Mr Paul Smith

Deputy Secretary, Forestry, Resources and Climate Change

Department of Jobs, Precincts and Regions

1 Spring St

MELBOURNE VIC 3000

16 May 2021

Dear Mr Smith

**REGULATORY IMPACT STATEMENT FOR THE MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) (MINERALS REGULATIONS) AMENDMENT 2022**

I would like to thank your staff at the Department of Jobs, Precincts and Regions

(the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Assessment (RIS) for proposed changes to the regulation of declared mines in the Mineral Resources (Sustainable Development) (Minerals Regulations) Amendment 2022 (the proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal’s expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 13 May 2022 meets the adequacy requirements set out in the Subordinate Legislation Act 1994.

**Background and problem**

The proposed Regulations amend regulatory requirements for ‘declared’ mines in the Mineral Resources (Sustainable Development) Minerals Regulations Act 2019 (the current Regulations). The Regulations are the principal regulations for mining and mines under the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act). Declared mines are subject to additional regulatory requirements to manage and mitigate the greater risks they pose than other mines.

Mines have been able to be ‘declared’ since 2009 when amendments to the MRSD Act enabled the Minster to ‘declare’ mines that have significant geotechnical or hydrogeological risks. Currently, only the three Latrobe Valley brown coal mines have been ‘declared’. These brown coal mines are some of the largest in the world. In the RIS, the Department explains that the size of these mines and their proximity to nearby townships, infrastructure and waterways carry significant safety and stability risks, which led to them being ‘declared’.

Rehabilitation is critical, so that mine land can be returned to a safe, stable and sustainable form. There are broadly three phases in the life of a mine:

1. the mine is operating. An operator must have a rehabilitation plan and may undertake progressive rehabilitation during operations;
2. the mine is no longer operating, but rehabilitation activities continuing; and
3. the mine being closed once rehabilitation is complete.

Further changes to regulatory requirements for ‘declared’ mines were made through the MRSD Amendment Act 2019 (the Amendment Act). These amendments introduced additional rehabilitation and post-closure requirements for ‘declared’ mines including establishing:

* **Declared Mine Land Rehabilitation Plans** (DMRPs), which declared mine operators are required to prepare;
* a **register of declared mine land** that includes the land, any conditions or prescribed matters applying to the land, and a post-closure plan against it;
* the **Mine Land Rehabilitation Authority** (the Authority) with functions and responsibilities for the rehabilitation of declared mine land. The Authority will be guided by the Latrobe Valley Regional Rehabilitation Strategy (LVRRS); and
* the **Declared Mine Fund**, to meet the ongoing costs associated with the post‑closure management of declared mine land if the land is transferred to the Authority.

The Department explains that regulatory amendments are required to support the Amendment Act. For example, the MRSD Act alone does not prescribe enough detail on matters to be included in a DMRP, the criteria for mine closure or how rehabilitation requirements will continue to be funded, creating uncertainty for declared mine operators, local communities and the Government. It explains that the proposed Regulations aim to enable the Victorian Government and mining operators to make decisions about the risks and liabilities attached to declared mine land, and to inform the community of those risks. The proposed Regulations prescribe details to operationalise three areas of the Amendment Act:

1. **DMRPs**, which will include criteria for the closure of the mine and a plan for the post-closure management and monitoring of the mine land. Rehabilitation will be the responsibility of the mine licensee until the Minister determines that the criteria for closure have been met, so that the licence is relinquished. After closure and registration, post-closure management of the mine land becomes the responsibility of the landowner (which may be the mine licensee) and/or the Authority;
2. **mine closure determinations**. The proposed Regulations will provide guidance to mine operators on what should be included in an application to close a mine as well as provide guidance to the Minister for considering whether criteria for closure have been met in an operator’s applications; and
3. **mine land registration**. The proposed Regulations will prescribe details for the Government to obtain and record information about a declared mine. This Department explains that this information will support informed decision making and setting contributions by operators to the Declared Mine Fund.

