Coversheet for a submission on the Mineral Resource (Sustainability Development) Act (MRSDA) Review

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Our Interest in the Review?

Owner of land affected by the Act

MRSDA Review
Earth Resources Policy Unit
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Department of Primary Industries
GPO Box 4440
MELBOURNE VIC 3001

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emailed to: MRSDA.review@dpi.vic.gov.au

Dear Sir/Madam

Please find attached submission to the Review of the MRSDA

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Acronyms

Blasting, flyrock and/or fly exclusion zone	The safety area which must be vacated during blasting (to be fully contained within the land controlled by the operator
Buffer	The area between the outermost impact (e.g. dust, odour, noise, vibration, fly and flyrock, etc) of the proposal (bunds, stockpiles, rock faces, internal roads, vehicles, equipments, machinery etc) and the land controlled by others outside the operations boundaries
CMA	Catchment Management Authority
Compensation	As defined in the MRSDA and identified within the Review Paper – namely payment to any second or third party who is negatively affected by the proposal/operations of the removal resource use (e.g. the money to buy a replacement property with the same features (water, soil quality, infrastructure, etc) as well as money for legal and stamp duty costs and a solatium for inconvenience)
Council	Local Government Council
DPI	Department of Primary Industry
DSE	Department of Sustainability and Environment
EIDA	Extractive Industries Development Act
EPA	Environment Protection Authority
Fly	Material projected as a result of blasting
Flyrock	Rock projected as a result of blasting
FOI	Freedom of Information
MRSDA	Mineral Resource Sustainable Development Act
OH&S	Occupational Health & Safety
Proponent/Operator	Company or person seeking to open the resource operation
SRW	Southern Rural Water
VCAT	Victorian Civil & Administrative Tribunal
Water Authorities	e.g. CMA & SRW

Prelude

1. I note that the MRSDA is to incorporate the EIDA from 1st January 2010 under the "Resource Industries Legislation Amendment Bill 2008". In light of this, I will refer to the various resources jointly as "resource industries", as depicted in the Bill. So, perhaps the term "resource" should become the official definition or designation as to cover the mineral, petroleum, extractive or explorative industries.
2. I have found that the MRSDA Review Issues Paper to be a very well thought out and put together document. It is succinct and logical.

Summary

3. I have listed some of the major points and hope my comments are helpful:
    a. Those who have responsibilities must uphold those responsibilities in their entirety;
    b. Legislation must be absolutely followed;
    c. Full compliance must be mandated and enforced;
    d. There must be fairness in all capacities and areas by all persons and authorities;
    e. Simplification must not run the risk of leading to dilution of responsibilities or compliance;
    f. The environment and neighbouring properties must be protected along with resources;
    g. The health and wellbeing of the community must be protected;
    h. The community must continue to be involved in all aspects and stages of any and every proposal and operation;
    i. There must continue to be adequate compensation to all affected parties;
    j. There must be no favoritism, or additional benefits beyond the standard, for any particular operation/s in any regard;
    k. All licences and permits, including all third party licences and permits, must be applied for and subject to community participation and comment;
    l. The incorporation of the EIDA must not dilute the MRSDA, and
    m. Rehabilitation is the sole responsibility of the operator and must be fully and entirely completed by the operator and at the full and entire cost of the operator.

Bonds, Royalties and Financials

4. There should be a minimum bond called for, and then, by all means, use the risk profile of companies/operations and ownership of the land (have they been in administration at any time, have they been bankrupt at any time, how many times have they had to be closed down in other operations, how may complaints have there been and of what type, etc – personally **or** corporately) in calculating bond amounts. Other than putting a lien on land owned by the owner/operator, of sufficient value, or a lien or caveat on monies in the bank, I think that a bank guarantee (on which they have to pay interest), would provide the best adequate security to Government – which is far less costly to them than putting the cash up front.
5. The current bond system does not adequately cover all future liabilities. In a scenario adjacent to our property, the proponent is clearly intending to (in violation of the Water Act

1989) take the water from our property (they intend to excavate through the spring (which is the headwaters of our waterway), and the aquifer, and destroy a considerable amount of the catchment). They intend to use the water for dust suppression and leave us with none or, at best, very little. They do proposed to arbitrarily (when it suits them) supply us with a little by way of drainage (in lieu of the current clean and clear spring water), but there is no guarantee of supply during the use and certainly no provision after the use is finished!! How would the bond cover that???

