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D25/35102

Matt Vincent
Chief Executive Officer, Resources Victoria
Department of Energy, Environment and Climate Action
8 Nicholson Street
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19 May 2025

Dear Mr Vincent,

REGULATORY IMPACT STATEMENT FOR THE MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) (MINERAL INDUSTRIES) AMENDMENT REGULATIONS 2025 AND MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) (EXTRACTIVE INDUSTRIES) AMENDMENT REGULATIONS 2025

I would like to thank your staff at the Department of Energy, Environment and Climate Action for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2025 and Mineral Resources (Sustainable Development) (Extractive Industries) Amendment Regulations 2025 (the proposed Regulations).

The Commissioner for Better Regulation is required to provide independent advice on the adequacy of RISs in accordance with the Subordinate Legislation Act 1994 Guidelines (the Guidelines). However, as the office of the Commissioner for Better Regulation is currently vacant, the Secretary to the Department of Treasury and Finance (or their delegate) is responsible for providing independent advice on the adequacy of RISs, in accordance with the Guidelines. The Secretary has delegated this responsibility to me in my capacity as Deputy Secretary, Economic.

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 clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received on 16 May 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and problems

The regulatory framework for Victoria's mineral and extractive industries is provided for by the *Mineral Resources (Sustainable Development) Act 1990* (the Act). Mineral industries refer to the extraction of minerals from land for commercial production.[1] Extractive industries (or quarrying) refer to the removal or extraction of stone for commercial purposes, such as use in construction or manufacturing.

The Act requires operators in the mining industry to obtain a licence under one of four categories: exploration, mining, prospecting or retention. The Act also enables individuals to engage in recreational mineral prospecting under a miner's right or tourist fossicking authority (TFA). In the extractive industry, a licence is known as a work authority, which enables an operator to extract stone. The Act also grants the Department powers to administer these licensing schemes and regulate the mineral and extractive industries, which is carried out by Resources Victoria (a branch of the Department).

The Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 and the Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019 (the current Regulations) set out further requirements for the mineral and extractive industries respectively. This includes requirements relating to licence and work authority applications, work plans, declared mine rehabilitation, the mining register, infringements, reporting requirements, and fees, the latter of which is the focus of this RIS.

The current Regulations prescribe 84 different fees for operators in the mineral and extractive industries. The current Regulations prescribe annual rent (for licences) and annual fees (for work authorities), which make up nearly 90 per cent of total fee revenue. They also prescribe service fees, including for licence and work authority applications, grant and renewal of licence, lodging and varying work plans, as well as fees for miner's rights and TFAs. The current Regulations also set out royalty rates and prescribe a mine stability levy for Latrobe Valley coal mines, however these are not considered in this RIS.

A key principle of the Government's *Pricing for Value* Guide is that the costs of regulatory services are borne by those who benefit from or give rise for the need of those services. Applying this principle to the regulation of mineral and extractive production, the Department outlines that the costs incurred by Resources Victoria to administer its

[1] 'Minerals' refer to any substance which occurs naturally as part of the earth's crust including gold, silver, mineral sands, coal, antimony and industrial minerals, but does not include water, stone, peat or petroleum.

regulatory functions under the Act should be recovered by fees paid by operators in the industry.

The Department outlines that the current mineral and extractive fees are failing to fully recover regulatory costs. Fee revenue in 2023-24 was estimated to raise $7.5 million, while regulatory costs were estimated to be $21.3 million, reflecting a cost recovery rate of 36 per cent. This means that the bulk of regulatory services are not being funded by the businesses who have created the need for regulation, but by taxpayers, who the Department explains are cross-subsidising mineral and extractive businesses.

The Department explains that the current fees under-recover regulatory costs because they have not been reviewed or altered in over a decade. The current mineral and extractive fees were set in 2013 and 2014 respectively and were calculated based on the costs of regulatory activities at the time.[2] Since then, the Department explains that significant reforms to earth resources regulation, as well as greater gold and extractives production and increased public objections to licences, have substantially increased regulatory costs.

In the RIS, the Department explains that the Government has requested mineral and extractive fees be increased by 1 October 2025 to enable the relevant regulatory costs incurred by Resources Victoria to be fully recovered for the 2025-26 financial year.

