on industry, although this could be partially mitigated by the enabling of electronic reporting
* Prescribing new infringements could deliver improvements in the efficiency of enforcement regime and potentially increase compliance. Changes to penalty units improves the effectiveness of these penalties by better reflecting the severity of offences.

## Competition assessment

A RIS is required to examine whether proposed regulations will affect competition or place a disproportionate burden on small businesses.

Any regulatory proposal needs to be scrutinised carefully to assess whether it is having an adverse impact on the ability of firms or individuals to enter and participate in the market. As a matter of good public policy, it is a fundamental principle in Victoria that any new legislation (both primary and subordinate) will not restrict competition unless it can be demonstrated that:

* The benefits of the restriction outweigh the costs, and
* The objectives of the legislation can only be achieved by restricting competition.

A measure is likely to have an impact on competition if any of the questions in Table 29 can be answered in the affirmative.

Table 29: Competition questions

| **Test question** | **Assessment** | **Reason** |
| --- | --- | --- |
| Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms? | Yes | The extractives industry is restricted to only those holding work authorities. This potentially reduces the number of participants in the industry. |
| Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure? | Yes | The additional requirements for rehabilitation plans will initially apply to new applicants and may be more onerous than the current arrangements. |
| Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc.)? | Yes | Smaller businesses are disproportionally affected given their smaller administrative economies of scale. There is, however, reduced burden for activity on small areas of land.[[103]](#footnote-103) |
| Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products? | Yes | Work authorities restrict the location of where extractive activities may take place. |
| Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet? | No | The same requirements will be imposed on new entrants compared with incumbents. |
| Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure? | No | The regulations do not impose restrictions on the ability to innovate. |

The Act, and by extension, the regulations contain several proposals that may restrict competition. The requirement for firms to hold a work authority restricts the eligible number of players in an industry (although this does not place restrictions on the ability of additional parties to apply for a work authority). Work plans associated with work authorities also specify the location of activities and the nature of activities to be undertaken.

As part of the National Competition Policy legislative review process, the Victorian Government examined the Act for competition restrictions. While the review found that the main restrictions on competition contained in the legislation relate to granting exclusive rights to explore or exploit a given area of land, there were also restrictions identified in relation to the approval of work plans before the commencement of work and land rehabilitation requirements. The review concluded that small number of restrictions on competition contained in the legislation were necessary to achieve the objectives of the legislation and are justified in the public interest.[[104]](#footnote-104)

The competition assessment outlined above also considers the effect of the legislation. The Regulations themselves only restrict competition at the margin—to the extent that they operationalise the Act.

The proposed regulations concerning rehabilitation plans do not impose new obligations on work authority holders. However, they will improve compliance which is likely to add to costs. Over time, all work authority holders will be required to update their rehabilitation plans, so incumbents will not have an advantage over new entrants in the longer term.

The current requirements are contained throughout legislation but are difficult to follow. The proposal will consolidate these requirements, making them easier to understand which should promote compliance. While greater specificity and enhanced compliance will affect new entrants, it is proposed that all work authority holders review their rehabilitation plans within 5 years. There may be some marginal competition impacts in this period, when new applicants will face greater rehabilitation requirements than incumbents.

## Small business impacts

In Victoria, small businesses make up approximately 97% of the State’s total businesses. Of approximately 500 companies in the extractives industry, 20 (or 4% of) companies account for around 75% of the industry’s overall production, with the remaining 96% of businesses accounting for just 25% of production. This indicates that the proportion of small businesses in the extractives sector is likely to be similar to the State average.[[105]](#footnote-105)

It is Victorian Government policy to specifically consider the impact of proposed amendments to regulatory proposals on small business in a RIS. Small businesses may experience disproportionate effects from regulatory requirements for a range of reasons, including limited resources to interpret compliance requirements, or to keep pace with regulatory changes and the cumulative effect of different requirements.

An assessment of the small business impacts should consider matters such as:

* Variation in the compliance burden
* Whether any compliance flexibility options have been considered that will assist small businesses to meet the requirements of the proposed measure
* The likely extent of compliance by small versus large business
* The distribution of benefits arising from the proposed measure
* The relative impacts of penalties and fines for non-compliance.