6. Bonds should not be used for other purposes other than to ensure the full and complete rehabilitation of the land after the use. One DPI person told an objector to a quarry that if there were any problems with loss of water or such on his property, that it would come out of the bond! However, there is no validation of this claim.
7. The royalties issue could easily be construed as conflict of interest on behalf of DPI since it is not only in their best interest to approve licences and permits, but is part of their charter and role.
8. The provision of a trust for ongoing monitoring and low-level remediation work would be better than nothing, but then there is the problem of who would manage the trust and who would continue to oversee the managing of long-term liabilities such as the continued provision of water to adjacent landowners? There is the risk to the future generation if things are not done correctly in this generation, and a trust does not necessarily deal adequately with this.
9. There should be a requirement to assess the owner/operators on their current and past financial histories e.g. if there have been bankruptcies then this should make a difference in assessing their likelihood of being able to responsibly run or operate the resource enterprise. Royalties should be paid up front (any rent or lease is usually paid in advance). There should be a secure and accurate electronic tally of material exiting the site so as to not allow for any minimising of the amounts liable for payment.

Climatic, Carbon and Associated Matters

10. The proposed introduction of the Carbon Pollution Reduction Scheme should be a "must", for each and every resource industry. In addition, they should have to provide offsets in order to play their part in the ability to lessen the effects and impacts of their operations. However, Carbon Capture and Storage – presumably pumping it into the voids left in the aquifers and/or other underground locations – runs significant risks that are as yet unknown. This must not be the accepted protocol, certainly not until the full impacts are accurately assessed and the community at large should have a say in the final determination – with the decisions based on fact (researched and accurate) and not fiction (guesswork, supposition or conjecture).

Community Involvement

11. The community involvement in the MRSDA is great and must be continued into the extractive industries when they are integrated into the MRSDA – and the "*general duty to consult with the community* [should] *be more explicitly enforceable*."
12. Having third party verification and local community participation would have the insurance that businesses would be more likely to follow legislative requirements as to outcome – there is nothing like someone with a big stick looking over your shoulder to ensure you do the right thing. The MRSDA should require both a purpose and objectives, and the objectives should remain specific, implementable – and implemented.

13. If, as part of the Council Certificates during the purchase of land process, Councils had to state that the land was within a zoning for e.g. Exploration area, EIIA or equivalent, and that there was a possibility that the resource would be mined, quarried or extracted, then potential purchasers would purchase on that premise and would have less problem and/or right of objection if such industry came to pass.

14. Presumably the new MRSDA will require that DPI establish and maintain a register which includes **all** resource operations, and that any interested party may view the documentary history of any such licence.

Compensation

15. "*People, jobs and investment are flowing into our regions, attracted by new employment, investment and business opportunities and a new view of provincial Victoria as a great place to enjoy a high quality lifestyle while carving out a healthy, safe and fulfilling future…. and maintain the quality and amenity of life in provincial Victoria* "[Moving Forward page 5] Such "*high quality lifestyle*" and "*healthy, safe and fulfilling future … and maintain the quality and amenity of life*" must not be lost or compromised, especially since it is legislatively protected. If someone has these values as current, then any proposal by resource industry to dilute or impact on these must indeed provide adequate compensation for being able to do so, as mandated in the MRSDA.

16. "*A particular challenge for many communities in these 'lifestyle' regions is developing planning systems that allow more intensive land use while protecting the natural environment and amenity that draws people to these areas*". [Moving Forward page 12] Loss of "*lifestyle*" can be traumatic and costly – socially, economically and health-wise – and this too must be adequately compensated under the MRSDA.

17. It is good to see that adjacent landowners who are affected can obtain compensation. Too often proponents think that they can affect adjacent landowners without concern or repercussions. "Off-site" compensation is an effective means of addressing any disadvantage suffered by adjacent landowners. It is necessary to retain these compensation provisions in the MRSDA so that the recourse against, and the control of, impacts remains.

18. Does "*the statement of economic significance*" also cover adjacent landowners for the loss of income, loss of amenity, loss of water, loss of current, loss of property value or loss of potential additional income such as a Bed &Breakfast? If not, then it should.

