MINERALS COUNCIL OF AUSTRALIA

SUBMISSION:

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

OCTOBER 2006

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EXECUTIVE SUMMARY

The Minerals Council of Australia (MCA) welcomes the Productivity Commission's study of Performance Benchmarking of Australian Business Regulation. The MCA hopes that this benchmarking study will pave the way for greater efficiency in regulation and microeconomic reform more generally.

Reform of regulation has been a particular concern of the MCA for many years. Areas of concern include occupational health and safety (OHS); project approval procedures including environmental approvals; tenement administration; land access; transport; taxation; vocational and technical education; energy; and environmental issues, including climate change.

The MCA has recently assessed the regulations in all Australian jurisdictions for exploration and mining project approvals with an audit and scorecard. The MCA is also participating in the COAG program to reform the OHS regulations and has recently been involved in shipping regulation reform.

The MCA's experience with assessing regulations leads us to believe that it is both desirable and feasible to benchmark business regulation as a basis for improving its consistency, efficacy and efficiency. We strongly submit that the Commission's project should proceed to Stage 2. If it does, the MCA would be pleased to work with the Commission to develop a pilot or case study.

The minerals industry seeks *minimum effective regulation* that is performance-based (non-prescriptive) as far as possible. We also advocate the development of operational guidelines for government and industry that underpin the non-prescriptive approach in order to remove subjectivity.

We contend that regulations should be targeted at the identified problem or issue and not impose unnecessary burdens. Regulation should only be used where it is demonstrably the most economically efficient way of addressing the problem or issue in question. The minerals industry also wants regulation that assists it in meeting the criteria of community acceptance and in underpinning its implied 'social licence to operate'.

Minimising the 'regulatory burden' on business is not about minimising regulation itself – regulation is necessary to achieve the objectives of a modern state.

Unfortunately, there is generally no overarching national framework to consider harmonisation of regulations among jurisdictions. Even within jurisdictions, regulations are usually considered piecemeal, rather than in a more holistic framework.

The recent COAG decision on the Banks Taskforce report to set up inter-jurisdictional committees to review various areas of regulation 'hot-spots', such as OHS and development approvals, is a welcome development. The MCA submits that national assessments of regulations should be accompanied by arrangements for jurisdictions to work together, and with industry, to harmonise and improve the efficiency of regulation across Australia.

The MCA has found that over time, long-standing areas of regulation, such as mining tenement administration, have been refined to the point where systems work efficiently and well. Although systems may differ between jurisdictions, they are broadly similar and well understood by industry and agency staff. Problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land. In addition, poor administration and implementation of regulation imposes unnecessary burdens on business.

A common administrative problem arises from poorly defined responsibilities between agencies both within and between jurisdictions. Administrative silos tend to engender narrow perspectives and inability to see the bigger picture. Generally, there are few examples of governments outlining clearly their administrative and compliance requirements in a whole-of-government way.

The MCA recommends that COAG agree guidelines for benchmarking regulations nationally and its associated Ministerial Councils requested to:

- Undertake national assessment reviews of regulations with a view to identifying opportunities for harmonising and improving efficiency;
- Seek stakeholder input on what priorities should be given to reduce the regulatory burden as part of a review of how regulatory approaches can be enhanced, harmonised and simplified;
- Agree reform priorities in consultation with industry and other key stakeholders;
- Apply reforms uniformly across Australia;
- Report publicly on outcomes annually; and
- Governments agree to include the regulatory impact along with the financial impact of all proposals put to their parliaments.

1. BACKGROUND

1.1 The Minerals Industry in Australia

The Minerals Council of Australia (MCA) welcomes the Productivity Commission's study of Performance Benchmarking of Australian Business Regulation. The MCA hopes that, following the Report of the Banks Taskforce[1] this benchmarking study will pave the way for the Commission to encourage greater efficiency in regulation and microeconomic reform more generally.

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 minerals industry accounts directly and indirectly for around 8 per cent of Gross Domestic Product. It underpins vitally important supply and demand relationships with the Australian manufacturing, construction, financial services, process engineering, property and transport sectors. The industry is one of the most technologically advanced in the world and is at the forefront of new capital investment in Australia. The minerals industry is a highly capital-intensive industry and currently accounts for over 24 per cent of total private new capital investment in Australian industry.

1.2 The Importance of the Inquiry

The prosperity Australia has enjoyed in the last two decades is partly the result of past reform of regulation. Paradoxically, in recent years Australian governments have been adding new rules and regulations faster than they have removed or simplified existing rules.

Perhaps more so than any other industry, regulation impacts all stages of minerals industry activities from grant of tenure, exploration, mining, processing and closure to relinquishment of tenure. (See Appendix.)

Regulation is necessary in a modern state – it is part of the institutional framework that enables a society to achieve its objectives. Efficient regulation is a precondition for sustainable industries. However, regulation should be the minimum necessary to achieve objectives efficiently and effectively and it should not discourage voluntary innovation and improved practices by businesses. Australia's continued prosperity depends on the on-going efforts of both business and government to improve efficiency and to innovate. Microeconomic reform has been a significant contributor to Australia's enhanced performance and governments have realised that reforming regulation is an important part of this wider economic reform.

To retain its competitiveness in highly competitive, international markets the minerals sector relies on the efficiency of the economy providing it with key inputs. The minerals industry therefore has two particular areas of interest in the current inquiry:

(a) to ensure regulation of the overall economy achieves desired outcomes efficiently with minimum necessary direct control of economic agents by government authorities; and

(b) to ensure that necessary economic regulation of the minerals industry is applied in the most economically efficient manner to achieve identifiable outcomes but not further inhibit what otherwise would be voluntary actions.

The importance of this inquiry lies with the potential that it will benchmark regulatory performance to identify leading practice and enable the promotion of nationally consistent and efficient regulation by improving the processes of regulation making, operation and review.

[1] Rethinking Regulation (2006), Report of the Taskforce on Reducing Regulatory Burdens on Business, Australian Government, C*anberra.*

1.3 Key regulatory issues and areas of interest of the minerals industry

Reform of regulation has been a particular concern of the MCA for many years. As a general rule, companies (in any industry) are reluctant to criticise their regulators overtly. An industry association can obtain inputs from members and generalise from this material to develop constructive suggestions for improvement. The MCA has taken on this role in regulation reform in a number of areas. These include occupational health and safety; project approval procedures including environmental approvals; tenement administration; land access; transport; taxation; vocational and technical education; energy; and environmental issues, including climate change.

The MCA has recently attempted to describe and assess the regulations in all Australian jurisdictions in one of the key areas of interest, namely exploration and mining project approvals. The Commission is aware of this work (the project approvals Audit[2] and the Scorecard[3]).