For the preferred option the proposed Regulations related to work plans are likely to decrease the burden on small businesses while the proposed Regulations in other areas are likely to increase this burden. Features of the proposed Regulations that are likely to decrease the burden on small business include:

* Simplified requirements for work plans – simplifying requirements will reduce burden on all businesses. Small businesses may benefit disproportionately as A.1. - Status quo is likely to be having a greater impact on these businesses which lack administrative economies of scale available to larger businesses. However, these requirements will have no impact on some very small businesses which are not required to provide work plans under the Act.[[106]](#footnote-106)

Features of the proposed regulations that are likely to increase the burden on small businesses include:

* Requiring additional information required in rehabilitation plans adds to the burden for small business. As with the benefits above, this additional burden may have a greater impact on small business given the lack of administrative economies of scale. Conversely, businesses which are small enough to not require a work plan will also not be required to produce the associated rehabilitation plan and will therefore be unaffected by this change
* Additional reporting requirements will impose a burden on all small extractives industry businesses (unlike work plans, all businesses are required to meet these reporting requirements). In addition to the economies of scale reasons outlines above, these additional requirements may also require small businesses to explore their land more fully to collect data on resource amounts. This is likely to impact small businesses disproportionately as larger businesses are more likely to be monitoring resources already and only face the additional administrative burden.

## Interstate comparison

The instruments used by each Australian jurisdiction to regulate extractive industries differ. Some jurisdictions lay out requirements in an Act, while in other jurisdictions these powers reside in Ministerial guidelines or regulations. Regulation of extractive industries may also be governed through the planning system. Western Australia, for example, regulates the extractive industry through the *Mining Act 1978 (WA),* State Agreement Acts, and through local government planning, depending on whether the activity takes place on crown or private land.[[107]](#footnote-107)

This diversity in approaches to regulation makes a direct comparison of the proposed Regulations problematic (as they can’t be compared to an equivalent instrument). However, desktop research of the various regulatory approaches across other jurisdictions has not identified any substantial differences in the restrictions placed on commercial activity or the administrative burden of compliance with the regulatory regime.

# Implementation and Compliance

## Implementation

Most of the responsibility of implementing the proposed Regulations will fall on the State Government, and more specifically the Department. The primary goal of the implementation phase will be to update and communicate with industry to keep operators and authority holders informed of the incoming changes with the proposed Regulations. This will be done by updating information documents (including websites, guidelines and Standard Operating Procedures (SOP’s)) and re-designing application and reporting forms.

To simplify the implementation process and avoid any potential misunderstandings, the Department conducted consultations with a number of stakeholders in the extractive resource industry (see Chapter 9 for more details). This has ensured that many in the industry understand the changes that will come into place with the proposed Regulations.

The table below outlines the implementation outcomes for each area of the Regulations, ranging from minimal implementation (where minor updates may be made to information documents) to full implementation. It is expected that the Department will complete minimal implementation in all of the areas described below, and will then seek to achieve the full implementation measures where possible.

Table 30: Implementation outcomes

| **Area of Regulations** | **Regulatory materials to be produced** | |
| --- | --- | --- |
| **Minimal implementation** | **Full implementation** |
| Overarching | Revised Delegations  Revised website | NA |
| Work plans | Revised Statement of Operating Change (to ensure clarity about when variations will be triggered)  Revise Departmental Guideline *Preparation of Work Plans and Work Plan Variations – Guideline for Extractive Industry Projects*  Develop Ministerial Guideline | As minimal implementation *plus*:   * Risk Management Code of Practice (incorporating material currently under development for low to medium risks) |
| Rehabilitation plan | Revised Work Plan Approval Standard Operating Procedure (SOP) including decision making criteria/ approach or New Rehabilitation Plan Approval SOP  Revised Statement of Operating Change (to ensure clarity about when variations will be triggered)  New Completion/Bond return SOP | As minimal implementation *plus*:   * Revised Bond Policy   Ministerial Rehabilitation Guideline |
| Community engagement plan | No new guidance. Extractive industry proponents are directed to the *Community Engagement Guidelines for Mining and Mineral Exploration in Victoria* | Specific community engagement plan guideline developed for extractive industries. |
| Information requirements (e.g. work authority applications, work authority renewals, work plan approvals, annual reporting) | Revise references to regulations and schedules in SOPs, current forms and associated guidance  Operational Policy Brief—current forms approved by Department Head for use under proposed Regulations | Re-designed forms for:   * Work authority applications; * Work authority renewals; * Work plan approvals; and * Annual reporting. |
| Infringements | Revise references to regulations and schedules in guidance and other materials | NA |
| Minor and technical amendments | Revise references to regulations and schedules in SOPs, guidance and other materials | NA |

