

# ACTION PLAN

## A response to the Ministerial Statement of Expectations for the regulation of the earth resources sector

This document sets out commitments to reform and improve the governance and performance of the Earth Resources Regulation Branch of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) and legislative reform through Earth Resources Policy and Programs Branch, in response to the Statement of Expectations issued by the Minister for Energy and Resources, The Hon Lily D'Ambrosio MP on 18 September 2015.

### 1. Role clarity

Earth Resource Regulation (ERR) Branch's purpose includes safeguarding the health and wellbeing of local communities and ensuring that earth resource developments do not pose environmental and public safety risks to the community. This is achieved in partnership with the earth resources industry and other stakeholders.

Governance and operational arrangements for ERR will be reformed. A new ERR leadership structure is being implemented to build a high performance culture. ERR's functions will be realigned to enable it to more effectively manage risks arising from the earth resources sector, and business systems and processes improved to ensure proportional, consistent and justifiable decision making. ERR's governance will be strengthened through increases in internal capability and additional expertise and quality assurance from the Technical Review Board and external specialists.

DEDJTR will clarify and communicate the roles of its separate regulatory (ERR), industry development (Minerals Development Victoria) and dispute settlement (Mining Warden) roles to assist community and industry.

ERR will take a lead role in strengthening coordination of regulation of earth resources by all relevant Victorian regulators, to ensure regulation is comprehensive and consistent.

DEDJTR and the Department of Environment, Land, Water and Planning (DELWP) have already developed a Partnership Agreement to establish collaborative arrangements, recognising the interdependencies in delivering responsibilities. ERR will review this Partnership Agreement and strengthen and implement memorandums of understanding (MOU) with all other regulators with the goal of more clearly articulating roles of each agency, as well as regulatory consistency and timeliness. These regulators include the Environment Protection Authority (EPA), Energy Safe Victoria and WorkSafe. ERR will give effect to these MOUs through proactive intelligence sharing, and by engaging with other regulators in carrying out its regulatory approval functions.

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# Earth Resources Regulation 2015–16

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ERR will seek to establish a Victorian Earth Resources Regulators Forum, with an independent chair. This will drive a coordinated, strategic approach to regulation in the earth resources sector, with a focus on robust decision making and timeliness.

ERR will also strengthen its relationships with the Commonwealth Department of Industry, Innovation and Science, and co-regulators including the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

| Strategy   | Lead                                      | Date(s)           |
|--|---|-------------------|
| New ERR leadership structure is enacted  | ERR                                       | End November 2015 |
| Clarify and communicate the roles of ERR, Minerals Development Victoria and the Mining Warden                        | ERR / Earth Resources Policy and Programs | End December 2015 |
| Review and update MOUs with relevant regulators and publish on DEDJTR website  | ERR                                       | End December 2015 |
| Rebuild ERR's internal governance to embed business process and performance improvements                             | ERR                                       | End January 2016  |
| Establish a Victorian Earth Resources Regulators Forum to enable strategic coordination of the system for regulation | ERR                                       | End June 2016     |

The reforms in this Action Plan will be completed under current legislation. The legislative framework for the earth resources sector will also be reviewed and options for policy and legislative reform developed for your consideration, to ensure these reflect contemporary regulatory standards and community expectations.

A policy priority is to establish a Community Advocate to support informed community participation in earth resources regulatory decisions.

| Strategy  | Lead                                | Date(s)           |
|---|-------------------------------------|-------------------|
| Prepare a forward program of policy and legislative priorities for Ministerial consideration, including a plan to consult with stakeholders | Earth Resources Policy and Programs | End November 2015 |
| Prepare a plan for establishing a Community Advocate  | Earth Resources Policy and Programs | End March 2016    |

ERR's purpose includes safeguarding the health and wellbeing of local communities and ensuring that earth resource developments do not pose environmental and public safety risks to the community

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ERR will improve its performance in line with good regulatory practice. As an immediate step it has adopted the following compliance principles, as outlined in DEDJTR's compliance policy. They elaborate on what regulated parties can expect from ERR staff in these interactions. ERR will report its performance against these principles, using a DEDJTR standard for measuring performance, from mid 2016.