Impacts, Health and Safety

19. There is no doubt that the resource industries, be it open cut or below ground, … has and does play an important role in the development of Victoria. It does also, however, have significant impact on the community around it, and this is often a very negative impact – a sometimes largely ignored or minimised impact. Obviously there are some operations that are responsible in their administration of the operations, but, just as obviously, there are those who are not. The situation around our property is that the proponent together with our local Council, DSE, DPI, EPA, and the water authorities have all considerably ignored the legislative requirements, including ensuring that all the required and necessary secondary licences and permits actually have to be applied for. They have, instead, somewhat overlooked and/or attempted to minimise the compliance with legislation and the many resultant impacts on neighbouring properties and the environment – and have certainly evidenced little or no concern about it.

20. Neighbours of resource industries are often extremely worried about the *very* real prospect of the inhalation of dust particles and the subsequent prospect of silicosis. Even with the use of water sprays in an effort to reduce airborne dust particles, the dust still infiltrates the air, leaving a gritty taste in your mouth. Dust from extraction, blasting, stockpiles, roads, etc cannot always be adequately contained within the boundaries of the land. Added to this is the risk of odours, vapours and gases from machinery, equipment, vehicles and blasting. Thus it is critically important that a sufficient buffer be controlled by the proponents and that all performance standards have to be met within those boundaries. The only way that I can see to reduce the dependence upon water is to have and maintain those sufficient buffers so that the dust is not an issue. The impact of wet disposition has by no means been adequately dealt with by research, discussion or legislation.
21. There must be adequate and enforceable requirements for safety issues – e.g. the blasting, fly and flyrock exclusions zones having to be entirely upon land controlled by the proponent.
22. With the transfer of responsibility of OH&S to WorkSafe, although DPI no longer has a role in regulating OH&S, they do have the responsibility for regulating public safety. However, in our scenario they have failed to fulfil it – what is the guarantee that they will fulfil it in other scenarios?
23. There is benefit "*in these powers being similar to those of inspectors under the Occupational Health and Safety Act, now that DPI no longer regulates health and safety*". It can only be hoped that WorkSafe will enforce OH&S because there is so much that DPI seems to overlook and not demand compliance with.

Licences and Permits

24. Licences and/or permits for such activities as "take and use" water, "works on a waterway", "dam operation" licence, EPA's "schedules premises", "discharge" licences, and associated Council permits (buildings etc) should be a separate requirement from the permit and licence required for the "use" of exploration or development, whatever the resource. This distinction provides for a clear division and each stage can be evaluated individually, as they should be. A permit or licence for disruption to others' water supply, or potential damage to the environment or adjacent landowners' properties, should not be a given just because there is a resource that is available.
25. Resource permits and licences should only be granted after a resource deposit has been identified and mining/extraction is proposed, and should be limited to the area covered by the resource, not just a large area within which there might or might not be material for removal – the exception for this is for the required extension of land in order for the proponent to control the buffer.
26. I believe that a licence or permit for removal of resource should have a time limit to meet the requirements of other licences and/or permits e.g. some water licences have a limit of five years.
27. If there was a checklist for additional or secondary permits and licences, with the relevant information of what was required, at what stages they were required, the community consultation requirements, etc, then these could be streamlined because the authorities, the proponent and the community would all know the requirements and stages beforehand and the process would not be held up by lack of knowledge by the proponent, community or the authorities.

MRSDA and EIDA

28. The MRSDA's requirement "*that its administration should have regard to the principles of sustainable development*" is laudable and it can only be hoped that the amalgamation of the extractive industry into the Act does not dilute it. By contrast, in looking into the EIDA to see the requirements of the Act (and Regulations), I have come to the conclusion that to have the requirements of the MRSDA placed on the extractive industry – provided that they are mandatory and the requirements upheld and compliance demanded – would be a serious improvement on the current EIDA status.

29. "*The MRSDA sets out a wide variety of offences and corresponding penalties which may be prosecuted in the courts. In practice, however, breaches are rarely pursued through the courts, largely because there are other more effective and efficient enforcement tools and sanctions available to inspectors and the Minister. For example, DPI uses promotion, education and advice to encourage compliance with the responsibilities of holding a tenement. Compliance is monitored through a range of activities including regular and random inspections, audits, mandatory reporting of information by licence holders and analysis of information reported*." The inspectors should have more powers to enforce the regulation of exploration, mining and extractive operations. The "softly, softly" approach does not encourage compliance as much as the fear of court action together with the subsequent costs and delays would. I fail to see that "*promotion, education and advice to encourage compliance with the responsibilities of holding a tenement*" would be more likely to enforce compliance – I find that extraordinary if that actually works. I think it more likely that the inspectors don't want to upset anyone.