## Earth Resources Regulation – Compliance Strategy 2018-2020

ERR has a compliance strategy which will encourage, monitor and enforce regulatory compliance of Victorian earth resource businesses for 2018-2020. ERR is committed to ensuring that robust risk assessment informs the choice of compliance activity, and to understanding the effectiveness of those activities on reducing overall risks of non-compliance. This strategy identifies eight priority risks for 2018-2020:

* Community impacts
* Fire
* Stability
* Rehabilitation and bonds
* Extraction without permission
* Water
* Administrative compliance
* Security.

In addition to these priority risks, the strategy also focuses on the key issues identified for each of the industry sectors, as well as specific site-related risks. ERR uses community input and local knowledge to inform its compliance priorities. They also use the performance data and public feedback collected each year to annually review and improve the effectiveness of the strategy in achieving regulatory outcomes.

ERR uses several regulatory tools to encourage compliance. Typically, these range from providing advice and educational material and escalate to prosecutions with penalties attached in the order of $150,000 (see Table 31 below). ERR’s hierarchy of compliance tools is shown below. It will be observed that an infringement notice may be used for medium risks and interventions. Infringement notices also provide a rapid and certain response for lower level offences appropriate for infringements.

In the past five years there has been one prosecution under the Act and three are currently afoot. There have also been five warnings over the past year.

Table 31: ERR compliance tool hierarchy

|  | **Compliance measure** | **Description** |
| --- | --- | --- |
| *Lower level of risk and intervention* | | |
|  | Engagement and advice | Inspectors respond to requests for advice from industry, members of the public and stakeholder groups. They help affected parties access guidance materials, codes of practice and public authority holder publications. They make all parties aware of their compliance obligations under legislation. |
|  | Provision of guidance material | Guidance materials are made available and easily accessible on the DJPR website. They advise on best practice and outline compliance obligations for authority holders and members of the public. |
|  | Inspections and audits | DJPR obtain information from authority holders for regulatory compliance purposes through site inspections and audits. Inspections determine whether the authority holder is meeting their compliance obligations and, if not, DJPR decide on appropriate action. |
|  | Field entry and audit reports | Following inspections and audits, DJPR prepare a report for the authority holder. The report discusses findings and actions that may be required to address any non-compliance. In addition, DJPR record the timeframe for closing out any non-compliances, which inspectors follow up. |
|  | Warnings | DJPR may issue warning letters or official warnings when the severity of the offence and the culpability of the offender are low. |
|  | Amendments, conditions and variations | DJPR may require authority holders to amend existing plans, including by adding or amending conditions on authority to impose greater control (for example, increased monitoring and reporting levels) on authority holders. |
|  | Infringements and notices | DJPR may issue an infringement or notice when an infringeable offence has allegedly occurred under the relevant legislation. The receiver may have the right of appeal, depending on the applicable legislation. |
|  | Directions | Earth resources legislation provides ERR with the power to give directions that require certain actions to occur by a certain time. Significant penalties can apply if those instructions are not followed. |
|  | Suspensions and cancellations | DJPR can respond to critical non-compliance by suspending or cancelling an Authority. A formal process must be followed when senior officers take this action, and oversight by department legal representatives is employed to support cases. |
|  | Prosecutions | DJPR may initiate prosecution proceedings when a serious offence has allegedly occurred under Victoria’s earth resources legislation. Inspectors must prepare a brief of evidence to present the case to the Magistrates Court of Victoria. The legislation provides a range of penalties for a person found guilty of an offence. For example, as of 1 July 2017, this is up to a maximum of $158,570 under the Act. |
| *Higher level of risk and intervention* | | |

## Infringement Notices

As part of the RIS process, the Department reviewed the existing infringement notices and penalties. The Department also identified areas in which enforcement would be strengthened if there were infringements attached to certain acts or omissions.