### *DEDJTR compliance principles*

| Principle            | What regulated parties can expect  |
|----------------------|--|
| <b>Helpful</b>       | I can expect to receive appropriate and timely information, advice and assistance to help me understand and meet my compliance obligations                               |
| <b>Respectful</b>    | I can expect to be professionally and respectfully treated by DEDJTR compliance staff at all times   |
| <b>Impartial</b>     | I can expect to receive fair and honest treatment that is based on the law and consideration of all relevant facts and explicit criteria                                 |
| <b>Proportionate</b> | I can expect my compliance experience to match the relative risk, impact and intent of my behaviour  |
| <b>Predictable</b>   | I can expect to be able to anticipate my compliance experience and to be treated the same as any other regulated individual or organisation for equivalent circumstances |
| <b>Transparent</b>   | I can expect to easily understand the way in which DEDJTR regulates both industry and the community  |

ERR is committed to reporting its performance against these compliance principles

### 2. Building capability and culture

ERR is committed to building a performance-oriented culture that is focused on outcomes. As an immediate response to your SOE, ERR has acquired additional technical and legal capability, and reviewed processes to improve the accuracy, timeliness and reliability of its advice to you.

ERR is implementing a new structure that will bolster strategic leadership and provide a strong oversight to the reform of ERR. The new leadership will lead a significant investment in professional development and reshape the workforce to respond to priorities such as community engagement.

A strategy for managing and developing the professional capabilities and culture of the ERR workforce will be developed. The capability strategy will include developing and acquiring skills, building knowledge and reshaping values and behaviours to embed a positive culture as an effective, risk-based regulator.

ERR is committed to building internal technical capabilities. ERR is recruiting to establish a new Mine Fire Safety Unit (MFS Unit) within the branch. The MFS Unit will lead regulatory, compliance and education activities related to fire safety and will provide authoritative advice to ERR staff, industry and the public. Further technical capability will be built under the capability strategy.

ERR commits to continue consulting with appropriate external technical experts to ensure risks are identified and steps taken to manage those risks. This will include the following improvements:

- The Technical Review Board will provide more strategic advice to the Government in response to technical matters.
- An expert panel will provide operational technical capability in areas such as mine stability and water and chemical risks, and also support development of staff skills in these areas. The panel’s operation will be aligned with best practice in other Australian jurisdictions.
- ERR has also committed to engage risk and fire experts to assist it in assessing the Risk Assessment and Management Plans that the Latrobe Valley coal mine operators must submit in accordance with their licence conditions.

ERR will develop a strategy for managing and developing the professional capabilities and culture of its workforce

| Strategy  | Lead | Date(s)           |
|---|------|-------------------|
| Establish a Mine Fire Safety Unit in ERR            | ERR  | End December 2015 |
| Establish an external technical expert panel        | ERR  | End March 2016    |
| Develop and implement a capability strategy for ERR | ERR  | End March 2016    |

### 3. Risk-based strategies

Risk management is an integral part of good regulatory administration and underpins many of the improvements you seek. ERR is implementing key strategies to meet your expectations for a risk-based approach to regulation and compliance.

#### Risk management framework

ERR will develop a risk management framework for the full range of its activities, from licensing and approvals to operations. This overall risk framework will allow a shared understanding of risks and enable a consistent approach to managing, in partnership with industry, the risks arising from earth resources activities.

ERR will finalise and implement a quantitative risk assessment tool. This will provide a systematic framework for identifying, analysing and prioritising risks at select earth resources sites, and will inform compliance priorities to be outlined in a Compliance Strategy. This tool will enable ERR to target compliance resources to areas where they are most needed and will prove most effective.

ERR will adopt risk-based approaches for all its regulatory activities. It is investigating the introduction of a cash bonds system for rehabilitation. Other options to tailor bonds to reflect risk, informed by the Hazelwood Mine Fire Inquiry, will be considered in 2016.

Earth Resources Policy and Programs will develop and implement a new approach to resource development, including strategic planning and public interest zones. The approach will ultimately inform allocation of mineral rights by ERR. Earth Resources Policy and Programs will test the framework, and develop capability to use the framework, through a regional pilot project focusing on the Stavely geological province in western Victoria.

ERR will develop a risk management framework for the full range of its activities, from licensing and approvals to operations

| Strategy   | Lead                                | Date(s)           |
|--|-------------------------------------|-------------------|
| Complete development of a quantitative risk assessment tool for assessing risks at select earth resources sites  | ERR                                 | End December 2015 |
| Develop architecture for risk management framework   | ERR                                 | End January 2016  |
| Roll out risk management framework   | ERR                                 | End May 2016      |
| Develop and implement a new approach to resource development, including strategic planning and public interest zones   | Earth Resources Policy and Programs | End May 2016      |
| Test the framework approach for assessing earth resources rights allocations through a pilot project in the Stavely geological province and publish it on the DEDJTR website | Earth Resources Policy and Programs | End June 2016     |

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### Implementing risk-based mining and extractive work plans

Legislative amendments to the *Mineral Resources (Sustainable Development) Act 1990* have been brought forward. From 1 December 2015 applications for new work plans, or to vary existing work plans for mines and quarries, must be risk-based. Similar requirements already form part of petroleum, pipeline, geothermal and greenhouse gas storage legislation.