In its response to the Banks Taskforce, COAG identified development approvals and occupational health and safely regulation as regulatory 'hot-spots' for work by all jurisdictions. The MCA is participating in the COAG program to reform the OHS regulations. The MCA has also been involved in shipping regulation reform within the National Bulk Commodities Group, and in the Group's submission to this inquiry.

The MCA's experience with assessing regulations leads us to believe that it is both desirable and feasible to benchmark business regulation as a basis for improving its consistency, efficacy and efficiency. We strongly submit that your project should proceed to Stage 2. If it does, the MCA would be pleased to work with the Commission to develop a pilot or case study.

The minerals industry is particularly concerned to ensure that:

- Regulation of the overall economy achieves desired outcomes efficiently with minimum necessary direct control of economic agents by government authorities;
- Necessary economic regulation of the minerals industry is applied in the most economically efficient manner to achieve identifiable outcomes but not further inhibit what otherwise would be voluntary actions;
- Inter-jurisdictional harmonisation of regulation to avoid the wasteful costs to national companies of developing different monitoring and compliance systems for each jurisdiction to meet what are usually similar objectives;
- Appropriate use is made of co-regulation, quasi-regulation and self-regulation (including voluntary industry codes) to encourage the development of best practice approaches;
- Regulation is risk- and performance-based where ever possible; prescriptive regulation being used only where it is demonstrably more efficient and effective; and
- Jurisdictions ensure adequate resourcing of regulatory agencies to ensure that regulations can be effectively and efficiently administered by skilled inspectors so that compliance costs for business can be minimised.

[2] *URS Australia (2006a)*, National Audit of Regulations Influencing Exploration and Mining Project Approval Processes, prepared for the Minerals Council of Australia, *February*.

[3] *URS Australia (2006b),* Scorecard of Mining Project Approval Processes, prepared for Minerals Council of Australia, *May; both* available at www.minerals.org.au .

2. MINIMUM EFFECTIVE REGULATION – A BASIS FOR A PRINCIPLED APPROACH TO REGULATION

2.1 Resources for regulatory compliance

The increasing demands on governments to do more with less resources leads to pressure on resources available to administer regulatory systems. Even where the regulatory system is well designed; if the resources are not available to administer it efficiently and effectively then the system will fail.

The MCA supports the COAG Principles of Good Regulation. Such systems to promote "good" regulation appear to be working reasonably well at the Commonwealth level, although, as Productivity Commission annual reports indicate, there is always room for improvement. Elsewhere, new regulations could be improved by greater consultation with industry, more effective cost/benefit assessments and better definition of objectives.

Much more needs to be done at the State, Territory and Local Government levels. While some States are attempting to improve their approach to regulation, the general approach suffers from being too limited in coverage and from inadequate resourcing of independent, regulatory review agencies. Given the amount of regulation relevant to the minerals sector at the State level, it is important that the minerals industry and government work together to improve the situation.

2.2 High level principles for best practice regulation

There is a very wide range of regulatory measures available to the Government, ranging from black letter law to voluntary codes of conduct or practice. The manner in which regulation is developed and applied distinguishes four broad categories of regulation:

- regulation which the Government develops and enforces;
- co-regulation where an industry develops and administers a Code of Conduct and Government provides the ability to enforce the Code by providing legislative backing in some form;
- quasi-regulation where industry adopts or uses a Code of Conduct which the Government assists in creating, or endorses, but Government does not enforce the Code; and
- self-regulation where industry sets its own standards or conducts and promotes those standards without Government involvement.

The minerals industry in Australia wants and needs to be internationally competitive. It therefore requires an operating environment that is conducive to innovation, investment, growth and profitability and founded upon some fundamental principles for the development of sound public policy.

The ultimate goal of public policy ought to be to facilitate the attainment of high levels of sustainable growth in productivity for industry and in living standards for all Australians. In the view of the MCA the fundamental principles for the development of public policy that will promote that goal are as follows:

- the preservation of open and competitive markets;
- transparent, secure and transferable property rights;
- minimum necessary government intervention;
- constructive government/stakeholder consultation in developing regulations and guidelines;
- policy measures which create incentives for pro-competitive conduct; and
- government intervention in markets to be limited to correcting demonstrated instances of market failure in a non-discriminatory and non-distortionary manner.

The MCA argues that the appropriate role for regulation must be to operate, and be seen to operate, within the framework provided by these policy principles.

Regulation can be pro-competitive and advantageous to the community in ways that promote growth in productivity and living standards. This can be the case, for example, by helping complex societies deal with otherwise intractable economic, social and environmental problems. At their best, regulation can create order and provide a basis for stable progress.

Unfortunately, the number of Government agencies from which authority for mineral activities must be obtained is very large and their roles very diverse. This multiplicity greatly adds to the cost, timing and difficulty of undertaking such developments.

2.3 Micro-economic reform of regulation

Over the past decade there have been a number of useful reforms by COAG and individual Governments aimed at the removal of inefficient and unnecessary regulation of the minerals industry. These reforms have included the removal of export controls on coal, mineral sands and alumina which restricted the ability of Australia's internationally operating minerals companies.

COAG has adopted 'best practice' guidelines for the development of national standards or regulation and for the preparation of regulatory impact statements as part of its ongoing commitment to micro-economic reform.[4]

The MCA supports the COAG Principles of Good Regulation, which cover:

- the need for regulation, including robust policy development processes;
- alternative approaches, from 'black-letter' law, co-regulation, quasi-regulation, to self-regulation and voluntary actions and codes;
- encouraging consistency among jurisdictions to avoid inconsistency and duplication of processes;
- regulatory failure, where regulation may not make things better, or may even makes things worse;
- analysis of the benefits and costs of regulation;
- public consultation and community support;
- transparency and accountability;
- minimising adverse effects of regulation, including on competition;
- encouraging efficient outcomes, particularly through use of performance-based rather than prescriptive measures;
- ensuring good administration, including consistency and predictability in decision-making; and
- ensuring consistency with international standards and practices.

Ensuring that these principles are rigorously applied through both the policy development process and practical implementation is a challenge for any government, particularly given the ever-expanding reach and scope of governmental responsibilities. In a complex federal system like Australia's, where national and state/territory responsibilities interact, it is particularly difficult. But it is necessary in the interests of promoting greater efficiency and national prosperity.

These COAG Principles represent a means of identifying regulations that affect business costs and identifying priorities for review and reform.

Since the COAG initiative, there is evidence that at least some of the resulting regulatory reforms have streamlined and simplified regulation in Australia and improved harmonisation between jurisdictions and with international regulations. This reform process, however, appears to have only occurred to a relatively minor extent in various states.

While some States are attempting to improve their approach to regulation, the approach suffers from being more limited in coverage and from not granting independence to their regulatory review agencies and appropriately

[4] Council of Australian Governments (COAG) (2004), Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies (see http://www.coag.gov.au/meetings/250604/coagpg04.pdf)

resourcing them.