Infringement notices are important part of the ERR’s enforcement and compliance regime. Infringement notices seek to balance fairness (lower fine levels, convenience of payment, consistency of approach) with compliance and system efficiency (reduced administration costs, no need to appear in court, no conviction). Infringement notices also provide a rapid and certain response for lower level offences appropriate for infringements, with deterrence dependent on people being aware they are likely to be detected offending and dealt with through less severe penalties. The maximum infringement penalty for an individual should generally not exceed 12 penalty units (a penalty unit is currently $165.22; 12 penalty units is equivalent to $1,983), and for a corporation should not exceed 60 penalty units ($9,913).[[108]](#footnote-108)

The proposed Regulations would have more infringement offences than the current Regulations. This helps to resolve some of the current problems surrounding infringements in the status quo.

Concerns have been raised that, currently, a number of offences are only prosecutorial, meaning that enforcement must occur through a Court of Law. This can discourage the enforcement of these offences, as the prosecutorial process can be lengthy and expensive. In addition, there are certain infringement offences that carry penalties which do not necessarily meet the severity of the offence. This can lead to anger and frustration from industry if it believes that a penalty is too harsh, or conversely if a penalty is considered to be lenient it may encourage repeat offenders.

The proposed Regulations prescribe infringements for offences under the Act and prescribes infringements for offences under the Regulations. Infringements prescribed by the proposed Regulations were examined by the Infringements System Oversight Unit (ISOU) within the Department of Justice and Community Safety, in line with the *Attorney-General's Guidelines to the Infringements Act 2006*. The four main principles used in assessing the suitability for new infringement offences under the Guidelines are gravity, clarity, penalty level, and consequence. The ISOU advised the Department that the infringements and penalties in the proposed Regulations are suitable.

The new infringement offences to be included in the proposed Regulations are:

* Carrying out extractive industry activity without authority (addition of a penalty for corporations of 25 penalty units)
* Failure to carry out extractive industry activity under the work authority that is in accordance with the work authority and the approved work plan (addition of a penalty for corporations of 25 penalty units)
* Failure to carry out an extractive industry work authority or operate a quarry without appointing a quarry manager to manage operations
* Failure to continue the appointment of a quarry manager or person to manage the site while rehabilitation is being carried out
* Failure to comply with a request of an inspector to produce documents, examine documents and answer any questions put by the inspector without reasonable excuse
* Failure to comply with the conditions imposed by the Department Head on the return of a seized thing
* Failure of an occupier (or apparent occupier) of a worksite to provide assistance reasonably required by an inspector to carry out their duties without reasonable excuse
* Failure of an occupier (or apparent occupier) of a worksite to assist a person that is assisting an inspector to access a worksite
* Failure to comply with a lawful requirement of an inspector (penalty for persons reduced from 10 to six penalty units and addition of a penalty for corporations of 30 penalty units)
* Failure to comply with a notice issued by the Minister under section 110(2) of the Act (in relation to taking a specified action to remedy the contravention or non-compliance, prohibiting the doing of a certain activity or class of activity, requiring the authority holder to supply further plans or other information and to undertake monitoring, surveys an audit or an assessment). Penalty for persons reduced from 10 to six penalty units and addition of a penalty for corporations of 30 penalty units
* Failure to comply with a notice issued by an inspector under section 110A(2) of the Act (in relation to stopping an activity and taking any action necessary to remedy an activity in contravention of the Act within a specified period). Addition of a penalty for corporations of 25 penalty units
* Failure of a holder of a consent to furnish the Minster with the prescribed information relating to surveys and any other operations authorised by the consent
* Failure of a holder of a work authority to retain copies of records of sales and extractions for inspection purposes for six years.

# Evaluation

The proposed Regulations will be subject to an ongoing evaluation strategy, which will focus on assessing the costs and benefits of the proposed Regulations. The evaluation strategy will consider baseline data and key performance indicators, such as reporting statistics, enforcement data and internal ERR statistics regarding activities taken according to the Regulations. Ongoing consultation with stakeholders will also take place, particularly in relation to rehabilitation plans, work plans, and community engagement plans.