ERR will provide clear information to industry about requirements under risk-based work plans legislation. ERR has developed a draft risk-based work plan guideline, in consultation with industry, and will seek industry feedback on this draft. The guideline will be revised and refined in response to industry feedback and published on the website.

ERR will establish a work plan assessment taskforce, and use the quantitative risk assessment tool mentioned above to select the highest risk sites (approximately 50 sites) to submit risk based work plans.

ERR has developed a draft risk-based work plan guideline which will be revised and refined in response to industry feedback

| Strategy  | Lead | Date(s)           |
|---|------|-------------------|
| Provide a draft guideline to support preparation of risk-based work plans   | ERR  | End November 2015 |
| Risk-based work plan taskforce will identify highest risk sites and request operators of at least 50 high risk sites to move to risk based work plans | ERR  | End February 2016 |
| Publish final risk-based work plan guideline  | ERR  | End June 2016     |

### 4. Clear and consistent regulatory activities

ERR will develop its compliance approach based on good regulatory practice and recommendations from the Victorian Auditor-General’s Office Report *Effectiveness of Compliance Activities: Departments of Primary industries and Sustainability and Environment* (2012).

ERR will develop an Earth Resources Compliance Strategy, informed by a risk assessment that outlines compliance priorities. The Compliance Strategy will drive clear and consistent regulatory activities. It will set out how ERR will use compliance tools for its licensing, approvals and enforcement activities along a continuum from information provision and education, through infringement notices to prosecution and licence revocation.

The Compliance Strategy will include a strong focus on early, proactive compliance. It will also incorporate a strategy for managing and developing the professional capabilities of the ERR compliance workforce. This first Strategy will identify priorities for one year, after which future strategies will take a three to five year horizon.

Building on the Compliance Strategy, ERR will develop an annual compliance plan to outline the basis for delivering on the priorities identified in the Compliance Strategy. The compliance plan will set out compliance activities, address availability and deployment of resources and reaffirm ERR’s commitment to the compliance principles.

DEDJTR is improving its systems for managing complaints, whether these relate to industry non-compliance, regulatory decisions or the conduct of Authorised Officers. ERR will fulfil its roles within these departmental systems to ensure fair, accessible and transparent management of complaints relating to earth resources.

ERR will develop an annual compliance plan to outline the basis for delivering on the priorities identified in the Compliance Strategy

| Strategy  | Lead | Date(s)           |
|---|------|-------------------|
| Fulfil ERR’s role relating to formal complaints lodged with the DEDJTR complaints system                      | ERR  | From January 2016 |
| Publish an Earth Resources Compliance Strategy, informed by a risk assessment and clear compliance principles | ERR  | End January 2016  |
| Develop an annual compliance plan, outlining compliance activities, resources and compliance principles       | ERR  | End February 2016 |
| Monitor and evaluate the performance of the compliance plan and report results                                | ERR  | End June 2016     |

### 5. Stakeholder consultation and engagement

Community stakeholders provide ERR and regulated businesses with a social licence to operate. ERR will develop a new approach to guide its engagement with stakeholders. It will develop a strategy that focuses on effective, structured engagement and consultation that is proactive on matters of concern to the community. A mechanism for members of the public, industry, other regulators and local governments to provide feedback to ERR will be developed. These measures will underpin open, transparent and inclusive processes.

ERR established an Earth Resources Regulation Steering Committee as an avenue for stakeholder representatives to engage with ERR on forthcoming legislative change, and other issues of interest to stakeholders. The purpose and operation of this Steering Committee will be strengthened to ensure its ongoing relevance and effectiveness.

ERR will reform Environment Review Committees for mining and extractive operations, building on a 2014 review, to enable more effective industry consultation with community and government. Environment Review Committees generally comprise community members, state and local government and industry, and have been established at various times as conditions of licences or other requirements, or established voluntarily by the licence holder.

ERR will focus on effective and structured stakeholder engagement and consultation that is proactive on matters of concern to the community

| Strategy   | Lead | Date(s)                                |
|--|------|--|
| Plan a new stakeholder engagement approach and deliver the following elements: <ul style="list-style-type: none"> <li>• Conduct stakeholder engagement workshops to inform development of a stakeholder engagement strategy</li> <li>• Develop a stakeholder engagement strategy and publish the strategy for comment</li> </ul> | ERR  | End December 2015<br>End February 2016 |
| Research and consult with stakeholders to identify options to reform Environment Review Committees   | ERR  | End April 2016                         |
| Build capability in stakeholder engagement through training and acquiring additional workforce capacity  | ERR  | End May 2016                           |
| Develop a stakeholder feedback mechanism   | ERR  | End May 2016                           |
| Present recommendations for reforming Environment Review Committees to Minister  | ERR  | End June 2016                          |