Options and Analysis

The Department considers two sets of options in the RIS:

1. **Cost recovery options** (Options 1 and 2), which increase mineral and extractive fees to achieve full cost recovery.
2. **Fee design options** (Options A, B and C), which are not directly aimed at cost recovery and are therefore considered in parallel to the cost recovery options.

The Department assesses the cost recovery options against the base case of the current Regulations, and then the fee design options against the preferred 'cost recovery' option as a reference case. To assess options, the Department uses a multi-criteria analysis (MCA) with the following criteria and weightings:

- efficiency (35 per cent)
- effectiveness (15 per cent)
- equity (15 per cent)

[2] When the Mineral Industries Regulations and Extractive Industries Regulations were re-made in 2019, fees were not reviewed or altered, in line with the former Commissioner for Better Regulation's recommendation to delay the review of fees until after 1 July 2020. This was to allow for the recommendations from the *Getting the Groundwork Right* Report to be implemented.

- simplicity (35 per cent).

The Department explains that efficiency is the principal objective of the proposed Regulations, reflected in the higher weighting of this criterion, because it considers it highly important that businesses pay for the regulatory costs that arise from their activities. The Department also assigns a higher weighting to simplicity, arguing that because other regulatory reforms are underway in the sector, any changes to the current fees should be easy to understand and implement.

Cost recovery options

For cost recovery options, the Department considers two options that would increase all fees prescribed by the current Regulations (except for the mine stability levy and royalty rates) and further prescribe two additional fees related to declared mine rehabilitation plans. The two options considered by the Department are:

- **Option 1**: a flat 234 per cent increase to all mineral and extractive fees
- **Option 2**: a differential increase in fees, with all mineral fees increasing by 247 per cent and all extractive fees increasing by 211 per cent. The Department explains that stakeholders raised the idea of setting fees for extractives lower than minerals as they claimed that extractive operators are generally smaller and less complex than mineral operators.

The Department explains that both options will achieve full cost recovery, ensuring that the earth resources industry pays for the costs of regulation arising from their activities. The Department also outlines that both options will enable Resources Victoria to recover costs incurred in reviewing declared mine rehabilitation plans through the two new fees.

The Department explains that Option 1 is its preferred 'cost recovery' option. This is because when the fees were set in 2013 and 2014, the fees were calculated based on the costs incurred by the regulator for different activities at that time. The Department explains that these fees are the best currently available estimates of the regulatory effort of different mineral and extractive activities. Therefore, it argues that deviating from them, as proposed under Option 2, would likely result in fees being less efficient and less reflective of regulatory effort. The Department explains that Option 2 may also result in mineral operators cross-subsidising extractive industry operators.

However, the Department notes that because the fees under Option 1 are based on the 2013 and 2014 fees, rather than more recent activity-based costing data, it is unlikely that they will accurately reflect the current costs of regulatory services. The Department explains that it does not currently have the data to undertake a more rigorous analysis of regulatory costs that would enable fees to be set on a more efficient basis.

The Department acknowledges that Option 1 (a 234 per cent increase to all fees) may result in negative outcomes in the mineral and extractive industries. This includes negative equity impacts (as smaller businesses may be less able to pay the higher fees than larger businesses), businesses exiting the industries, and higher prices for extractives and construction materials. However, the Department explains that these impacts are not likely to be significant, as it expects that the proposed fees will represent a small portion of total business costs for operators (fees will represent approximately one per cent of production value on average). It also explains that the higher fees, and any associated negative impacts, are needed to achieve full cost recovery and ensure that regulatory costs are paid by the industry, rather than taxpayers.

Fee design options

The Department considers three fee design options, which could each be applied to Option 1 (as the preferred 'cost recovery' option). The Department compares these options against the reference case of Option 1:

- **Option A**: providing licence and work authority holders with the option of paying annual rent/fees on a quarterly basis.
- **Option B**: adding two higher threshold annual fee categories for larger extractive operators, and consequently reducing the fee increase for smaller extractive operators.
- **Option C**: no increase to mineral exploration licence fees, compensated by a 281 per cent increase to all other mineral and extractive fees.

