

Policy and Legislation, Earth Resources Policy and Programs

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**Submission on Draft Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2022 and associated regulatory impact statement**

I am a Senior Lecturer and researcher at Melbourne Law School and The University of Melbourne, and I am a member of the Centre for Resources, Energy and Environmental Law and Melbourne Climate Futures.

Since 2007, I have been researching ideas and concepts of environmental justice, including climate justice. During 2012, whilst a visitor at the University of California – Berkeley, I also researched local climate justice movements and activities in California. My PhD, which won the award for best legal thesis for 2019, was on the topic of [A New Justice for Australian Environmental Law](https://minerva-access.unimelb.edu.au/handle/11343/234045). I have written about environmental justice, especially centring the experience of people of the La Trobe Valley in my article: [Trajectories of Environmental Justice: From Histories to Futures and the Victorian Environmental Justice Agenda](https://vulj.vu.edu.au/index.php/vulj/article/view/1043). I have met with, and discussed the bounds of environmental justice, with this government on matters concerning environmental laws and access to green space. This research and my experience frames my submission to you.

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My submission focuses only on the role for communities in mine closure and rehabilitation planning. In my view, the draft regulations neglect the knowledge, experience, and desires of communities, and in so doing they perpetuate an environmental injustice for those Victorians who have borne the burden of harms associated with mineral extraction for our collective benefit. In entrenching environmental injustice, the proposed regulatory regime departs from this government’s long-stated (since 2014) commitment to environmental justice. While that commitment was demonstrated and influential in the reform of the *Environment Protection Act*, it is not a commitment that can be siloed. That commitment must be at the forefront of its regulatory response in things like end of life of extractive land uses.

I urge you to revisit your draft regulations, particularly how you position communities in the process for planning and mine rehabilitation. Communities should have agency over mine rehabilitation; over their collective futures post-closure.

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Currently, the regulations view communities as people to be ‘consulted’ (rr 64F(1)(b), 64G and 64H); their views and interests considered (r 64K(b)). I appreciate that the draft regulations are confined by the Act under which they will sit. However, while sections 84AZV and 84AZU of the *Mineral Resources (Sustainable Development) Act* do prescribe a requirement for consultation, they do not prescribe the shape and form of that consultation. Moreover, they provide scope for the government to prescribe other matters in the process for planning for mine rehabilitation and closure.

At a minimum, the regulations should:

1. **Require a process of co-design of rehabilitation plans with communities**, such that the Minister be presented with a plan from the proponent alongside a plan co-designed by the proponent with the community.
2. **Require consultation to be over a period of many months and be iterative and discursive**, with the proponent required to show how that responded to the community following its feedback and evidencing that it has explained to the community why it has not incorporated their views; rather than consultation it simply being a chance for community members to comment on the proponent’s rehabilitation plans, with those comments not being engaged with.
3. **Require a social impact assessment and community narrative**, undertaken by the government independently of the proponent, that foregrounds and explains the community experience with the mine, and their interests in rehabilitation and their hopes for the future following the closure of the mine.
4. **Require the Minister to consider all of the above views and information**.

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As a standard for governance, environmental justice is almost impossible to fulfil. As I have written and explained to this government, governments always need to make decisions with the wider community in mind. Mines are a form of development for our collective needs and benefit. Those people proximate to them bear the burdens of potential and real environmental harms for all of us. They often do so to a greater extent than other communities do.

Conceptually and theoretically, environmental justice in those circumstances should mean that communities are then given the possibility of active participation in the land use, and they should receive some form of compensatory or restitutory benefit. These things have not occurred in Victoria, perhaps for good political and economic reasons. When mines close, however, there is no broader Victorian benefit, yet there is a chance for communities to receive some form of restitutory justice. While there may be disruptions to extractive goals by having active participation by community members in the operational life of the mine, there is no such disruptive potential in its rehabilitation and closure.

My four recommendations, above, are about acknowledging that mine communities have endured burdens for all of us and that upon closure of their mines, they should be given an opportunity for restitutory justice in the form of having a say over their futures. Demanding that of mining companies and itself is the least the government can do.

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If you would like to speak further to me about the matters in this submission, I am happy to make a time.

Yours sincerely



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