# Earth Resources Regulation 2015–16

## ACTION PLAN

ERR aims to be an authoritative and trusted source of information regarding the regulation of earth resources industries.

| Strategy   | Lead | Date(s)           |
|--|------|-------------------|
| Develop a web page on the DEDJTR website that outlines the role of the regulator and provides accessible information and services  | ERR  | End December 2015 |
| Review ERR's online presence to explore options for other electronic media to highlight the role of the regulator and improve timely access to information and services  | ERR  | End March 2016    |
| Review online and print materials to ensure that all publicly available information is accessible, comprehensible and suitable for a range of audiences. ERR will publish information on the rights and responsibilities of individuals and regulated businesses | ERR  | End April 2016    |

ERR aims to be an authoritative and trusted source of information regarding the regulation earth resources industries

### 6. Timeliness

ERR will improve its standard of service to industry, especially in terms of the timeliness of its decision making. It will adopt a best-practice approach by developing a client service standard that sets out statutory timeframes and commitments regarding non-statutory timeframes, and report against this standard.

ERR will coordinate its activities with other regulators to improve timeliness and reduce costs to industry. Facilitated through the Victorian Earth Resources Regulators Forum, this will include a focus on more real-time communication, strategic sequencing, common risk assessment and partnerships with local government authorities.

ERR has invested in Resource Rights Allocation and Management (RRAM), a comprehensive tenements management system. The online system allows tenement holders to submit information to ERR directly, whether it is information related to statutory approvals or regulatory reporting requirements. RRAM is also able to send automated messages to tenement holders prompting them to submit reports or notify them when other timeframes are approaching. This system will reduce the regulatory burden on tenement holders.

ERR will work more proactively with industry on RRAM to deliver the full range of benefits. ERR will strengthen its approach to training for using the RRAM system to encourage tenement holders to use this time saving system. ERR commits to continued engagement with industry to fully realise the benefits of RRAM as a timesaving tool.

ERR will develop a client service standard and report against it

| Strategy   | Lead | Date(s)           |
|--|------|-------------------|
| Develop a client service standard that sets out timeframes for decision making | ERR  | End February 2016 |
| Publicly report against the client service standard                            | ERR  | From July 2016    |

### 7. Communication and transparency

ERR will be more accountable and transparent about its decision making, from licence decisions through to compliance activities. Within existing legislation, it will progressively move toward a presumption of openness and improved accessibility to regulatory information.

Legislation giving the Minister the power to require public reporting of activities on mines and quarries was passed in September 2015. ERR will be responsible for enforcing compliance with these new requirements, and is currently developing an implementation plan.

This is an important part of delivering the Government’s initiative to improve public transparency in the earth resources sector, to ensure that communities are well informed about significant mining and quarrying activities in their local areas. ERR commits to taking a proactive approach to communicating information about legislative amendments to its stakeholders.

ERR is developing a plan for implementing new public reporting requirements

| Strategy   | Lead | Date(s)           |
|--|------|-------------------|
| Release an Implementation Plan for public reporting by mine and quarry operations in accordance with legislative amendments  | ERR  | End November 2015 |
| Identify and publish performance indicators to inform the public about applications and compliance activities and start reporting against them   | ERR  | End February 2016 |
| Prepare and publish a guideline on transparency  | ERR  | End March 2016    |
| Publish guidelines that clearly state the criteria used to assess the submitted documentation for approvals under each piece of legislation and for both licensing and secondary approvals | ERR  | End March 2016    |
| Publish reports submitted by mine and quarry operators in accordance with legislative amendments   | ERR  | End March 2016    |
| The highest risk sites, including coal mines and the Stawell, Costerfield and Bendigo mines will commence public reporting on their websites   | ERR  | End June 2016     |
| Publish information on regulatory decisions quarterly  | ERR  | From July 2016    |

## 8. Continuous improvement

This Action Plan includes strategies to ensure ERR becomes a contemporary regulator that is aligned with Government priorities and meets the expectations of its stakeholders. ERR will monitor and evaluate progress against the strategies to continuously improve regulatory outcomes and performance, which in turn will inform future improvement plans. Feedback from stakeholders will be gathered as part of this process.

DEDJTR will report performance against the strategies in this Action Plan publicly in the 2015-16 DEDJTR Annual Report.

ERR will monitor and evaluate progress against the strategies to continuously improve regulatory outcomes and performance, which in turn will inform future improvement plans

Further information: [www.energyandresources.vic.gov.au/earth-resources](http://www.energyandresources.vic.gov.au/earth-resources)

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