The Competition Principles Agreement obliges governments to ensure any new legislation that restricts competition is in the public interest. This is to ensure that no unwarranted, anti-competitive restrictions re-emerge in new or amended legislation.

2.4 Minerals industry expectation of regulation

What the minerals industry wants is ***minimum effective regulation*** that is performance-based (non-prescriptive) as far as possible. We also advocate the development of operational guidelines for government and industry that underpin the non-prescriptive approach in order to remove subjectivity. We do not seek self-regulation alone and most definitely not for OHS regulation.

Regulations should be targeted at the identified problem or issue and not impose unnecessary burdens on those affected. Regulation should only be used where it is demonstrably the most economically efficient way of addressing the problem or issue in question. The minerals industry also wants regulation that assists it in meeting the criteria of community acceptance and in underpinning its implied 'social licence to operate'. Guidelines required for the implementation of regulations should be developed through an open and transparent stakeholder engagement process.

The overall intent of *minimum effective regulation* is to ensure that the regulatory regime is relevant, its policy objectives are sound and capable of being achieved, and that its administering agency is fully engaged in and committed to achieving the desired policy outcomes. The regulatory regime should be effective in establishing a minimum platform of performance that provides for adequate protection of the community, business and the environment, while establishing a clear, unambiguous set of consistent standards.

All the costs associated with the regime, such as its administration costs, its compliance costs and any economic opportunities foregone as a consequence of it, should be minimised. The proposed regime should represent the best regulatory approach to the problem being addressed, and should include consideration of the role for co-regulation and quasi-regulatory regimes.

3. THE CONCEPT OF 'REGULATORY BURDEN' ON BUSINESS

3.1 The Regulatory Burden

Minimising the 'regulatory burden' on business is not about minimising regulation itself – regulation is necessary to achieve the objectives of a modern state, as outlined above. The MCA defines the regulatory burden as the increased costs of compliance with inefficient or ineffective regulation relative to minimum effective regulation. It is a relative concept, the opportunity cost of sub-optimal regulation. As such, **it represents a dead-weight loss to the community, the economy as a whole, and affected industries in particular**. These costs can relate to:

- Compliance costs;
- Delays, uncertainty and impediments to investment, innovation and/or operation;
- Human (individual and social) costs; and
- Legal costs associated with inappropriate use of criminal versus civil law, jurisdictional complexities, and violation of basic principles of due process and onus of proof.

Inefficient or ineffective regulation also imposes regulatory burdens on governments that can also be considered dead-weight losses. Administrative costs are higher than they need be, and staff become frustrated and disillusioned when they try to implement conflicting or poorly conceived or drafted provisions. The increasing demands on governments to do more with less resources leads to pressure on resources available to administer regulatory systems. Inadequate staffing, both in terms of numbers and experience/skills also cause delays to investment or interruptions to production, reducing growth in production and employment. Even if the regulatory system is well designed, if the resources are not available to administer it efficiently and effectively then the system will fail the test of "minimum effective regulation".

The design of regulations could be improved by greater consultation with industry, more effective cost/benefit assessments and better definition of objectives. Much more needs to be done at all levels of government, national, state/territory and local. While some States are attempting to improve their approach to regulation, the general approach suffers from being too limited in coverage and from inadequate resourcing of regulatory review agencies. Not all jurisdictions require the preparation of regulatory impact statements (RISs) for new legislation containing restrictions on competition. In addition, the types of legislation subject to scrutiny and the extent of monitoring and public reporting of the outcomes of gate-keeping activity, vary considerably across jurisdictions. Given the amount of regulation relevant to the minerals sector at the State level, it is important that the minerals industry and government work together to improve the situation and to minimise the regulatory burden on business.

The minerals sector works with authorities within individual jurisdictions, e.g. the Australian Government on tax or competition policy issues, or a state government on mining regulation when an issue is being reviewed. However, **there has generally been no overarching national framework to consider harmonisation of regulations among jurisdictions**. Even within jurisdictions, sun-setting regulations are usually considered piecemeal, rather than in a more holistic framework. The recent COAG decision on the Banks Taskforce report to set up inter-jurisdictional committees to review various areas of regulation 'hot-spots', such as occupational health and safety and development approvals, is a welcome development. The MCA submits that national assessments of regulations should be accompanied by the development of arrangements for jurisdictions to sit down together, and with industry, to harmonise and improve the efficiency of regulation across Australia. Appropriate Ministerial Councils under the aegis of COAG could do this.

These processes should learn from the recent Competition Principles Legislative Review where each jurisdiction worked in isolation from the others; so the opportunity for inter-jurisdictional harmonisation was lost. It is therefore important that once the system of assessing and benchmarking regulations nationally is established, the reports to COAG should identify opportunities for inter-jurisdictional harmonisation.

3.2 Burdens built into regulatory design

In our work on assessing regulation relating to exploration and mining project approvals, the MCA has identified some generic issues that the Commission may find useful. We found that it was useful to distinguish between the

design of the regulations themselves, and their administration. Each of these areas can result in regulatory burdens on business.

The experience of the minerals industry is that it should not be assumed that regulations are designed using best practice policy processes, nor should it be assumed that they are effective or efficient in achieving welfare enhancing objectives. While regulations should be designed to be efficient and effective, and should only be introduced if the benefits exceed costs, such analysis is rare in practice. The Office of Regulation Review and the Banks Taskforce have both noted this in their reports. Some jurisdictions (e.g. Western Australia) do not have a regulation review agency. Others do not systematically or rigorously require Regulation Impact Statements whilst others conduct such reviews as proforma exercises of little value.

The MCA has found that over time, long-standing areas of regulation, such as mining tenement administration, have been refined to the point where systems work efficiently and well. Although systems may differ between jurisdictions, they are broadly similar and well understood by industry and agency staff. Problems tend to arise in relatively new regulatory areas, such as environmental management, cultural heritage and access to land. It is inevitable that there will be learning required and teething troubles in new areas of regulation or in applying contemporary principles to old areas of regulation. However, in the MCA's experience, **jurisdictions do not do enough to learn from each other, or from the experiences of other areas of public policy in designing regulations to deal with similar issues.**

Box 1: Assessment Criteria for Regulatory Design

Regulation can impose burdens at the design stage, even before it is implemented. The MCA's Audit and Scorecard of project approval procedures set out criteria for assessing regulations relating to project approvals that could have more general application for the Commission in developing its benchmarking framework. In general, the design of regulations should be assessed in terms of the following criteria:

Threshold questions

> Are there externalities, information deficiencies or policy impediments that warrant government regulation?

> Are there significant costs if nothing is done and do they exceed the costs of government intervention?

> Is a regulation the only, or the best, way to address the problem? Or are there other approaches (such as co-regulation, quasi-regulation or no regulation) that will lead to better outcomes for society?