Table 32: Evaluation of the proposed regulations

| **Evaluation** | **Action** |
| --- | --- |
| Objectives of the evaluation | The overarching objective of the Regulations is to create an efficient framework for the collection of information to allow for the efficient and effective management of the economic and environmental risks and to increase public confidence in extractive activities in Victoria in a way that is compatible with the economic, social and environmental objectives of the State. The proposed statutory rules aim to contribute to this by creating an efficient, fit-for-purpose framework for collecting information from proponents and allowing the Government and the community to make well-informed decisions. |
| Framework for the evaluation | Earth Resources Policy and Programs will develop an Intervention Logic Model[[109]](#footnote-109) to assess to efficiency and effectiveness of the outcomes sought.  This framework will allow the Department to measure outcomes against the problem to be addressed in a systemic and logical manner. |
| Key information that will be collected to assess progress against delivering objectives | Baseline data and information collected will include:   * Work plan and variations data * Activities and expenditure data and production data * Infringement and enforcement data, including complaints and incidents recorded * Data regarding the number of reportable events that are reported, including in relation to any changes in reporting of breaches of work plan requirements * Rehabilitation statistics, including bond levels and number, and rehabilitation information * Data regarding objections to work authorities * Data regarding any perceived efficiencies and other improvements for the administration of rehabilitation bonds.   ERR will use the following key performance indicators to measure the effect of the Regulations:   * Data on the number of incidents reports and complaints * Data on the number of investigations undertaken * The effect of enforcement actions (through data on infringements and court cases) * Measuring the impact of new work plan requirements through the tracking of work plan approval times. |
| Responsibility for collecting, analysing and reporting on data and information | ERR will collect and analyse key performance indicator data. Much of this information is contained on the RRAM database. Complaints to the department from stakeholders will also be assessed. |
| Consultation Plan – Stakeholders | Evidence of the effectiveness of processes and outcomes will be tested with stakeholders when the evaluation occurs. The Department plans to conduct a survey or hold a forum to seek stakeholder views within five years as part of the mid-term review. |
| Timing of evaluation | An assessment against the cost recovery guidelines in relation to fees and royalties will occur following the reform program to ERR. The review of the fees will occur after 1 July 2020.  Given that the proposed regulations impose a significant burden on stakeholders, it is proposed to conduct a mid-term review of the regulations (i.e. after 5 years of operation). It could be expected that this evaluation would occur before December 2024.  The timing of this review of the proposed Regulations may be aligned with proposed reforms to the **Mineral Resources (Sustainable Development) Act 1990** to create modern fit for purpose legislation. |

The Department will continue to engage with stakeholders on a regular basis to discuss the effectiveness of the Regulations and any suggestions for change. Periodic review of the data and key performance indicators may indicate changes in the overall trends and may provide indicative information about the effectiveness of the Regulations in reducing negative impacts and enhancing positive impacts of extractive industries. Earth Resources Policy and Programs staff will liaise with ERR and field staff to monitor the effectiveness of Regulations on an ongoing basis.

# Consultation

To inform development of the proposed Regulations and the preparation of this RIS, the Department conducted consultation with industry participants and other areas of the State Government. Consultation included:

* The Department of Environment, Land, Water and Planning; Environment Protection Authority Victoria; and WorkSafe Victoria on quarry rehabilitation, closure and post closure arrangements. The ISOU, Department of Justice and Community Safety, was consulted in relation to the appropriateness of the infringement notice levels.
* In October 2018 ACIL Allen undertook an analysis of red tape costs in the Victorian earth resources sector. This analysis estimated the regulatory costs imposed by the current Regulations. This costing was informed by consultation with industry associations (Minerals Council of Australia (Vic), Cement Concrete and Aggregate Australia (CCAA), Construction Material Processors Association (CMPA); as well as a range of organisations from various sub-sectors within earth resources and consulting
* The Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 are recently remade and were the subject of a RIS published in March 2019. Responses to this RIS included input from the two major extractives industry bodies, CCAA and CMPA. Aspects of these responses included extractives specific comments and as well as others which apply to both the minerals and extractive industries. These views have been considered as part of developing the proposed Regulations.