**Impact analysis**

In the RIS, the Department analyses two options to operationalise the Amendment Act:

* **Option 1** **– Up-front approach**. This option is licensee driven and presupposes the end landform in advance. The focus of the DMRP would be to identify the post-closure landform for the mine site at the outset of rehabilitation planning. This option is intended to enable the Minister to set adequate rehabilitation bonds based on early, detailed information from the DMRP.
* **Option 2 - Iterative approach**. This option is based on continuous improvement. It involves early agreement on what rehabilitation activities need to be done but does not specify the post‑closure landform at the outset.
* This option is intended to promote rehabilitation planning that manages risk. Under this option, the evidence base would develop over time and be used to iterate the DMRP. Operators would be required to report annually and consult more broadly in iterating their DMRPs.

The Department analyses these options against the current Regulations using a multi-criteria analysis (MCA) for each of the three areas of the Amendment Act. The criteria and weights are:

* Benefits in terms of the effectiveness achieving the objectives of area of the relevant part of the Amendment Act (50 per cent);
* Cost to industry (25 per cent); and
* Cost to government (25 per cent).

The Department does not quantify costs in the RIS in monetary terms. It explains that:

* it does not have access to commercial-in-confidence information to estimate industry costs;
* negotiations between industry and government on rehabilitation are ongoing; and
* costs will be incurred over several decades, making costs uncertain and impractical to estimate.

The Department explains that Option 2 is its preferred option and is superior to Option 1 for each of the three areas of the Amendment Act. It also explains that both Options 1 and 2 are preferred to the current Regulations.

* Option 2 is preferred for **DMRPs** because it better facilitates an accurate assessment of rehabilitation liability, appropriate and integrated government decision making and a transparent and flexible planning approach. These benefits are assessed to outweigh additional costs to industry and government under this option.
* Option 2 is preferred for **mine closure determinations** because it provides a clearer and more transparent decision-making framework and is less costly to industry. These benefits are assessed to outweigh the disadvantages of this Option — Option 1 would enable the Government to make decisions quicker, because it involves third‑party verification that closure criteria have been met rather than government verification. As a result, Option 1 would be slightly less costly for the Government than Option 2.
* Option 2 is preferred for **mine land registration** because it better supports obtaining and recording relevant information about declared mine sites as well as fair and accurate contributions to the Declared Mine Fund. Option 2 requires operators to submit an extensive list of documents and evidence when they register their declared mine land, a greater level of detail than required under Option 1. However, costs to industry under Option 2 are likely to be similar or lower because industry will have greater clarity about requirements. Option 2 also prescribes a procedure for the Authority to follow for registering declared mine land and calculating the fund contribution, which is likely to be more costly than the approach under Option 1.

**Implementation and evaluation**

In the RIS, the Department explains that it will continue to engage with key stakeholders, including industry and other Departments, to ensure that the proposed Regulations will be applied in a way that is consistent with their objectives and aligned with whole of government policies. It notes that implementation will require a deliberate and extensive program of preparatory work, and capacity and capability building for the industry regulator, the Mine Land Rehabilitation Authority, and co-regulators:

* The immense complexity and volume of information expected to be received and assessed under these regulations, dictates the industry regulator will need to build its expertise and engage specialists to undertake this significant work to meet the expectations of the community.
* The Mine Land Rehabilitation Authority will require similar expertise and adequate resourcing in its role in relation to declared mines, with the capacity and understanding of co-regulators also critical to effective implementation of these regulations.

In the RIS, the Department explains that evaluation of the proposed Regulations will be iterative and ongoing. It notes that it will continue to engage with stakeholders including industry, the regulator and the community to monitor the effectiveness of the Regulations. The Department will be responsible for collecting, analysing and reporting on data and information.

The Department will work with the regulator to monitor administration of the following requirements:

* Declared Mines Annual Reporting requirements,
* Declared Mine Rehabilitation Plan requirements,
* Guidance about the Declared Mine Fund,
* Declared Mine Post-Closure Plan requirements, and
* Application for closure criteria and closure determination guidance.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation