



# MINERALS COUNCIL OF AUSTRALIA - VICTORIAN DIVISION

## MODERNISING VICTORIA'S PLANNING ACT

Submission in response to Discussion Paper

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MAY 2009

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## EXECUTIVE SUMMARY

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The Victorian Minerals industry has traditionally been and will continue to be an important contributor to Victoria's growth, particularly in regional and rural Victoria. For the sustainable future of the industry, the regulatory framework must be balanced between promoting investment in the State, good practice and the expectations of the community in an efficient way with minimum necessary direct control of economic agents by government authorities.

Planning and environmental regulations represent a substantial proportion (in terms of approvals) of minerals industry regulation, both State and Commonwealth regulations. It is therefore critical that all regulations are applied in the most economically efficient manner to achieve identifiable outcomes without inhibiting innovation and improved practices by businesses.

In this increasingly society where complex social, environmental and financial matters coalesce, the importance of attracting investments into Victoria that meet the principles of sustainable development is paramount. For investment to occur, an investor must be confident that its sovereign risk is as low as possible. Onerous and duplicative legislation leading to very unpredictable and often unexplainable regulator outcomes does nothing to provide the investor with confidence. Nor do approval processes that cost millions of dollars and cause significant delays to investment decisions. A legislative spider web with reams of red tape will result in investors looking elsewhere.

Victoria's regulatory environment is by no means leading practice. This Inquiry provides a unique opportunity for Victoria to significantly streamline its regulations without reducing environmental and social obligations.

Victoria faces a range of issues when compared to the other mainland jurisdictions of Australia. Two in particular - a relatively small land mass with the 2<sup>nd</sup> largest population of the country; this same land being well endowed with economically recoverable mineral resources.

Land use conflicts and controlled or restricted access to Crown land for exploration is a significant barrier for the minerals industry. For Victoria's economic and social prosperity, these critical areas need to be managed to ensure the continued viability of mineral resources operations in a responsible way.

The minerals industry has and continues to be an eager participant in sustainable development in the State. Partnerships with government and non-governmental organisations have lead to leading practice in sustainable development. The industry is well aware that good practice contributes largely to its 'social licence to operate'.

The planning controls that are of most importance to the minerals industry are those that mandate land use and in particular control or restrict access to land for exploration and control or restrict mining project approvals.

The MCA seeks greater efficiency, effectiveness and consistency in the regulatory framework. The MCA actively participates in regulatory framework reviews across the range of issues facing the minerals industry, including, OHS, biodiversity, climate change, taxation etc. One thing is common in all regulation; that is the need to remove duplication not only between State and Commonwealth laws but to remove duplication across laws within the same jurisdiction. Furthermore, actual regulatory instruments contribute only part of the concerns the industry has. Regulatory practice is of equal concern. We see the resources and competency of the industry regulators as a critical area for attention. We also seek a whole-of-government approach to project approvals so as to avoid the need to satisfy the often personal view of every relevant (and often not so relevant) individual in every relevant agency.

Many regulatory systems are ineffective and inappropriate with obstructive laws, regulations and guidelines, as well as inadequate administrative arrangements for the implementation of the laws and regulations. This is not unique; various jurisdictions have had considerable difficulties in truly reaching regulatory reform.

We hope that this Review will deliver significant improvements in the regulatory certainty for sustainable industry growth – real reform.

The MCA seeks regulatory reform to establish an effective regulatory system for planning. We do not seek a “new car”; a “major service” is warranted however.

We identify that as well as legislation design, greater resources to ensure regulator institutional capacity is urgently needed.

We seek a one-stop-shop for the approval of major/complex projects requiring multi-agency approvals and we seek declaration of projects of State significance for expedited progress through the planning approvals system.

# 1. INTRODUCTION

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The Minerals Council of Australia (MCA) welcomes the opportunity to make a submission to the review of the *Planning and Environment Act 1987*. The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations. The Victorian Division of the MCA represents the interests of member companies operating, exploring and providing services to the industry in Victoria.

Policy positions of the Victorian industry are one and the same as the entire Australian minerals industry. The MCA operates on a platform of national consistency and therefore considers that minerals operations in all jurisdiction should be subject to the same policies and legislative frameworks across the country.

The MCA recently detailed a number of issues related to planning, environment and project approvals in its submission to the Victorian Competition and Efficiency Commission Inquiry into Environmental Regulation in Victoria<sup>1</sup>.

## 1.1 Victorian Minerals Industry

The minerals sector accounts, directly and indirectly, for around 8.0 per cent of the Australian economy. In 2007-08, the sector generated exports of \$114 billion, representing approximately 62 per cent of Australia's total merchandise exports and over 48 per cent of total exports of goods and services<sup>2</sup>.

Victoria's minerals and petroleum sector accounts for about 2% of the Gross State Product (GSP)<sup>3</sup> and is increasing. Investment in the Victorian minerals sector is at a record high and increasing. The investments are in the brown coal, gold, base metals and mineral sands sectors. In addition, private industry expenditure on exploration was at a record high of \$93.7 million in 2007-2008.

The Victorian Government initiative *Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest*<sup>4</sup> the minerals boom up to 2008 and identifies the opportunities and possible impacts on regional communities. These include:

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

The Victorian minerals industry has not experienced the rapid reversal of fortune experienced elsewhere in Australia. There has been a slowdown in investment, but not the closures of mines being witnessed in other states.

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

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

As with elsewhere, further investment in the minerals industry in Victoria is influenced by the identification of viable mineral resources, access to the land occupied by those mineral resources, financial resources, the support of the community, the regulatory environment, and the availability of a skilled workforce. Consequently, access to land

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<sup>1</sup> MCA's Submission can be accessed at <http://www.vcec.vic.gov.au> and is listed as submission number 58.

<sup>2</sup> Australian Mineral Statistics 2009, December quarter 2008, ABARE.

<sup>3</sup> ABS Catalogue No. 5220.0, Australian National Accounts, 2007/08.

<sup>4</sup> Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest, Victorian Government Regional Development Victoria, November 2005

and the issues associated with gaining development approval, including planning approval, from the regulators can have a significant impact on investment decisions.

## 1.2 Sustainable Development

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

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

The minerals industry is a significant manager of land, particularly in regional and rural Victoria, where our investments in monitoring, reporting and on-the-ground natural resource management outcomes are ever-increasing.

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

To give an example of this sort of voluntary industry initiative, in 1997 the MCA developed the Australian Minerals Industry Code for Environmental Management. At the time it was considered a leading framework for an industry association to develop in that it outlined beyond compliance requirements for the sector to improve its environmental performance. It also institutionalised public environmental reporting to the extent that the industry was a leader in that area and has driven a lot of the development of indices around the world. However, like everyone else, we have recognised that sustainable development is not about environmental management alone. The triple bottom line of environmental, social and economic responsibility means that we had to make a transition to a platform of incorporating all these elements. To give effect to this new platform, the environmental code was retired and replaced with *Enduring Value – the Australian Minerals Industry Framework for Sustainable Development* in 2005.

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

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

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

## 2. REGULATORY FRAMEWORKS

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### 2.1 The National Context

In 2006 the MCA assessed the regulations in all Australian jurisdictions for exploration and mining project approvals and released the resulting audit<sup>5</sup> and scorecard<sup>6</sup> report. These are available at [www.minerals.org.au](http://www.minerals.org.au).

The audit of project approval procedures confirmed the significant burden on business caused by inefficient and ineffective project approval procedures and identified that problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land; and poor administration and implementation of regulation imposes unnecessary burdens on business.

The scorecard assessed how well the policy and regulations are *designed* in each jurisdiction and how well these policies and arrangements are *administered* in each jurisdiction. The assessment was made by a panel of five leading consultancies experienced in exploration and mining project approvals across the country

Seventeen key project approval issues were assessed. Planning approval was one of these issues.

On planning regulation design, Victoria scored slightly above average on the planning institutional framework, clarity of policy objectives and efficiency of regulation however scored the worst in respect to stakeholder input and appeals. In terms of administration of the planning framework, Victoria had an average result on clarity of process, compliance cost, regulator capacity, certainty and effectiveness.

This Scorecard shows that Victoria's planning system is by no means best practice. Planning reform comes around once in a generation and the review of the P&E Act provides us with a valuable opportunity to develop a system that leads the country.

### 2.2 Victoria within an International Context

Since 1997, The Fraser Institute has conducted an annual survey of metalliferous mining and exploration companies to assess how mineral endowments and public policy factors such as regulation affect and exploration investment. Survey results represent the opinions of executives and exploration managers in mining and mining consulting companies operating around the world. The survey now includes data on 71 jurisdictions around the world, on every continent except Antarctica, including sub-national jurisdictions in Canada, Australia, and the United States.

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

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

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

The key indicator in this report is the score for mineral potential under current regulations when compared with mineral potential in a "best practice" scenario. This provides a result termed "room for improvement". The Australian jurisdictions that are in the first quartile for mineral potential include WA, NT, Qld, and SA but all except

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<sup>5</sup> URS Australia, National Audit of Regulations Influencing Mining Exploration and Project Approval Processes, Prepared for MCA, February 2006.

<sup>6</sup> URS, Enesar Consulting, GHD, Sinclair Knight Mertz and Environment Action, Scorecard of Mining Project Approval Processes, Prepared for MCA, May 2006.

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

South Australia are in the second quartile for policy potential. South Australia is in the first quartile. This should be a concern for all except the South Australians. In terms of room for improvement, all the Australian jurisdictions are in the third quartile, which is at least positive. Nevertheless Victoria is identified as the Australian jurisdiction with the most room to improve its policy position.

### 3 REGULATORY REFORM PRINCIPLES

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The MCA is concerned that the Victorian Government currently has a number of reviews underway or recently completed that all in some way relate to mineral resources and have been developed in apparent isolation from each other. Examples include the development of the new State-wide biodiversity strategy, climate change policies including White Paper, Victorian Energy Statement, review of the Minerals Resource (Sustainable Development) Act and the Victorian Competition and Efficiency Commission Inquiry into Environmental Regulation.

There is substantial overlap and potential for conflict between the various review processes and other initiatives, such as the regional catchment strategies, the newly branded Natural Resource Management program with implications for bilateral programs, water market reform, and the review of the EPBC Act (C'with) to name just a few.

The minerals industry has two specific goals regarding reform to the P&E Act:

- > to ensure regulation of the overall economy achieves desired outcomes efficiently with minimum necessary direct control of economic agents by government authorities; and
- > to ensure that necessary planning and environmental regulation of the minerals industry is applied in the most economically efficient manner to achieve identifiable outcomes without inhibiting innovation and continuous improvement of business.

#### 3.1 Minerals Industry Expectation of Regulation

The MCA consistently advocates the principle of minimum effective regulation and in particular the development of good regulatory process should be informed by the following principles:

- > regulatory approaches should not be used unless a clear case for action exists, including an evaluation of why existing measures are not sufficient to deal with the issue;
- > a range of policy options (including self-regulatory and co-regulatory approaches) have been assessed and found wanting;
- > the regulation represents the greatest net benefit to the community;
- > the regulation developed is the most efficient means of achieving the desired outcome at least cost to industry;
- > effective guidance is provided for both regulators and stakeholders to ensure that the regulations are correctly implemented and monitored;
- > mechanisms such as sunset clauses or periodic reviews are built into the legislation to ensure that the regulations remain relevant over time; and
- > there is effective consultation with stakeholders at key stages of the development and implementation of the regulation.

We also seek a whole-of-government approach to regulatory approvals that impact on complex projects so as to avoid the need to satisfy the often personal view of every relevant (and often not so relevant) individual in every relevant agency.

Ideally we seek a one stop shop for project approvals, including planning approvals. That is, a single agency charged with the authority to approve projects. Whilst such an agency would be required to do an intense amount of work across all relevant agencies to reach a whole of government position on a proposal, the proponent would only deal with the one point in Government.

Such an approval regime will require a great deal of maturity by agencies who may feel threatened by what they perceive to be a loss of their agency's 'control' being delegated to a single whole of government agency.

However, it does mean that project proponents are not required to 'hawk' their projects across all relevant agencies of government for approval, which is most inefficient and a disincentive to invest.

Land access requirements and planning approvals for minerals operations, and the application and use of offsets or other mechanisms to support environmental management, are influenced by a variety of landscape managers, often within and across the same physical areas, including:

- > local government (e.g. statutory planning approvals, 'local environment plans', land use zoning through planning schemes, etc);

- > State government agencies (e.g. utilities – ‘infrastructure planning’, conservation agencies – ‘biodiversity strategies’, water planning authorities – ‘statutory water plans’);
- > regional NRM organisations (e.g. ‘catchment action plans’); and
- > Commonwealth, State and local government development approval processes (e.g. which additionally determine where NRM ‘offset’ resources are placed in the landscape, with or without strategic planning support).

Local government is responsible for administering the local planning scheme. However, under the Mineral Resources (Sustainable Development) Act (MR(SD) Act), exploration work can be undertaken without the need for a planning permit. Mining projects are however required to gain planning approval before the work plan can be approved. Planning approval can be gained through a planning permit issued by the local government authority or through an Environmental Effects Study completed under the direction of the Minister for Planning.

Whilst we acknowledge this demarcation of responsibilities there is often very little communication and knowledge sharing across the levels of Government to enable efficient, effective and timely decision making.

### 3.2 Reducing Regulatory Barriers to Growth

The time taken to achieve project approvals, the high cost of approvals processes, the uncertainty of outcome and the conflicting views of government officials participating in the process all add to investment uncertainty. The approvals process as it currently operates is a major disincentive to investment in Victoria.

The other key area of regulation that is a barrier to increased investment in country Victoria is access to land for exploration and mining.

The minerals industry’s continues to have concerns regarding reduced access to Crown land for exploration and mining, the growth in restricted and exempt Crown land, options for multiple and sequential land use management regimes, and concerns for the rights of existing licence holders. The general presumption that conservation objectives and modern mineral resource development are incompatible is completely unacceptable as is not borne out by evidence.

The MCA recognises that land can be used for different purposes at the same time (multiple) and for different purposes after a land use has finished (sequential). Multiple and sequential land use is fundamental to achieving simultaneously the State’s economic and conservation objectives and consistent with the principles of sustainable development as operationalised for the Australian minerals industry in *Enduring Value*.

### 3.3 Improving Institutional Arrangements

Improving the institutional arrangements under which regulators operate can have a big impact on reducing red tape.

As stated above, the big issue that the minerals industry seeks in this regard is a one stop shop for project approvals. That is, a single agency charged with the authority to approve projects.

Another area for significant improvement in planning and environmental regulation is ensuring that the regulator has adequate resources and competent people. This will ensure high quality, consistent outcomes rather than ad hoc personal views being applied by individuals.

The effective implementation of the P&E Act is critically dependent upon the availability of adequately resourced, competent people, particularly in local government.

## 4 MODERNISING VICTORIA'S PLANNING ACT

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The MCA agrees with the principles of this review in that the P&E Act requires a "major service" rather than a "new car"; however we propose a number of suggestions both in legislative design and administrative change that would considerably improve the effectiveness of the Act.

### 4.1 General comments

#### The Title

The MCA acknowledges the historical reason for the naming of the Act in line with the Minister of the day's portfolio responsibilities. However, in the past two decades a significant number of environmental legal instruments have been developed and remain in force today. According to the VCEC Inquiry into Environmental Regulation in Victoria, there are currently 43 environmental Acts in Victoria alone. Layered over this, there are numerous Commonwealth environmental Acts that also operate in Victoria. The MCA believes environmental management is well covered and it is no longer suitable for a planning instrument to incorporate specific environmental regulation responsibility. This is not to say that a principle of the re-named Act does not include the concept of environmental management and a component of sustainable development. The MCA recommends the name of the Act better reflect its purpose, for example, the Land Management Act, Planning Act, Planning and Development Act.

#### The Objectives

By and large the objectives of the Act are still relevant today, however given the compelling reason for a name change of the Act with a principle stating the need for the re-named Act to incorporate sustainable development principles, there is no place for "environmental protection" as an objective of the Act.

The MCA would argue that environmental protection is an implied objective across many Victorian Acts, such as the MR(SD)A 1990, Water Act 1989, Aboriginal Heritage Act 2006, National Parks and Crown Land (Reserves) Act 2006 and by having it as an objective of what should really be a land development Act provides duplication, confusion and conflict.

#### Principles

The MCA recommends that inclusion of sustainable development principles in the new Act detailing the economic, environmental and social objectives of the State, similar to that which are incorporated in the MR(SD)A, will ensure that economic, environment and social consideration are made in the administration of the Act.

#### Interaction with other Acts

It is important that an enabling Act like the P&E Act have very clear linkages with other legislation where land is developed and managed, including roads, public infrastructure, essential services, education facilities and health care facilities. Duplication of planning requirements in other Acts only leads to misinterpretation and inconsistency, particularly when Acts are amended.

It is also important that definitions that primarily related to issue-specific Acts like Aboriginal Heritage, Water or minerals development are not duplicated in an enabling Act such as the P&E Act. Over time the minerals industry has experienced the situation where a definition in one Act bears no relationship to a definition in another Act.

The MCA does not support specifying specific reference in Acts to issues currently facing Victoria such as housing affordability, climate change etc as listed in the Discussion Paper and considers these issues are policy or operational issues and are often evolving issues that may be dependent on international influences like the Global Financial Crisis in which we currently find ourselves. Objectives of any Act are typically broad enough for governments to make determinations that it will consider particular issues when administering the Act.

### 4.2 The Permit process

For the minerals industry the permitting process is referred under the MR(SD)A. The MCA has no particular concern about some of the processes described within the P&E Act related to the permitting process – lodging applications, enforcement. We do however have concerns with the notice application, objection, referrals, decision, conditions and amendment processes. As described earlier in our submission, the minerals industry also has concerns with the institutional capacity to administer of the Act.

### Notice application

As the Discussion Paper notes, not all planning schemes specify notification requirements and therefore the responsible authority must decide whether material detriment would be caused to any person. Furthermore there is no detail on what matters must be taken into account in deciding whether material detriment may be caused. It is at this point where the competence of the responsible authority is critical. Competence goes to capacity, capability, transparency and objectivity. Unfortunately the minerals industry has routinely encountered a subjective determination of 'material detriment'. Moreover 'affected parties' can be interpreted to range from the neighbour to an interest group based in California (yes this is a real example). Given this there needs to a set of State-wide guidance to all responsible authorities on how material detriment is to be determined and what constitutes an affected party. As suggested in the Discussion paper, classes of notification would be very useful. While, as noted this would not require legislative change, rather than classes being inserted into planning schemes, a guidance note would be sufficient and timelier.

### Objections

The MCA notes that s.57(1) of the Act provides that "any person who may be affected by the grant of the permit may object to the grant of the permit". Aside from a commercial advantage qualifier, there is no test of what is reasonable. As mentioned above, an interest group in California may have a particular bias on an issue and could justifiably believe this section of the Act applies to them. However this is ludicrous and the MCA does not believe this was the policy intent of the law. Furthermore an objection can be lodged that bears no relevance to the proposal.

The MCA recommends that the language in s.57(1) be amended to include a test of what is reasonable. We also recommend as suggested in the Discussion paper that the term objection be changed to submission and the responsible authority have discretion to reject an objection. This discretion however must come with adequate guidelines to ensure objectivity.

### Referrals

It is this step in the permit process that can lead to extraordinary delays. As detailed earlier in this submission, a central point for referrals will go some way to improving the coordination and follow up that is required when a referral occurs. The MCA further recommends that Memorandum of Understandings with relevant agencies include timeframes within which responses must be made and that a public register tracking the referral process be available online. The MCA believes that this public transparency will engender a culture that will increase efficiency so that a referral authority is not subject to public exposure for lack of timeliness. This proposal has been recently recommended by VCEC.

While some authorities will argue that they have no ability to control the time a referral agency takes to respond to a referral and that it should not be recording this, there is precedent - WorkSafe Victoria (WSV) provide twice yearly updates to stakeholders on performance indicators it has no ability to control (i.e number of claims, fatalities etc). WSV reporting of this information indicates that it is measuring its own influencing ability as a modern regulator.

The potential for including a provision in an MOU that deems the referral authority has no issue with the proposal if it has not replied to the responsible authority within the specified timeframe is very worthy of consideration.

### Making a decision

The Discussion paper acknowledges that the status of particular government policies to be considered when assessing an application leads to inconsistent decisions being made. The MCA asserts that while the Act or any other legislative instrument has no role in detailing the policies to be considered by the responsible authority when deciding on an application, the Act could establish the power to develop guidelines that could be called up in regulation that detail all relevant policies and how the responsible authority will consider these when making a decision.

While there are times prescribed in regulations by when some decisions should be made, in practice it is common for these not to be met. The ability to "stop the clock" for such minor issues including the application being sent back for page numbers to be included or a name missing should not trigger a stopping of the clock. There is no reason whatsoever that the application cannot be considered while an administrative detail is followed up. The critical component of an application is its content – not whether i's are dotted and t's are crossed.

Furthermore, if a decision is not made within the prescribed timelines, the application should be deemed to be approved. There will be some occasions where the proponent and responsible authority will agree that an

extension is required and the law must enable this discretion. By having fixed timelines with deeming provisions will drive cultural change that will increase efficiency and the number of decisions made within the timeline.

#### Conditions

It has been interesting to follow the debate on the enforceability of conditions, and even more so that VCAT has not been able to achieve any clarity around this.

Conditional approvals are a fact of the modern project approval system. The enforcing of conditions is really an issue of regulator capacity and adequate resourcing. Industry social licence to operate depends on confidence in the regulatory system. The MCA recommends that conditions should also be reviewed periodically for long term relevance.

#### Amending a permit

The ability to amend a permit is paramount. No more so than in the current economic conditions where proponents are facing extraordinary issues in gaining finance and developing project proposals. An application to amend a permit should not entail the same process that was required to apply for the permit in the first place. The MCA asserts that the approval process should enable a risk assessment to identify simple amendments or amendments of low risk to an issue entirely contained should be able to be amended in a considerably more timely manner.

### **4.3 Planning schemes and the amendment process**

While the MCA acknowledges the need for planning schemes to reflect the use, development, protection and conservation of the relevant land, there continues to be inconsistency in planning schemes across local council borders that often contradict each other but also do not reflect the State interest. As council boundaries are arbitrary lines drawn across the map, the land does not stop and start in line with these boundaries. It is important that consideration of regional use, development, protection and conservation of land be considered within planning schemes and that the Minister responsible needs to ensure that State interests are maintained over local interests to the extent that it is practical.

The MCA maintains that the amendment process should have the same transparency and checks and balances as that which it recommends for the application of a planning permit as detailed above (material detriment, affected party etc).

### **4.4 State-significant projects**

A one-size-fits-all approach is not useful to the minerals industry as projects are unique, specific and finite. Unlike other industrial land development the minerals industry's use of the land is temporary.

The proposed 'short process' for planning permits we see applying to very minor applications such as home renovation. This proposed process would not be relevant to the minerals industry.

The Discussion paper implies that small scale, low complexity proposals could be eligible for the 'short process'. The MCA argues that large scale often not complex projects that the minerals industry typifies should also be eligible for a fast-tracked process. We need to maintain the ability of the process to opt out of the P&E Act and be dealt with in the Environmental Effects Act 1978 (EEA).

The VCEC Inquiry into Environmental Regulation explored the possibility for streamlining approvals for major projects. VCEC considered approvals only under the EEA and did not consider approvals processes for projects requiring either a planning permit of planning scheme amendment given that the P&E Act was to undertake this current review. However, the principles for streamlining remain the same regardless of the legislative tool.

We note that some projects have an impact on the future of the State's overall development and therefore decision making is elevated by the Act to give the Minister the power to declare a proposal to be of State significance. According to the Ministerial Powers of Intervention in Planning and Heritage Matters (DSE, 2004) it is MCA's view that the majority of minerals development proposals should be considered to be of State significance through substantial regional investment, job creation, State productivity and economic development. However in practice this does not occur.

Perhaps a \$ value of capital investment should be a trigger for such intervention as occurs in other jurisdictions. The MCA would suggest a figure of \$100 million.

Below is an example of a large minerals development project that was referred to the Planning Minister for a determination on whether an Environmental Effects Statement (EES) needed to be prepared. As detailed the Planning Minister took 92 days to make a decision. The decision was that while an EES was not required an environmental report was requested. For a project of this scale, complexity and capital investment, an EES or environmental report is normal. We don't believe that it should take three months for this decision to be made.

Nor do we accept that it is good practice for the whole approval process to take 15 months

Project 1 - Planning Permit	New Mining Project			
	Start	Days	Start	Complete
Project referral to Planning Minister	0	92	16/01/2008	17/04/2008
Project referral to DEWHA	2	34	18/01/2008	21/02/2008
Scope Environmental report	93	32	18/04/2008	20/05/2008
Environmental studies	126	111	21/05/2008	9/09/2008
Endorsement of draft report by Govt	238	78	10/09/2008	27/11/2008
Public exhibition	317	42	28/11/2008	9/01/2009
Respond to public comments	362	4	12/01/2009	16/01/2009
Mining Licence (DPI)	243	93	15/09/2008	17/12/2008
Mining Work Plan (DPI)	182	162	16/07/2008	25/12/2008
Planning Permit	324	88	5/12/2008	3/03/2009
Work Authority (DPI)	415	4	6/03/2009	10/03/2009

As evidenced by the above, this duration is a very real deterrent to investment by a proponent and puts Victoria's economic prosperity, regional development and employment at risk.

Not only is there uncertainty about whether a Minister will determine a project is of State significance, and that this decision may be given at a very late stage in a project's feasibility, there are also no transparent guidance on how the Minister will make a decision. The MCA recommends that criteria be developed and that this criteria have regard to the economics of the project, its location (regional, rural), potential for job growth and duration of project.

There are other ways for streamlining approvals for major projects – the MR(SD)A could describe a streamlined process for major projects following the consultation between the Ministers responsible for the MR(SD)A and the P&E Act, or specific legislation for state-specific projects. The latter could create a cumbersome legislative framework and would not provide certainty and transparency as they are single project statutes. The MCA recommends an alternate statute that specifically has a head of power to enable a project to be declared State significant. A single Act that enables the declaration for any major project is required. The Act would also simply describe the approvals process and which sections of related Acts apply.

The decision about whether a project is declared must occur at an early stage in the process and provide greater certainty for all stakeholders, greater flexibility in the process, and a more integrated and streamlined approach across a range of related legislation. This would be useful in Victoria.

The new Act should also require the Government establish a whole-of-government committee to oversee the project through the approvals process (similar to an Inter-Departmental Committee).

## 5 CONCLUSION

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The MCA seeks regulatory reform to establish an effective regulatory system for planning. We do not seek a “new car”; a “major service” is warranted however.

We identify that as well as legislation design, greater resources to ensure regulator institutional capacity is urgently needed.

We seek a one-stop-shop for the approval of major/complex projects requiring multi-agency approvals and we seek declaration of projects of State significance for expedited progress through the planning approvals system.