30. There are some significant differences between the current MRSDA and EIDA, and combining the two, while of considerable benefit due to the multitude of similarities, does however, raise questions as to the possible dilution of the more strict legislation of the MRSDA – does this mean that the higher principles will be brought to bear, or the lowest and most lenient? A few of the discrepancies between the two Acts are as follows:

    a. The MRSDA makes it clear that watercourses are to be protected and that no mining it to take place within 100m of them without clear permission to do so but, while the EIDA states that there must be a buffer of 30m, even that is not upheld – and authorities, in direct disregard to legislation, are significantly ignoring this);

    b. The MRSDA makes provision for compensation for neighbouring properties that are affected by the use and the EIDA clearly shows that it doesn't care about the impacts and makes no provision for compensation for those affected other than Crown land;

    c. The MRSDA specified that there is a duty to consult with the community, but the EIDA doesn't care about ensuring that there is any community involvement at all, rather, it ignores the issue;

    d. The MRSDA states that its aim is "to serve Victoria's interests now and into the future", but the EIDA appears to be unconcerned about the interests outside of the proponent and the industry and certainly does not appear to care about any generational gains or responsibility other than to preserve materials for the future;

    e. The MRSDA is taking the "carbon constraining" on board, while the EIDA seems to ignore it;

    f. The MRSDA has the 100m rule and the EIDA ignores the impacts and tries to get as close as possible to the sensitive uses in spite of EPA's recommendations for larger buffers, that are to be (according to legislation) controlled by the proponent;

    g. The MRSDA has taken the lead on "environmental sustainability" and EIDA makes reference to it in passing but doesn't enforce it;

h. The MRSDA has a Code of Practice for Mineral Exploration whereas the EIDA doesn't;

i. The MRSDA has guidelines – which presumably it adheres to, unlike the EIDA.

31. The difference between the MRSDA and the EIDA is very clearly seen in the "Why Tenement Compliance Matters" in that there is much, and rightly so, in the way of compliance matters for the mining industry, but very little, and wrongly so, for the EIDA.

Other Bodies

32. All of the three different mechanisms – MEAC, Advisory Panels and Mining Wardens – are required because they all have their own roles, so unless the responsibilities were combined into one board, panel or committee they should all remain. The issue with moving such a role as the Mining Warden to VCAT is the delay in having a Hearing and the possibility of the Members not being familiar with the issues.

33. The role of the Earth Resources Development Council should be formalised in the MRSDA and it should incorporate the extractive industries.

Regulation, Regulatory Reform and Compliance

34. All legislative requirements must be consistent and cross-referenced between the various Acts and Regulations.

35. Saying: "*While generally, there is no scope in the MRSDA or regulations to vary the work plan specifications according to risk and company performance, in practice there is some flexibility in the amount of detail required*" would imply that the MRSDA and regulations are not important and can be summarily dismissed at the discretion of the person assessing the application. This is evident in scenarios like ours with the proponent ignoring a considerable number of requirements in the checklist and regulations – and DPI did not require them to comply. This would appear to be a common practice within DPI and leads to disharmony within the community because the community has learnt that it cannot rely upon DPI to enforce legislation, and, if DPI won't enforce it, why would the operators comply it unless they have to?

36. With regard to the proposed abatement of incidents, injuries and deaths, there should be the same requirement of the proponent to control the buffers in relation to blasting, fly and flyrock exclusions zones in addition to other OH&S practices – this would lessen the occurrences outside the boundaries. This requirement is clearly not enforced in all circumstances, thus putting the public and/or adjacent landowners at serious risk as well as ignoring legislation that states dangerous activities have to be contained within the land controlled by the proponent. Our situation is that Council and DPI are ignoring the fact that proponent does not control a considerable amount of the outer flyrock and blasting exclusion zones and are relying on people who have no legal requirement to do so, to evacuate their own premises upon the (unreasonable) request of the proponent to do so. In addition, the proponent's representative (either deceptively or because he did not know the legislation which governed his own field) told VCAT that the shotfirer had the right to have people removed (by WorkSafe or the Police) from their own properties if they did not comply with the proponent's demand for them to remove themselves from their own land – in spite of WorkSafe stating that this was not so. As you can see, these things must be legislatively made clear. Therefore, "*management of public risk (public health and safety) is also a justification for government regulation of the industry*."