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1. DPJR 2019, *Earth Resources Sector Indicators 2017-2018*, p.5 [↑](#footnote-ref-1)
2. Department of Jobs, Precincts and Regions (DPJR) 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p.7 [↑](#footnote-ref-2)
3. *Mineral Resources (Sustainable Development) Act 1990*, s.1 [↑](#footnote-ref-3)
4. *Subordinate Legislation Act 1994*, s.10 [↑](#footnote-ref-4)
5. As discussed earlier, ‘financial costs’ (e.g. fees, royalties) are not within the scope of this RIS. [↑](#footnote-ref-5)
6. DJPR 2018, *Earth Resources Regulation: 2017-18 Statistical Report,* p.4 [↑](#footnote-ref-6)
7. ACIL Allen Consulting, 2018, *Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs*, p.9, Table 2.1 [↑](#footnote-ref-7)
8. Work plans are not required for areas of land less than five hectares at a depth of less than 5 metres. [↑](#footnote-ref-8)
9. Department of Natural Resources and Environment, National Competition Policy, *Review of the Mineral Resources Development Act 1990*: <http://ncp.ncc.gov.au> [↑](#footnote-ref-9)
10. Commissioner for Better Regulation, 2017, *Getting the Groundwork Right: Better Regulation of Mines and Quarries*, State of Victoria, Melbourne, p. 65 [↑](#footnote-ref-10)
11. Department of Precincts, Jobs and Regions (DJPR) 2018, *Earth Resources Regulation: 2017-18 Statistical Report,* p.4 [↑](#footnote-ref-11)
12. Commissioner for Better Regulation, 2017, *Getting the Groundwork Right – Better regulation for mines and quarries,* p.4 [↑](#footnote-ref-12)
13. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p.17, Table 4.2 [↑](#footnote-ref-13)
14. Ibid, p.18 [↑](#footnote-ref-14)
15. Ibid, p.5 [↑](#footnote-ref-15)
16. DPJR, *Earth Resources Regulation: 2017-18 Statistical Report,* p. 14, Table 3.2 [↑](#footnote-ref-16)
17. Ibid, p.15, Table 3.3 [↑](#footnote-ref-17)
18. Ibid, p.17, Table 4.2 [↑](#footnote-ref-18)
19. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p.5 [↑](#footnote-ref-19)
20. PwC 2016, as cited in Ibid, p.13 [↑](#footnote-ref-20)
21. Ibid, p.4 [↑](#footnote-ref-21)
22. *Mineral Resources (Sustainable Development) Act 1990*, s.2(1)(a)(iii) [↑](#footnote-ref-22)
23. PwC 2016, as cited in Ibid, p.13 [↑](#footnote-ref-23)
24. Department of Environment, Land, Water and Planning (DELWP) 2019, Victoria in Future 2019: Population Projections 2016 to 2056 [↑](#footnote-ref-24)
25. Ibid, p.7 [↑](#footnote-ref-25)
26. Ibid, p.19 [↑](#footnote-ref-26)
27. Buckley, R. W., Guerin, B. and Inan, K. 1993, *Extractive Industry Interest Areas Melbourne Supply Area*, Geological Survey of Victoria. Unpublished Report [↑](#footnote-ref-27)
28. Olshina, A. & Burn, P. 2003, *Melbourne Supply Area – Extractive Industry Interest Areas Review*, Geological Survey of Victoria Technical Record 2003/2, Geological Survey of Victoria [↑](#footnote-ref-28)
29. Ibid, p.20 [↑](#footnote-ref-29)
30. Ibid, p.20 [↑](#footnote-ref-30)
31. *Mineral Resources (Sustainable Development) Act 1990*, s.77I, s.77J, s.77K, s.77L, s.77M, s.77N and s.77O [↑](#footnote-ref-31)
32. Ibid, s. 77G [↑](#footnote-ref-32)
33. An exception is made for a person who proposes to apply for an extractive industry work authority to carry out an extractive industry a) on land that has an area of less than 5 hectares and a depth of less than 5 metres; and b) that does not require blasting or the clearing of native vegetation. See Ibid s. 77 G(2). [↑](#footnote-ref-33)
34. Ibid, s.120A(1) [↑](#footnote-ref-34)
35. Ibid, s.89A [↑](#footnote-ref-35)
36. Under section 7C of the Act the Minister for Resources can declare specified quarries if they present significant geotechnical or hydrogeological risks of harm to public safety, the infrastructure and the environment. Any declared quarry would be subject to additional work plan and reporting requirements designed to monitoring and manage the risks they present. [↑](#footnote-ref-36)
37. ACIL Allen Consulting, 2018, *Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs*, p. ii and iii [↑](#footnote-ref-37)
38. Ibid, p.9, Table 2.1 [↑](#footnote-ref-38)
39. Ibid, p.10 [↑](#footnote-ref-39)
40. Ibid, p.39, Table B.9 [↑](#footnote-ref-40)
41. Ibid, p.40, Table B.11 [↑](#footnote-ref-41)
42. *Mineral Resources (Sustainable Development) Act 1990*, s.77I(3) [↑](#footnote-ref-42)
43. Ibid, s.77J(1) [↑](#footnote-ref-43)
44. Ibid, s.77K – s.77Q [↑](#footnote-ref-44)
45. Ibid, s.77G [↑](#footnote-ref-45)
46. In relation to an approved work plan, a specified variation means a variation to work that is being carried out in accordance with the approved work plan. See definition of ‘specified variation’ in Ibid. [↑](#footnote-ref-46)
47. Ibid s.77H [↑](#footnote-ref-47)
48. Department of Primary Industries 2010, *Code of Practice for Small Quarries* [↑](#footnote-ref-48)
49. *Mineral Resources (Sustainable Development) Act 1990*, s.78A and s.79 [↑](#footnote-ref-49)
50. Ibid, s.81 [↑](#footnote-ref-50)
51. Ibid, s.80(4) [↑](#footnote-ref-51)
52. Previous edition, *Victorian Guide to Regulation*, April 2007, page 2-2. The *Victorian Guide to Regulation* has described externalities as follows: External costs and benefits, commonly referred to as externalities or spillovers – which occur when an activity imposes costs (which are not compensated) or generates benefits (which are not paid for) on parties not directly involved in the activity. Without regulation, the existence of externalities results in too much (where external costs or negative externalities occur) or too little (where external benefits or positive externalities arise) of an activity taking place from society’s point of view. Pollution is the most common example of a negative externality. [↑](#footnote-ref-52)
53. Department of Primary Industries 2010, *Code of Practice for Small Quarries* [↑](#footnote-ref-53)
54. *Mineral Resources (Sustainable Development) Act 1990*, s.116A(1) [↑](#footnote-ref-54)
55. Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010, s.13(2)(e) [↑](#footnote-ref-55)
56. *Mineral Resources (Sustainable Development) Act 1990*, s.2(1)(a)(iii) [↑](#footnote-ref-56)
57. See <http://earthresources.efirst.com.au> [↑](#footnote-ref-57)
58. *Mineral Resources (Sustainable Development) Act 1990*, s.8AA, s.8AB, and s.80(4A) [↑](#footnote-ref-58)
59. Ibid, s.106(1) [↑](#footnote-ref-59)
60. Ibid, s.110 [↑](#footnote-ref-60)
61. Commissioner for Better Regulation, 2017, *Getting the Groundwork Right: Better Regulation of Mines and Quarries*, State of Victoria, Melbourne, p. 65 [↑](#footnote-ref-61)
62. *Mineral Resources (Sustainable Development) Act 1990*, s.124 [↑](#footnote-ref-62)
63. Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010, s.17, s.18 and Schedule 3 [↑](#footnote-ref-63)
64. *Mineral Resources (Sustainable Development) Act 1990*, s.1 [↑](#footnote-ref-64)
65. State of Victoria, *Helping Victoria Grow: Extractive Resources Strategy*, Minister for Resources, p.1 [↑](#footnote-ref-65)
66. *Subordinate Legislation Act 1994*, s.10 [↑](#footnote-ref-66)
67. Office of the Chief Parliamentary Counsel Victoria, *Subordinate Legislation Act 1994 Guidelines*, paragraph 51 [↑](#footnote-ref-67)
68. *Mineral Resources (Sustainable Development) Act 1990*, s.77J(2) [↑](#footnote-ref-68)
69. Ibid*,* s.77G(1) and s.77G(2) [↑](#footnote-ref-69)
70. Ibid*,* s. 77G(3) [↑](#footnote-ref-70)
71. A declared quarry is a quarry declared by the Minister to have geotechnical or hydrogeological factors within the quarry that pose a significant risk to public safety, the environment or infrastructure. See Ibid, s.7C(2) [↑](#footnote-ref-71)