Option A would give operators the option to remit annual rent/fee payments on a quarterly basis. The Department explains that this would assist smaller businesses to smooth out their cashflows over the financial year, while imposing minimal costs to Government. Option A scores positively in the Department's MCA, indicating that adopting Option A would result in a net benefit compared to adopting Option 1 alone.

Option B would restructure the extractive annual fee categories to collect more revenue from the largest quarries. Annual fees are determined by the value of an extractive operator's gate sales. Currently, the highest annual fee category is for operators with more than $10 million in gate sales. The Department argues that the $10 million fee threshold inadvertently provides a 'concession' for the largest extractive operators (i.e. those earning over $30 million) that is paid for by smaller operators.

Option B would add three new annual fee categories for operators with gate sales between $10-20 million, $20-30 million, and more than $30 million. The latter two fees will respectively be 301 per cent and 341 per cent higher than the current fee for operators with gate sales above $10 million. Collecting additional revenue from the largest quarries

will enable a slight reduction in the annual fee increase for operators with gate sales below $5 million, saving them between $100 to $800 per year compared to Option 1.

The Department explains that the additional annual fee categories would improve the efficiency and equity of extractive fees, while only marginally increasing the complexity of the fee structure. Therefore, Option B scores positively in the Department's MCA.

Option C would keep fees for mineral exploration licences at their current levels, while increasing all other mineral and extractive fees by 281 per cent, compared to 234 per cent under Option 1. The Department explains that this option may facilitate further investment in Victoria's mineral industry, as mineral exploration may be more sensitive to fee increases than other sectors (although it notes that these investment benefits may be minimal given other mineral fees will be higher). The Department outlines however that this option would result in exploration licence holders being cross subsidised by other operators, resulting in a less efficient and equitable fee structure. Therefore, this option scores negatively in the Department's MCA.

Preferred option

In the RIS, the Department identifies Option 1 alone as its preferred option.

Options A and B both receive a positive MCA score, indicating that the Department considers that incorporating these elements into the proposed Regulations would produce a more optimal outcome than Option 1 alone. However, the Department explains that due to timing issues and internal resourcing constraints, it has not incorporated Options A and B into its preferred option or the exposure draft of the proposed Regulations.

In the RIS, the Department explains that initial stakeholder consultation, which informed the development of the fee design options, concluded in late January 2025, and that subsequent dialogue with stakeholders extended into February 2025. Due to the timing of stakeholder consultation, as well as internal resourcing constraints, the Department considers that it was not feasible to incorporate Options A and B into the preferred option and exposure draft while ensuring that the proposed Regulations are in place by 1 October 2025 – in line with the Government's request to raise fees to meet Resources Victoria's resourcing requirements for the 2025-26 financial year. The Department also notes that its MCA identifies that incorporating Options A and B would only be marginally more beneficial than Option 1 alone.

The Department explains that it is seeking to further test the options presented in the RIS through the public consultation process. The Department invites stakeholders to

comment on all the options presented during public consultation, and explains that it will consider all feedback prior to the making of the proposed Regulations.

Implementation and Evaluation

The Department explains that the implementation of the proposed Regulations will be relatively straightforward, as it has existing payment systems in place that operators are familiar with. The Department will write to all work authority and licence holders to notify them of the fee changes, which will come into effect from 1 October 2025. Non-annual fees (e.g. fees for specific regulatory services) will be payable from at the proposed rates, whereas annual fees will be payable at the end of the 2025-26 financial year.

In the RIS, the Department outlines that recent amendments to the Act will move mineral and extractive regulation towards a duty-based model, under which operators will be required to proactively eliminate or minimise risks. The Department notes that these amendments, due to come into effect in July 2027, will have implications for fee revenue (as work plans and the associated fee will no longer be required) and regulatory costs (as greater levels of compliance and enforcement are expected). This means that these fees will need to be reviewed before these amendments come into effect.

Therefore, the Department commits to reviewing all mineral and extractive fees prior to 2027. This future review will use more recent data (not currently available to the Department) to ensure that the fees are set on a more efficient basis and are based on regulatory costs associated with the new duty-based model. The future fee structure will also incorporate risk-based elements, to ensure that fees correspond with the relative risks of different operators and activities.

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

Yours sincerely,

Paul Donegan
Deputy Secretary, Economic
Department of Treasury and Finance