37. Regulation is indeed an important tool for achieving policy objectives and responding to community needs. However, in attempting to make the process smoother, this could well result in the minimisation of legislative requirements that could also defeat the intended objective of regulation. Regulatory improvements that deliver increased efficiency without compromising social, community, economic (the adjacent landowners' economic future), amenity and environmental objectives should be key to the development of a prosperous and sustainable resource industry – the welfare of the resource industry must not come at the cost of the welfare of the adjacent landowners and the local communities whom the resource industries are purporting to support.

38. While Victoria's *Reducing the Regulatory Burden* (RRB) initiative states that it affirms the Victorian Government's on-going commitment to regulatory reform, it runs the very serious risk, by reducing the "administrative burden", of, in fact, diluting the legislative requirements and the onus on compliance – at possible permanent cost to the environment as well as the local amenity, prosperity and wellbeing. I believe that would be the case in our situation – the proponent next to us has shown itself to, at almost every possible point, attempt to minimise the impacts, hide facts and have repeatedly provided inaccurate and inconsistent information that lacks the substantiation of their claims. To have the legal ability to continue to do this would be appalling.

39. There are many times when the process becomes more difficult than it needs to be – and this is when the proponents do not follow the rules, guidelines and legislation. "*Simplification*" is not necessarily the answer. If each development were to set up the forms and processes and perform the required acts in accordance with legislative requirements, then there should be no need for simplification, and there should be no action necessary "*to reduce the compliance burden*". Some of the "burden" is because the authorities have to come in and get the operations to do it right the second or third time around instead of them doing it right the first time. Compliance failure must be an absolute deal-breaker – if this was the case then surely most would comply without the need for further action.

40. Surely it should not be seen that there is a "burden" in environmental protection. Surely it is in the best interests of business as well as the community that, in all possible ways, the environment is, at worst, protected and at best, enhanced – and at no stage, degraded. What is messed up now may not be able to be recovered, and it is important to leave the environment in no worse state at the end of our time as it was when we arrived.

41. It is possible that any proposed "lessening" of the "burden" would, in fact, make it too easy for the impacts to be further overlooked and for the environment to be degraded.

42. In our situation, with excavation proposed next to our property, commencing a mere 152m from our dwelling, excavating through the headwaters of our watercourse and removing un-quantified amounts of groundwater from the system – with the articulated statement by the proponent's representative: "*so what if we breach the regional watertable?*", there must certainly be strict regulation and enforcement of the environmental protection, not a relaxing of the requirements.

43. While the *Planning and Environment Act 1987* does provide a framework which is for planning the use, development and protection of land, natural resources and amenity in Victoria, the Act is not always enforced and the planning schemes are often ignored. In our case, the Planning Scheme has also been largely ignored with the exception of the parts that support the proposed use next door – but the negative impacts, loss of amenity, loss of property values, loss of clean and clear watercourses, and the additional noise and dust and the odour and other interferences have largely been ignored. One of the key objectives of planning in Victoria is supposed to provide for the protection of natural resources and the maintenance of ecological and amenity values, but this has not been the case in our scenario.

44. The fact that "*framework and institutional arrangements for regulation needs to be able to respond to emerging challenges and the new business and economic opportunities those challenges present*" does not detract from the legislative requirements. The need to be "*flexible so that it does not act as a barrier to innovation or the adoption of new, more efficient practices*" must also not remove or lessen the need for full compliance. The basic requirement of legislation must be firm and protective of all aspects of the environment (water quantity and quality, ambient air quality, ambient noise levels, ecological systems and communities, safety, etc) and compliance with legislation must not be diluted, disregarded or minimised.

45. "*Explicit regulation can be appropriate where it has been demonstrated that a problem exists, government action is justified and regulation is the most efficient and effective option to deal with the identified problem*" – this particularly applies to setting mandatory buffers and the requirement of the proponent to control them. "*As the steward of mineral resources, the Victorian Government has a role in regulating the industry to ensure that the return on the development of mineral resources is maximized for the benefit of the broader community*" and the benefit of the broader community includes the abatement of impacts, not the increase of them.