72. Ibid*,* s.77H(1) [↑](#footnote-ref-72)
73. Ibid*,* s.77G(3)(d) [↑](#footnote-ref-73)
74. Ibid*,* s.78A [↑](#footnote-ref-74)
75. Ibid*,* s.79(a) [↑](#footnote-ref-75)
76. Ibid*,* s.79(b) [↑](#footnote-ref-76)
77. Ibid, s.116A(1) [↑](#footnote-ref-77)
78. Ibid, s.77KA [↑](#footnote-ref-78)
79. Ibid*,* r.5 and Schedules 1 and 2 [↑](#footnote-ref-79)
80. Ibid, Schedule 1, Part 4 [↑](#footnote-ref-80)
81. Ibid, r.7 and Schedules 1 and 2 [↑](#footnote-ref-81)
82. Ibid*,* r.5 andSchedule 1, Part 1 [↑](#footnote-ref-82)
83. In the proposed Regulations, ‘safe, stable and sustainable’ means (a) is not likely to cause injury or illness; and (b) structurally, geotechnically and hydrogeologically sound; and (c) non-polluting; and (d) aligns with the principles of sustainable development. [↑](#footnote-ref-83)
84. In the proposed Regulations, ‘rehabilitation milestone’ means a measurable, significant event or step in the process of rehabilitation [↑](#footnote-ref-84)
85. In the proposed Regulations, ‘relevant risks’ means risks that may require monitoring, maintenance, treatment or other ongoing land management activities after rehabilitation is complete. [↑](#footnote-ref-85)
86. Ibid*,* r.11 and Schedule 2 [↑](#footnote-ref-86)
87. Ibid, r.12 [↑](#footnote-ref-87)
88. Ibid, r.13 [↑](#footnote-ref-88)
89. Ibid, r.15 [↑](#footnote-ref-89)
90. As discussed earlier, ‘financial costs’ (e.g. fees, royalties) are not within the scope of this RIS. [↑](#footnote-ref-90)
91. ACIL Allen Consulting 2018, *Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs*, p. 10 [↑](#footnote-ref-91)
92. Commissioner for Better Regulation 2017, *Getting the Groundwork Right – Better regulation for mines and quarries,* p. 18 [↑](#footnote-ref-92)
93. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p. 22 [↑](#footnote-ref-93)
94. ACIL Allen Consulting 2018, *Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs*, p. 11 [↑](#footnote-ref-94)
95. Commissioner for Better Regulation 2017, *Getting the Groundwork Right – Better regulation for mines and quarries,* p. 16 [↑](#footnote-ref-95)
96. Department of Primary Industries 2010, *Code of Practice for Small Quarries* [↑](#footnote-ref-96)
97. *Mineral Resources (Sustainable Development) Act 1990*, s.77G(2) [↑](#footnote-ref-97)
98. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p. 4 [↑](#footnote-ref-98)
99. ACIL Allen Consulting 2018, *Red Tape in the Victorian Earth Resources Sector – Analysis of Regulatory Costs*, p. 12 [↑](#footnote-ref-99)
100. Ibid, p. 10 [↑](#footnote-ref-100)
101. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p. 4 [↑](#footnote-ref-101)
102. *Mineral Resources (Sustainable Development) Act 1990*, s.77G(2) [↑](#footnote-ref-102)
103. Work plans are not required for areas of land less than five hectares at a depth of less than 5 metres. [↑](#footnote-ref-103)
104. Department of Natural Resources and Environment, National Competition Policy, *Review of the Mineral Resources Development Act 1990*: <http://ncp.ncc.gov.au> [↑](#footnote-ref-104)
105. DPJR 2018, *Helping Victoria Grow – Extractive Resources Strategy*, p. 18 [↑](#footnote-ref-105)
106. Work plans are not required for areas of land less than five hectares at a depth of less than 5 metres. [↑](#footnote-ref-106)
107. <http://www.dmp.wa.gov.au/Geological-Survey/Land-use-planning-1409.aspx> [↑](#footnote-ref-107)
108. Attorney-General’s Department, Attorney-General's Guidelines to the Infringements Act 2006: Policy and Legislation, Version 1.0, 12 October 2018 [↑](#footnote-ref-108)
109. Intervention logic is the rationale on which many aspects of the framework are based. It supports the choices made at a lead agency level on outcome measures and targets, and the choices made by departments on their selection of activities. [↑](#footnote-ref-109)