Design and delivery questions

If the answer to all the above questions is *yes*:

> To what extent have regulations been designed following principles of good policy process (COAG), incorporating analysis of the benefits and costs, involving public consultation and community support?

> Are regulations well targeted to achieve clearly articulated objectives, i.e. likely to be effective?

> Are regulations efficient –risk and performance based, involving industry in design, efficient choice of measures (black letter law and subordinate legislation, co-regulation, self-regulation and codes of practice, etc.)?

> Are regulations consistent with other regulations within a jurisdiction, and with similar regulations in other Australian jurisdictions and internationally?

> Are regulatory arrangements well documented, simple, easy to understand, transparent and accountable?

> Are compliance arrangements clear, straightforward and practical to implement?

> Have any likely adverse effects been considered and acted upon?

> Do the arrangements provide for regular evaluation and continuous improvement?

> Are the legal arrangements (eg. civil or criminal law, penalties, onus of proof, etc.) appropriate for the particular issue and consistent with broader legal principles?

Box 1 sets out suggested design criteria for good regulation. If regulations are poorly designed, then the burdens on business (and probably on government too) are likely to be significant. Both administration and compliance will be more costly than they would otherwise be. The probability that they will successfully address the issues will also be lower.

In considering regulatory burdens, it is important to reflect on the human as well as the financial and wider efficiency costs. While a government may feel that using the criminal law may reflect its earnestness to improve performance, this can have serious consequences for employees and make it more difficult to recruit and retain qualified staff. The New South Wales Government's introduction of the crime of industrial manslaughter, for example, does nothing to improve occupational health and safety, but has made it more difficult to recruit and keep mine managers.

Ensuring that these criteria are met through both the policy development process and practical implementation is a challenge for any government, particularly given the ever-expanding reach and scope of governmental responsibilities. In a complex federal system like Australia's, where national and state/territory responsibilities interact, it is particularly difficult. Australian governments have been adding new rules and regulations faster than they have removed or simplified existing rules.

3.3 Burdens from Poor Implementation/Administration

Poor administration and implementation of regulation, however well designed it may be, impose their own burdens on business. Interestingly, **the MCA Scorecard of project approval procedures found that in every jurisdiction, inadequacies in administration of mining approval processes were apparent, even in areas where regulatory systems were well designed, mature and well established**. In the current mining boom, there may be special circumstances, as officials with mining expertise are being attracted to higher paying positions in the private sector. However, the staff problems appear to be more deep-seated and widespread, with limited resources available for ever-increasing responsibilities. **Both the Audit and the Scorecard found that administration of regulation was adversely affected by lack of competent staff.** This can lead to inconsistent or delayed decision-making, resort to rulebooks, and timidity in assessing innovative proposals. It also leads to the use of inappropriate, unfinished or draft policies as if they had been through full accreditation processes (highlighting the close relationship between regulatory design and administration).

Another common administrative problem arose from poorly defined responsibilities between agencies within and between jurisdictions. **Administrative silos tend to engender narrow perspectives and inability to see the bigger picture.** Often, the administrative and compliance processes will be outlined, say on a department's website, but this will usually be just the processes for that department, not for all the other processes required. **Generally, there were few examples of governments outlining clearly their administrative and compliance requirements in a whole-of-government way.** These problems are likely to apply generally, but are a particular issue for small businesses or new entrants to an industry or state. The efficiency of regulatory administration would be improved, and scope for streamlining identified, by clearer, more transparent, whole-of-government processes, to the benefit of government and industry alike. All of these administrative problems create burdens for business and the broader economy, as compliance costs increase and projects are delayed.

Inconsistencies in regulatory requirements between jurisdictions for the same issue create additional burdens for national (and international) businesses such as mining companies. Different state and territory regulatory requirements for dealing with essentially the same issue, prevent companies from having efficient nationally consistent monitoring, administrative and compliance systems. Not only is this an unnecessary cost, but it inhibits improved performance by making it more difficult to benchmark a company's performance from one jurisdiction to another. This leads to dynamic efficiency losses for the economy as well as increased costs and poorer performance for individual firms. Failure of regulators to use accepted international standards can also exacerbate these costs.

Box 2: Assessment Criteria for Administration of Regulations

The MCA has therefore found it useful to evaluate administration of regulations in terms of the following criteria:

> Efficiency: timeliness of decision-making; costs of administration and compliance; complexity; and predictability, certainty and consistency of outcomes;

> Effectiveness: effective implementation of policy objectives and measurable outcomes;

> Equity: equal treatment and consistency in application of regulations; equitable sharing of costs of regulation and compliance between government and business, in accordance with the principles outlined in the Productivity Commission's 2001 Inquiry into Cost Recovery[5]; and use of equitable and just processes.

[5] Productivity Commission 2001, Cost Recovery for Commonwealth Regulatory, Information and Administrative Agencies, Canberra.

The MCA considers that a national evaluation framework should aim to foster openness, transparency, good policy process and administration.

3.4 World's best regulatory practice

In 2004 the World Bank released its first major study on regulation, *Doing Business 2004*. The third report in the series was released this year.[6] The study examines the regulatory practices of 155 countries and ranks them against their peers. It effectively determines 'world's best practice'.

A cornerstone of prosperity comes from the ease with which businesses can operate, interact and transact. Australia is ranked 6th overall in the composite "ease of doing business" rankings behind New Zealand, Singapore, USA, Canada and Norway. Having a high ranking does not mean that a country has no regulation on business, nor do higher rankings necessarily mean better regulation. But a higher ranking does indicate that the government has created a regulatory environment conducive to business operations.

[6] World Bank (2006), *Doing Business in 2006: Creating Jobs*, Washington D.C., (see http://www.doingbusiness.org/documents/DoingBusines2006_fullreport.pdf)

4. BENCHMARKING/EVALUATION OF REGULATION

4.1 Benchmarking issue-by-issue

The aim of evaluating or benchmarking regulation is to identify areas for improvement, and to encourage a public culture of continuous improvement in policy and the selection and use of policy instruments. Achieving the improvements across all jurisdictions should be the aim. That means building and maintaining political support from nine governments, in an area where commitment has been variable in the past. To do this, the MCA considers that a two-pronged approach would be useful. The first would provide macro level indicators of the opportunity costs of poor regulation, including use of CGE (computable general equilibrium) modelling to indicate potential losses in output for the nation as a whole (GDP) and for individual states and territories (GSP). This would provide the headline material to develop and maintain political commitment.

While quantifying the total deadweight loss of regulatory burdens across Australia will gain public attention, this is not necessarily helpful in changing the regulatory culture in Australia. Policy-makers and regulators will not necessarily connect such macro measures to their own areas of activity. All specialists believe that their areas of activity are unique and that their past and current approaches and actions are well justified. They will not necessarily connect macro measures of regulatory burden with their own activities. The second prong of the approach therefore should be to undertake practical, constructive inter-jurisdictional evaluations of regulatory processes, approaches and outcomes in specific regulatory areas.