46. Government policy objectives should certainly be clearly identified and articulated – too much is subject to interpretation, sometimes the interpretation of those with vested interests.

    a. While entertaining the idea of "*flexibility*" it is important to ensure that the rules and regulations cannot be bent to serve the ideas and desires of a certain proponent who does not want to meet a more strict legislative framework (as is the case with our current fight with the proponent next to us);

    b. With regard to "*transparency*", the proposal next to us has not been transparent to the community, and many of the legislative requirements have been ignored – by both the proponent and the many authorities, including DPI. The entire process should be transparent and open – which is not the current case;

    c. There is currently a clear lack of "*consistency and predictability*". "*Regulation should be consistent with other policies, laws and agreements to avoid confusion and should be predictable to create a stable regulatory environment and foster business confidence*". The only predictability in the process adjacent to us has been that of having the proponent and authorities continue to ignore legislation and the impacts on adjacent landowners. While it has fostered the business confidence of the proponent, such confidence has come at the severe cost of confidence of those outside the proposal but who, Council have acknowledged, would be significantly affected by it;

    d. The need for "*cooperation*" with the community from both DPI and the proponents is critical, and certainly "*regulation should be developed with community and industry participation and in coordination with other jurisdictions*". The proponents of the proposal adjacent to us have not only refused consultation, but contested at VCAT the inclusion of Council's requirement of just one community consultation a year!! In addition to that, DPI have made it abundantly clear that they will not have any community consultation, nor require it of the proponent, that all communication as far as they are concerned is part of the planning permit. For over twelve months Council refused to state if they were going to even have any community consultation. The MRSDA says there has to be significant community consultation;

    e. "*Accountability*" by the proponent, DPI and the other authorities is not the current situation and is a critical requirement. The process around us has been duck-shoving responsibility for compliance onto other authorities, with no-one willing to require it of the proponent – with the nett result that no-one has demanded it and no-one wants to be accountable, and they are certainly not demanding it of the proponent. The

authorities have not made the proponent accountable for lack of substantiation of claims, nor for their proved inaccuracies and inconsistencies. The authorities themselves have also failed to be accountable to legislation, to their own strategic plans and visions, and to claims on their own websites;

f. "D*evelopment and enforcement of regulation should be monitored and the results made available to the public on a systematic basis*" – it is a bit difficult to monitor and enforce regulation when its requirements have been significantly been ignored.; and

g. The situation is that the process <u>is</u> "*subject to appeal*" to VCAT, but the process is not transparent or fair due to the focus of VCAT on approving development unless there are absolutely extraordinary circumstances. There should most certainly be a more "*robust mechanism to appeal against regulatory decisions should be available to those significantly impacted*."

47. A "*Regulatory Impact Assessment*" for each proponent, with full community comment is a marvellous requirement, and should most definitely be mandatory. A "*Business Impact Assessment*" for each proponent is also an excellent idea.

48. "*In administering regulation, decisions should be made and communicated in a timely and efficient manner. Where fees and charges are imposed, these should generally be set on a full cost-recovery basis*" – fully agreed with, and these decisions should be open and transparent. Any proponent must factor in the cost recovery against them. Another way of ensuring compliance could be that the discovery of each and every failure has a serious and significant fine, with fees applicable for the relevant authorities' time and continued fines for each day of non-compliance.

49. I think that it should be "*performance-based*" <u>together with</u> "*principles-based*" regulation [i.e. not either or] thus ensuring that regulation specifies desired outcomes <u>and</u> objectives, <u>and</u> the means by which these outcomes/objectives have to be met. Without the safety net of the absolute requirement of compliance with legislation I don't believe that all businesses have the integrity to safely and accurately provide the desired outcomes specified in legislation. I believe that there are some that would just look for the lowest cost solution – as would seem to be the attitude of the proponent adjacent to us.

50. There are serious inconsistencies between the legislative requirements and the outcomes, and these must be addressed. The purpose and objectives do not currently adequately capture the evolution of the resource industry, or "*the changing investment conditions, community expectations and requirements, and emerging health and environmental issues such as climate change*."

51. Regulation should absolutely "*be underpinned by a credible monitoring and enforcement regime*" however, there needs to also be "*an escalating series of enforcement mechanisms, leading to cancellation of a licence and/or prosecution in the judicial system*" and the resource industry needs to understand this.