In favouring an area-by-area approach, the MCA is mindful of the experience of the Tariff Board, Industries Assistance Commission and Industry Commission in undertaking the Tariff Review. While the big reductions in assistance were achieved by across the board cuts, beginning with the 25 percent tariff cut by the Whitlam Government, the culture of reducing dependence on assistance, and understanding the costs to the Australian economy and consumers were built by the painstaking industry-by-industry reviews.

In the case of regulation, the need for area-by-area review is even greater. First, all jurisdictions of government are involved, not just the Australian Government. In some cases, local government regulation may also be an issue. Secondly, those being regulated need to be involved in identifying major issues and areas for improvement. This can only realistically be done on a case-by-case basis. While it would be useful to model the economy-wide impacts of inefficient regulation to secure widespread government and public commitment to reform, the reform process itself must get down to specifics.

4.2 Coverage

Regulations govern every aspect of life in a modern society. While they are designed to achieve many objectives, only some of which relate directly to business, in practice most regulations can impinge on business somewhere. Even recreational fishing regulations designed to conserve fish populations or public health will affect businesses involved in providing goods and services for recreational fishers, for example.

Where should a case-by-case evaluation begin? Priority should be given to areas where the costs of current arrangements are unacceptably high, because objectives are not being achieved and/or because of the high regulatory burdens. National priority should be given to areas of regulation that are the province of both national and state/territory levels of government. The Australian Government is reforming its own approach to regulation, with the establishment of the Office of Best Practice Regulation, which will require increased use of benefit-cost analysis. Major Commonwealth policy and legislation reviews also provide some opportunity for business to identify issues. However, there is currently no ongoing framework for inter-jurisdictional regulatory reviews. The MCA considers that these should be the focus for future national benchmarking studies. The COAG 'hot spots' for regulatory reform are the obvious areas to begin.

A wide range of regulations affects the minerals industry. Significant areas of regulation include:

- Occupational Health and Safety;
- Tenement administration;
- Environment approvals;
- Land access;

- Transport;
- Competition policy, including third party access to mining infrastructure;
- Tax;
- Finance;
- Professional and trade qualifications, licensing and recognition; and
- Energy, uranium and Greenhouse.

The most significant for the MCA currently are occupational health and safety (OHS) and exploration and mining project approvals. OHS was identified by COAG as a regulation hot spot and the MCA is currently involved in the inter-jurisdictional review. COAG also identified development approvals for review, but did not specifically include mining project approvals. This could be a useful case study for the Commission in Stage 2.

Both of these areas are sources of substantial inefficiencies and losses for the minerals industry, our employees, the economy and the community at large. The minerals industry's priority is to undertake minerals exploration, development and production in a safe and healthy manner – and this is not subordinate to productivity. While the minerals industry can be hazardous, it need not be dangerous – risk management is the key. The MCA has developed a preferred regulatory model for the administration of OHS regulations which has national endorsement. A key component is achieving a nationally consistent approach to mine safety based on a strong partnership between employers, employees and regulators. **Although the health and safety issues do not vary from one state boundary to another, each jurisdiction has different requirements and regulatory arrangements. These not only inhibit the implementation of best practice across the country, but also impede the use of highly skilled and scarce staff across the country. Thus, regulations designed to promote OHS can have the paradoxical result of impairing performance in achieving safe and healthy workplaces, and at a high cost.**

The performance of Australia's exploration and mining project approval systems has been well documented in the Audit and the Scorecard and need not be repeated here. Although a number of criteria and indicators were identified, the MCA was not able to quantify the opportunity cost or deadweight loss from inefficient practices. Nevertheless, the experience of our members is that they are substantial, and would be measured in the millions of dollars each year. Unnecessary delays to projects at the moment are particularly serious as companies can lose opportunities to capture current high mineral and metal prices.

4.3 Methodologies

There are many methodologies to evaluating and benchmarking regulation, as the Commission has pointed out in its Issues Paper. Based on our experience, the choice of methodology will be influenced by the nature of the evaluation exercise and limitations on information. Modelling the economy-wide or macroeconomic effects of inefficient regulation requires some quantitative estimates of costs. The MCA has not been able to obtain robust over-arching estimates of the costs to the minerals industry of inefficient regulation. We would be pleased to assist the Commission if it wishes to undertake some research in this area.

The MCA is more experienced in analysis and evaluation of specific areas of regulation. This goes not only to the opportunity costs of current arrangements (the 'regulatory burden'), but also to evaluating achievement of objectives. The MCA's general experience is that **regulatory systems that are poorly designed or poorly administered will not only place a burden on business, but will often under-perform in delivering the objectives that they were set up to achieve in the first place**. While the Commission may be tempted to simplify the evaluation task by assuming that they do achieve their objectives, this is a heroic assumption that is not justified by this industry's experience.

We have also found that there are no consistently better performers among the jurisdictions. For any particular type of regulation, each jurisdiction has its strengths and weaknesses. In such circumstances, benchmarking to models of best practice can be extremely detailed and time consuming, and may not be an appropriate methodology for national benchmarking exercises.

For the Scorecard, an expert panel evaluated each jurisdiction's performance on a range of criteria relating to the design and administration of exploration and project approval regulations and processes, relative to an optimum.

While this process relied on the judgments and is therefore subjective, it has identified areas for improvement and models of good practice. This has generated considerable interest among the jurisdictions. As the MCA's objective is to encourage a culture of continuous improvement in regulation, the Scorecard approach is sufficient to stimulate reviews within jurisdictions. This is a 'quick and clean' approach to evaluation. However, the process did not involve the regulators and consequently suffers from the rigour they can bring to the analysis. Such short evaluations should therefore be supplemented by rigorous evaluation of particular areas of regulatory arrangements in all jurisdictions under the aegis of Ministerial Councils and COAG. The MCA will be pleased to participate in such exercises aimed at improving regulatory performance.

5. CONCLUSION AND RECOMMENDATIONS

What the minerals industry wants is ***minimum effective regulation*** that is performance-based (non-prescriptive) as far as possible; we also advocate the development of operational guidelines for government and industry that underpin the non-prescriptive approach in order to remove subjectivity. Regulations should be targeted at the identified problem or issue and not impose unnecessary burdens on those affected. Regulation should only be used where it is demonstrably the most economically efficient way of addressing the problem or issue in question. The minerals industry also wants regulation that assists it in meeting the criteria of community acceptance and in underpinning its implied 'social licence to operate'. Guidelines required for the implementation of regulations should be developed through an open and transparent stakeholder engagement process.

The overall intent of minimum effective regulation is to ensure that the regulatory regime is relevant, its policy objectives are sound and capable of being achieved, and that its administering agency is fully engaged in and committed to achieving the desired policy outcomes. The regulatory regime should be effective in establishing a minimum platform of performance which provides for adequate protection of the community, business and the environment, while establishing a clear, unambiguous set of consistent standards.