52. DPI has stated "*overarching objective of enabling transformation in Victoria's primary and energy industries to sustainably increase wealth and wellbeing while protecting and enhancing safety, community, animal welfare and environment*". I believe is not valid in that, <u>in our scenario</u>, DPI:

a. have failed to <u>increase</u> anyone's "*wealth*" other than the proponent's but, instead, have endorsed a work plan that would provably and seriously impact on adjacent landowner's <u>wealth, health *and* ability to continue to operate productive agricultural farms</u>,

b. as for the "*wellbeing*" of those outside the proposal, this does not seem to register on their radar and does not appear to be of great interest or importance to them. DPI, Council, EPA, DSE and the proponent have <u>all</u> ignored the impacts on the wellbeing of the adjacent landowners and have said that the resource industry has more

importance in spite of the requirement for protection of the "*wellbeing*" of those around the proposal,

c. "*protecting and enhancing safety*" is also selectively ignored because they do not ensure that the blasting, flyrock and fly exclusion zones are within the land controlled by the proponent, and expect neighbours to just get out of the way on their own properties if told to do so by the proponent,

d. in our scenario the "*community*" has not been informed or been kept informed, and DPI in fact refused, and continue to refuse, to provide information that would be helpful to the community and, in some cases, they refuse to ensure that the information they do provide is accurate,

e. "*animal welfare*" does not come into it at all and there is absolutely no concern that there are cattle, horses, birds, fish, frogs, wallabies, wombats etc within the blasting, flyrock and fly exclusion zones (on land outside the control of the proponent as well as on land inside their control), and

f. the "*environmental*" impacts have been, at best, minimised and at worst, ignored (no assessment of flora and fauna near the proposal, no water quality assessments, no water monitoring bores, no impact analysis of the removal of groundwater from the regional system, etc).

53. The subordinate instruments such as regulations, determinations, guidelines, recommendations or orders are not taken seriously – of what value are they if not enforceable? Self-regulation by industry members is open by abuse and, "*for example, accreditation schemes, quasi-regulation or co-regulation, rewarding good behaviour through reduced obligations and public information campaigns*" does not appear to make them care enough about the impacts to comply. As stated in our scenario, one of the conditions that the proponents fought to have removed through VCAT was the condition for one community consultation meeting a year, and they have not been proactive during any stage of the process with regard to community consultation – quite the reverse!

54. Both "*co-regulatory and quasi-regulatory approaches (e.g. industry codes of conduct, accreditation schemes)"* should "*definitely play a greater role in the regulation of the [resource] industry*" regardless of what other approaches are taken.

55. DPI's current level of governance is neither appropriate nor sufficient. DPI needs to be proactive in ensuring that legislative requirements are actually fully and accurately met (which, because it did not happen in our scenario, means that there will likely be many other failures with other proposals and operations).

56. Improvements could be made to increase the efficiency and effectiveness of cooperative arrangements between Government agencies by each of them enforcing the legislative requirements instead of one doing so and others not – working against each other is not beneficial to anyone.

57. "*What other types of information could be provided by DPI that would be valuable to industry and/or the community?*" As above, the full requirements that are in a legislative checklist, not an arbitrary one that DPI may, or may not (as was our scenario), take heed of.

58. The consistent capturing of digital reports and data with the associated metadata, and allowing easy access via the internet is excellent in that the exploration reports are then downloadable information, making it beneficial for both the industry and community to have the access to all exploration, mining and extractive data.

59. More offences should be subject to infringement notices and heavier penalties. I believe that enforcement through the courts would be more likely to enforce compliance and there should be "*more wide-ranging powers to seize assets and pursue prior owners*". I believe that undertakings, whether or not enforceable, would not be sufficient.

Rehabilitation

60. The rehabilitation planning process does not always efficiently deliver good rehabilitation outcomes. The proposal next to us has made broad statements that are unsubstantiated and clearly inaccurate to a large extent. The rehabilitation process must be improved by forcing DPI and Councils to have a clear look at, and assessment of, the proposed rehabilitation and end use and ensure that claims could, and therefore would, be substantiated and acted upon.

61. Landowners must be able to have a greater role in setting rehabilitation requirements and approving outcomes on private land, because they have to be left with land that they can use in some material manner – whether is a lake or as agricultural land again.

62. If there is to be a "community" outcome (such as Lilydale Lake, Blackburn Lake or Ringwood Lake) then it should most certainly have input from the broader community.

63. It is not appropriate that a licensee should be able to request the Minister carry out rehabilitation on their licence. If they take on the proposal, then it is to do the full works, which includes the rehabilitation. If the Minister has to carry out the works, then additional money should be due – the bond should be forfeited as a fine and the cost of the works payable in addition (personally payable by the directors if not recoverable from the corporation/company). That would stop the operators from walking away and leaving it to others to complete their works.

Simplification

64. If there was a "*more simplified, less demanding approval process apply to small-scale mining and exploration*" then it is open to dispute as to what is "*small-scale*" compared to the next level, presumably "*mid-scale*". Who makes the differentiation and on what grounds? Surely, if the current processes are adequately followed, then a "*small-scale*" proposal would simply take less time to prepare and assess and therefore be less arduous. In addition, if there was a distinction, any proposals outside the "*small-scale*" category would object to having to comply with a "*more demanding*" process. If the protection of community amenity and the environment is to be actually and properly dealt with then there cannot be any minimising of the processes.

65. I don't believe that there should be "*a simplified approval process apply to well-performed licensees*" as this discriminates against others. In addition it should be a given that there is a "*general (enforceable) duty to protect the environment and community*" regardless of the processes.

66. If DPI actually enforced the checklists they have compiled, then it would speed up the administrative arrangements for work plan approvals because the proponents would know what they had to provide and DPI could just check each item off as it met the full criteria.

VCAT

67. VCAT should have the right of review of consent and approval decisions, but this must be done in a manner that does not favour the developer, but takes into consideration all aspects in an unbiased manner. Third parties/affected parties should definitely have appeal rights because the authorities sometimes ignore them and the impacts on them.

68. Bond amounts should not be able to be reviewed by VCAT because VCAT would be unlikely to have the expertise to judge the amounts payable. However, if the rehabilitation has been properly and fully completed, then, if DPI fails to refund bonds within a reasonable timeframe, it should be able to be reviewed by VCAT.

Work Plans and Work Authorities

69. Work plans and work authorities are necessary, as is the upholding of legislation (which appears to not the current situation). The work plans and work authorities specify the details of the work proposed, and this then details the work approved. If this requirement was removed, then surely there would have to be a substitute (a rose by any other name ….) – otherwise how would anyone know what was proposed and what had been endorsed and/or approved?

70. Work plans definitely should be time-limited. If the proponent has done their homework, had meetings with the community and authorities (DPI, EPA, Council, water authorities, DSE, WorkSafe, etc) and obtained a list of all the legislative requirements before submitting their work plan, then the work plan process need not be a lengthy one. On the other hand, if the proponent has not done their homework, has not had the necessary consultations with the authorities and the community, have not implemented the requirements stated as a result of the consultations, then they should not be able to have a lengthy process due to their incompetence – there is no reason to reward them by allowing them additional time. In addition, past behaviour is the indicator of future behaviour – if they have not done their homework and groundwork properly, it could well be expected that they would not be able to run an operation properly, efficiently or in line with legislation.

Finally

71. In addition, above all else, the MRSDA must meet the requirements of the Environment Protection Act's:

    "1B Principle of integration of economic, social and environmental considerations
    (1) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment.
    (2) This requires the effective integration of economic, social and environmental considerations in decision making processes with the need to improve community well-being and the benefit of future generations.
    (3) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed."

    "1C The precautionary principle
    (1) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
    (2) Decision making should be guided by—
    (a) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
    (b) an assessment of the risk-weighted consequences of various options."

    "1D Principle of intergenerational equity
    The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations."

    "1E Principle of conservation of biological diversity and ecological integrity
    The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making."

    "1F Principle of improved valuation, pricing and incentive mechanisms
    (1) Environmental factors should be included in the valuation of assets and services.

(2) Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement."

"1G Principle of shared responsibility

(1) Protection of the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.

(2) Producers of goods and services should produce competitively priced goods and services that satisfy human needs and improve quality of life while progressively reducing ecological degradation and resource intensity throughout the full life cycle of the goods and services to a level consistent with the sustainability of biodiversity and ecological systems."

"1H Principle of product stewardship

Producers and users of goods and services have a shared responsibility with Government to manage the environmental impacts throughout the life cycle of the goods and services, including the ultimate disposal of any wastes."

"1I Principle of wastes hierarchy

Wastes should be managed in accordance with the following order of preference—

(a) avoidance;
(b) re-use;
(c) re-cycling;
(d) recovery of energy;
(e) treatment;
(f) containment;
(g) disposal."

"1J Principle of integrated environmental management

If approaches to managing environmental impacts on one segment of the environment have potential impacts on another segment, the best practicable environmental outcome should be sought."

"1K Principle of enforcement

Enforcement of environmental requirements should be undertaken for the purpose of—

(a) better protecting the environment and its economic and social uses;
(b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements;
(c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts."

"1L Principle of accountability

(1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.

(2) Members of the public should therefore be given—

(a) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;
(b) opportunities to participate in policy and program development."