All the costs associated with the regime, such as its administration costs, its compliance costs and any economic opportunities forgone as a consequence of it should be minimised. The proposed regime should represent the best regulatory approach to the problem being addressed, and should be based on an assessment of whether self-regulation or no regulation may be more appropriate policy choices.

The MCA supports the extension of this study to Stage 2. Evaluating performance of business regulation is essential to its improvement and to ensuring that Australia continues on the path of microeconomic reform. Efficient regulation is a necessary condition for this country to achieve its objectives in the most efficient way and to encourage a culture of continuous improvement. Priority should be placed on removing wasteful duplication, inconsistencies and conflicts between the regulatory requirements of different jurisdictions around Australia. To this end, institutional arrangements must be developed to provide for inter-jurisdictional regulation reviews.

The MCA recommends that COAG agree guidelines for assessing and benchmarking regulations nationally and its associated Ministerial Councils be requested to:

- **Undertake national assessment reviews of regulations affecting their areas of responsibility at all levels of government with a view to identifying opportunities for harmonising and improving the efficiency of regulation across Australia;**
- **Seek stakeholder input on what priorities should be given to reduce the regulatory burden in areas for which they are responsible as part of a review of how Commonwealth/State/Territory regulatory approaches can be enhanced, harmonised and simplified;**
- **Agree reform priorities in consultation with industry and other key stakeholders;**
- **Apply reforms uniformly across Australia;**
- **Report publicly on outcomes annually; and**
- **Heads of Governments agree to include in the regulatory impact along with the financial impact of all proposals put to their parliaments. This should be done through explanatory memoranda.**

The MCA will be pleased to assist in these endeavours.

ENDS

APPENDIX: MINIMUM EFFECTIVE REGULATION - A MINERALS INDUSTRY STOCKTAKE

Stocktake of regulation of the minerals industry

Perhaps more so than any other industry, regulation impacts all stages of minerals industry activities. This covers: grant of tenure, exploration, mining, processing, transport of inputs and final products, sales, closure of mining activities, rehabilitation and final relinquishment of tenure (see **Table 1**).

The MCA has undertaken a national audit of regulations influencing mining exploration and project approval processes. This section summarises the results of this audit.

The National Context

Not surprisingly, given the differing responsibilities of government in Australia, regulations impacting on exploration, mining and mineral processing inevitably involve a multitude of regulations at all three tiers of government and, where approved by the Australian Parliament, international regulations.

For example, in gaining exploration and mining project approvals in all Australian jurisdictions all levels of government can be involved. The MCA recently conducted a review of these regulations with a view to identifying significant opportunities for improving these processes based on best practice processes conducted both here and overseas.

Key mining project approval steps that involve significant government intervention at the Commonwealth, state/territory and local level are noted below. The jurisdiction principally involved in each issue is noted in brackets:

- Allocation of mineral resources and ensuring a return to the public from their utilisation (state/territory);
- Land access for crown land and private land (state/territory, Commonwealth);
- Environmental protection (state/territory);
- Planning approval (state/territory, local);
- Heritage issues (state/territory, Commonwealth);
- Regional economic and social issues (all levels);
- Water access (state/territory);
- Occupational health and safety (state/territory);
- Uranium-exploration and/or mining (state/territory and in NT, Commonwealth) and export (Commonwealth);
- Competition policy (state/territory, Commonwealth);
- Taxation arrangements (state/territory, Commonwealth); and
- Foreign investment approvals (Commonwealth[7]).

Government intervention occurs not only through legislation and regulation but also through codes of practice. For example, in Queensland there are 15 codes for conducting small mining operations.

[7] Many proposals also require assessment under **State/Territory** environment legislation. To avoid duplication, arrangements are made with the States and Territories to facilitate joint or cooperative assessments of proposals.

More generally, corporate governance has come to embrace a very wide range of issues in Australia. "At its core, it deals with the way in which management is composed and the mechanisms which are put in place to ensure that executive management is accountable to the board and that the board is accountable to shareholders. The issues raised include the independence of directors, the separation of the roles of CEO and Chairman of the Board and the use by the company of audit and other committees."[8]

International Context

Through Australia's involvement with the United Nations, the Organisation for Economic Development and Cooperation, Asia-Pacific Economic Cooperation, numerous treaties, etc, there are many instances where the Australian minerals sector and its service providers are required to meet Australian and international legal requirements (such as the Law of the Sea, International Ship and Port Facility Security Code and Convention for the Safety of Life at Sea).

State/Territory Context

Minerals exploration and mining activities in Australia's six States and the Northern Territory (NT) are usually administered by a state/territory department of mines, minerals and energy, or similar titled body. [9] **As a general observation, the design of long established parts of the regulatory system – such as issuing exploration permits, retention licenses (where applicable) and mining titles – have been clearly articulated and refined over many years.**

While all States and the NT have their own laws governing mineral activities, in content and administration they are similar. Each jurisdiction publishes information that summarises key aspects of its mining law and administration and an overall summary is provided at the Commonwealth level[10].

Typically, current tenement information for both exploration and mining titles in Australia is accessible in each jurisdiction via computerised, information systems. This enables identification of tenement status and title-holders, and immediate registration of applications for new titles. Information is also readily available on previous exploration activity in the States/NT and on the availability of data.

Although the approach is well established, it is still very complex. For example, **Attachment A** sets out the objectives and administrative responsibilities for Victoria.

In summary, the results of the MCA national audit suggest that:

- **the design of long established parts of the regulatory system, such as issuing exploration, retention and mining licenses/permits, have been well refined over many years;**
- **there is potential for improvement in the newer and evolving policy areas affecting the environment and land access;**
- **the efficiency of day-to-day administration of all parts of the approval system in all jurisdictions needs attention. Approval processes will only be as good as the agencies that administer them and efforts are needed to address inter-agency and inter-governmental accountability, cooperation and communication, staff numbers and skills.**

[8] Australian Government Solicitor (1997), "Duties of Directors and Corporate Governance," *Legal Briefing Number 38*, 9 October (see http://www.ags.gov.au/publications/agspubs/legalpubs/legalbriefings/br38.htm).

[9] The mining of uranium in the Northern Territory is an exception. Here the approval of a mining operation is the responsibility of the Commonwealth.

[10] Department of Industry, Tourism and Resources (2004), *Exploration and Mining Legislation – On Shore* (see http://www.industry.gov.au).

Table 1: MINERALS REGULATORY STOCK TAKE – OVERVIEW OF REGULATIONS IMPACTING ON THE MINERALS SECTOR [(a)]

ISSUE	NATIONAL	STATE/TERRITORY	LOCAL GOVERNMENT	INTERNATIONAL	BEYOND COMPLIANCE
Exploration and Mining Permitting	Uranium mining permitting (Northern Territory only) and through EPBC Act for all new mining	Eg. Mineral Resources Act 1989 (Qld) and associated regulations	Eg. Planning and Environment Act (Vic) and associated Council Planning Schemes		*Enduring Value* (EV)
Land Access	Native Title Act Heritage Legislation	Eg. Crown Lands Reserves Act (Vic), National Parks Act (Vic)		United Nations Convention on Biodiversity, Wetlands, Environment & Law of the Sea	EV
Environment	Environmental Protection & Biodiversity Conservation (EPBC) Act	Eg. EPA Act 1994 (Qld), Victorian ballast water management	Council Planning Guidelines	United Nations Convention on Biodiversity, Wetlands, Environment & Law of the Sea, Protection of the Sea	EV Greenhouse Challenge
Trade	Australian Constitution Federal Law	State/Territory Laws (Eg. Quarantine)		WTO, UN Conventions (Eg. Law of the Sea, Basel)	EV, UN Transnational Enterprise Guidelines
Transport	Federal Law; COAG; National Transport Commission; AQIS; AMSA	State/Territory Laws	Council/Shire requirements	International Maritime Organisation (IMO) (Eg. Ship safety), OECD & UN recommendations on transport of dangerous goods	EV IMO - Bulk Cargoes Code, Safe loading/unloading Code & Manual, Green Award

Heritage Cultural	Currently covered by 5 key Acts focussed on Aboriginal & Torres Straight Islander Heritage, World Heritage & the protection of moveable heritage	State/Territory Laws relating to Cultural Heritage, Archaeological & Aboriginal Relics as well as Environmental planning & assessment	Local Planning Laws	Convention concerning the Protection of World Cultural & Natural Heritage (the World Heritage Convention 1972)	EV
Other	EPBC Act				
Safety & Health	Quarantine, NOHSC Regs, Shipping – Australian Marines Notices	State based safety Laws and mine safety regulations, quarantine		ILO Safety & Health in Mining	MINEX, EV
Workplace Relations	**Federal law**	State law		ILO	*Enduring Value*
Marine Transport	**DOTARS – Continuous/Single Voyage Permits** Navigation Act			IMO (Safety of Life at Sea)	
Energy Efficiency	**Bill currently before Federal Parliament**	Victoria, Queensland and NSW have their own requirements Other states (?)			
Foreign Investment	**Foreign Investment Review Board**	Many applications also involve state/territory considerations.		Links through APEC and bilateral Investment Promotion and Protection Agreements	

Note: (a) Taxation, standards (eg Australian Accounting Standards Board, National Standards Commission, National Association of Testing Authorities, Standards Australia, International Standards Organisation) and corporations law issues not included.

Examination of non-regulatory options

In many situations self-regulation has a number of potential advantages over black letter law. In particular, it allows those most knowledgeable about the pros and cons of the alternative means of achieving a regulatory objective to achieve the most cost effective and flexible means of doing so.

In the changing environment brought on by globalisation during the past decade, governments have found it challenging to respond to community expectations especially given the increasing complexity of world finance and commerce.

In recognition of the very wide scope for self-regulation in Australia, the Federal Government established a Taskforce on Industry Self-Regulation in 1999. This Taskforce recognised that, in the changing environment brought on by globalisation, there is an expanded role for self-regulation. In particular, the Taskforce on Industry Self regulation found that "the failure of firms to act in a manner consistent with society's broad social objectives can have a damaging effect on overall reputation and profitability and that this provides a real incentive to implement self regulation". The role for self-regulation has been recognised by the Commonwealth Government which has said that "industry should take on increased ownership and responsibility for developing efficient and effective self-regulation where it is the most appropriate regulatory response."

Minerals companies too face new challenges, particularly the implicit need to alter their performance and behaviour in response to both business and general community expectations.

In this context, codes or codified frameworks have become increasingly important tools in encouraging improvement in the minerals industry's performance in a range of areas from environmental management to reporting resources. Codes do not replace legislation but instead complement it.

Enduring Value

In supporting more efficient and effective regulation, the Australian minerals industry is seeking to ensure that investments in mineral projects are financially profitable, technically appropriate, environmentally sound and socially responsible. To this end, the MCA worked closely with the International Council on Mining and Metals (ICMM) development of sustainable development principles. These have been adapted for application at the Australian mine site level through '*Enduring Value—the Australian Minerals Industry Framework for Sustainable Development*', which replaced the *Australian Minerals Industry Code for Environmental Management* in 2005. That Code was the first of its type in the world and *Enduring Value* represents the first industry framework for the application of sustainable development principles at the operational level.

Government legislation, regulations and codes set the minimum standards for mining. **However the more reputable companies operate at a higher level than this (ie "beyond compliance")**. A poor performing mining company impacts on the image of the entire industry, not just the company. **It is in the industry's interests to promote a level of performance above the minimum standard expected by the community and for poor performers in the industry to have their shortcomings brought to their attention and encouraged to adopt good practice.** For this reason the industry has developed self-regulation processes. A good example is *Enduring Value*. This framework provides a program of continuous improvement and encourages members to achieve environmental standards beyond the minimum standard set by regulation.

Signature to *Enduring Value* is a condition of membership for the MCA. However all exploration, mining and minerals processing companies and contractors are eligible to become signatories to *Enduring Value*, provided that they commit to meeting the *Enduring Value* obligations.

As part of the obligations under *Enduring Value*, signatories are required to publicly report site level performance, on a minimum annual basis, with reporting metrics self-selected from the Global Reporting Initiative (GRI), the GRI Mining and Metals Sector Supplement or self-developed. These reports address performance across the full scope of social, environmental and financial aspects of the business. **The Chief Executive Officer or equivalent is required to sign the annual *Enduring Value* report**. **In the case of multi-national companies, sign off is from the head of the Australian operations.**

This philosophy of *Enduring Value* is consistent with the COAG regulatory principles. The overall strategic objective of the project is for continuous improvement in social and environmental performance in exploration and mining projects attuned to community expectations and, where appropriate, recognised and rewarded in statutory approval processes that are nationally consistent and efficient.

However, attempts to achieve performance above minimum standards can be frustrated when juxtaposed with prescriptive rather than performance-based regulation, especially when it does not make allowance for risk.

The JORC Code

Australia is also recognised as the world leader in mineral resources and reserve reporting standards through the *Australasian Code for Reporting of Identified Mineral Resources and Ore Reserves* (the JORC Code). This Code has formed part of the Listing Rules of the Australian and New Zealand Stock Exchanges for close to two decades. It is the model used by many other mining nations and companies when formulating codes and guidelines dealing with pubic statements on ore reserves designed to inform the investing community.[11]

The JORC Code was initiated by the MCA in 1971 and is now jointly administered by the MCA, the Australasian Institute of Mining and Metallurgy (AusIMM) and the Australian Institute of Geoscientists (AIG). A Committee representing these organisations (and also including invited representatives from the Australian Stock Exchange and Securities Institute of Australia) guides its ongoing evolution.

Australia has a well developed legal and regulatory framework that governs the disclosure and reporting of exploration results, Mineral Resources and Ore Reserves by listed public companies. The regulatory framework is set out principally in the Corporations Law and the Listing Rules of the ASX. It is underpinned by the requirements of the JORC Code. The Code is also backed by the two professional bodies, AusIMM and AIG, which both have the procedures to review, and if necessary discipline Competent Persons who do not follow the Code.

The JORC Code is used to assist minerals companies to develop resources and build associated plant and infrastructure and to provide evidence to banks for borrowing purposes. It was drawn on by the Ralph Review of Business Taxation in its recommendations concerning the taxation of financial arrangements in the minerals sector and is being employed by the Australian Taxation Office (with MCA assistance) in developing a Life of Mine/Project Ruling under the Uniform Capital Allowance regime of the Tax Act.

The VALMIN Code

The purpose of the VALMIN Code (the *Code for The Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports)* is to provide a set of fundamental principles and supporting recommendations regarding good professional practice to assist those involved in the preparation of Independent Expert Reports that are public and required for the assessment and/or valuation of Mineral and Petroleum Assets and Securities so that the resulting Reports will be reliable, thorough, understandable and include all the Material information required by investors and their advisers when making investment decisions.

The main impetus for the development of a valuation and assessment code for the mining and petroleum industry came from the National Companies and Securities Commission (NCSC) in June 1988 with the release of draft guidelines dealing with the assessment and valuation of mining and petroleum assets. They were subsequently withdrawn for revision by an Australian Institute of Mining and Metallurgy (AusIMM) led committee of those industry and professional bodies to be affected by the guidelines and were reissued in March, 1990 as NCSC Release 149: "Expert Reports on Mining and Petroleum Securities and other Assets".[12]

[11] For further details, see http://jorc.org/main.php. The JORC Code has been used both as an internal reporting standard by a number of major international mining companies, and as a template for countries in the process of developing or revising their own reporting documents, including the United States of America, Canada, South Africa, the United Kingdom/Europe, Chile and Peru.

[12] M J Lawrence, "History and Relevance of AusIMM's VALMIN Code 1981-2001", in ***Mineral Asset Valuation Issues for the Next Millennium 2001***, proceedings of a conference organised in Sydney Australia, 25-26 October 2001, Australian Institute of Mining and Metallurgy, page 202.

In January 1991 the NCSC ceased operations to be replaced by the Australian Securities Commission (ASC) so that all NCSC releases ceased to be legally binding. In order to fill this gap with an improved and binding document, the AusIMM formed the VALMIN Committee in April, 1991 comprised of representatives from AusIMM and the Mineral Industry Consultants Association (MICA) and observers from the Australian Stock Exchange (ASX), Australian Securities Commission (now the Australian Securities & Investments Commission, ASIC), Australian Mining Industry Council (now the MCA) and the Securities institute of Australia (SIA). Since that time, representatives of the Australian Institute of Geoscientists (AIG), the Petroleum Exploration Society of Australia (PESA) and the Australian finance industry have joined the Committee as members or observers.

The first version of the VALMIN Code was issued in June 1995.

The VALMIN Code provides guidance on matters that may be subject to the *Australian Corporations Act 2001*, the associated Corporations Regulations, other provisions of Australian law, the published policies and guidance of Australian Securities and Investments Commission (ASIC) and the Listing Rules of ASX or of other relevant recognised stock exchanges. The Code applies in any particular circumstance only if, and to the extent that it is not inconsistent with the law, ASIC policy and guidance or the requirements of the relevant recognised stock exchange.

ASIC refers to the VALMIN Code when reviewing mining and exploration prospectuses and takeover documents. ASIC regards the Code as indicative of best practice, and expects that when specialist mining terms used in the Code are contained in such documents that they will have the same meaning as in the Code. Compliance with the Code does not relieve issuers and others involved in the preparation of prospectuses and takeover documents from their broader disclosure obligations under the Corporations Act.

The Australian Stock Exchange supports the issue of the Code and any serious breaches of which the ASX is aware will be brought to the attention of The AusIMM and AIG, which both have an Ethics Committee to consider such matters.

The VALMIN Code has also been drawn on by other mining nations in developing valuation and reporting codes.

Other Codes

A common reason for self-regulation, is a desire to raise industry standards and to demonstrate an industry's transparent commitment to leading practice. A good example of this is the Esmeralda gold mining cyanide leak in Europe — and the impetus that it gave to the development of the ***International Cyanide Management Code***.

If the minerals industry expects to have a workable regulatory environment, it recognises it must continue to take the initiative and act pro-actively to engage with Government and other stakeholders to develop sensible approaches consistent with society's expectations. In this way the industry will not be driven into outcomes which may hinder operations and make it difficult to operate and effectively contribute to the nation's wealth and job creation.

Once a resource is mined it must be transported to markets. In this context, Australia initiated the now internationally adopted ***Code of Practice for the Safe Loading and Unloading of Bulk Carriers*** (BLU Code) in the early 1990s. It became the first land-based code adopted by the International Maritime Organisation (in 1997).

Australia abides by many other IMO requirements and convened the international group that recently completed a revision the ***Bulk Cargoes Code***,[13] the next edition of which will incorporate the essence of the Australian developed *Manual of Safe Loading, Ocean Transport and Discharge Practices for Dry Bulk Commodities*. Australia also uses the OECD land transport guidelines and the MCA assists in the development of relevant Australian Maritime Safety Authority Marine Notices and in related Australian Quarantine and Inspection Service guidelines.

These are some of the codes that have evolved within the minerals industry in recognition that mining and its associated activities bring into sharp focus issues of resource management, safety, environmental performance

[13] For further details, see http://www.imo.org/home.asp.

and transparency. The important point is industry's transparent commitment to best practice with emphasis on performance-based approaches that are in tune with community values.

However, MCA is aware that self-regulation requires the strong support of the industry. When supported it can be a valid adjunct to co-regulation and performance based regulatory regimes. The MCA is also aware that self-regulation is not appropriate in all situations. The MCA does not support self-regulation of occupational health and safety for example.

In addition, it is also important that industry codes are sensibly developed, are only adopted if they are necessary and evolve through engagement with stakeholders with a legitimate interest in their implementation and success. To be effective codes must respond to real and identifiable needs.

Indeed, if the minerals industry expects to have a workable regulatory environment, it recognises it must continue to take the initiative to engage with government and other stakeholders to develop sensible approaches consistent with societal expectations. In this way the industry will not be driven into outcomes that may hinder operations and make it difficult to operate and effectively contribute to the nation's wealth and job creation.