

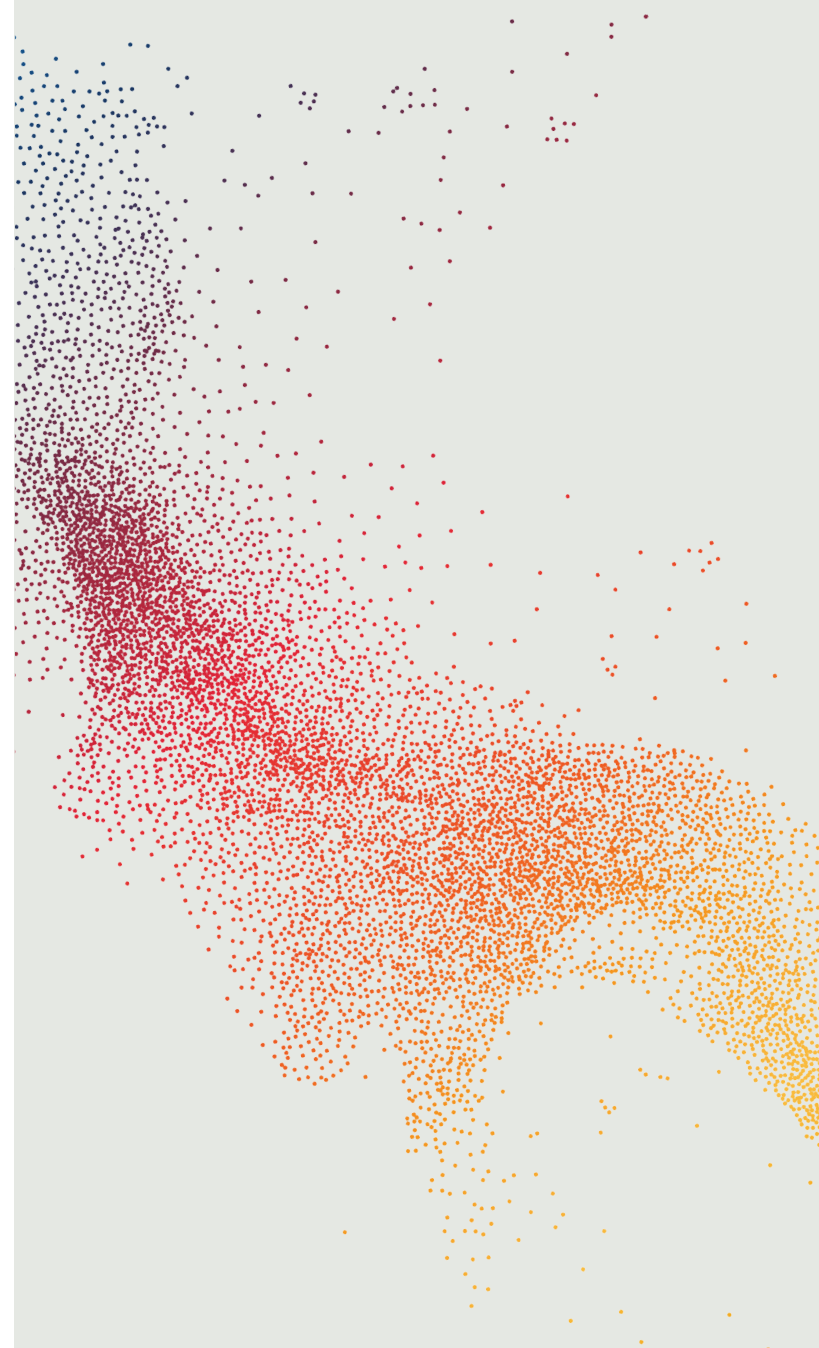


ERR reform options from the co-design process

Department of Economic Development, Jobs, Transport and Resources

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Executive Summary

The earth resources sector is a key driver of economic growth in Victoria. The Victorian mining industry produces important minerals for the economy, from gold and base metals, to zircon, ilmenite and coal, with sales valued at \$641m in 2015/16. This value does not include brown coal – a significant resource used almost entirely for electricity generation.

The Victorian extractives industry produces valuable raw materials, such as sandstone, granite, and slate, often used in construction, infrastructure and manufacturing projects, with sales of related products valued at \$785m in 2015/16.

In particular, the sector is an important contributor to economic growth in rural Victoria. The western part of the Gippsland region is strongly associated with coal mining, while sand and gravel resources near Grantville and Nyora help to meet the demand for construction materials coming out of metropolitan Melbourne. In the Grampian's region, the Wimmera Southern Mallee sub-region is now looking to diversify its economic base, with the mining sector seen as a key area of growth. Another example of such regions are the Bendigo and Ballarat gold mining areas.

The Earth Resources Regulation (ERR) branch of the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) is responsible for the regulation of the earth resources industries. The regulatory scheme aims to ensure that the risks posed

to the environment, members of the public, or to land, property or infrastructure are identified, eliminated or minimised. A set of principles for sustainable development underpins the administration of the scheme.

ERR embarked on a program of continuous development to drive improvements in its regulatory performance. The reform program is currently focused on improving the work plan approval processes.

DEDJTR engaged Nous Group (Nous) to assist it to explore reform opportunities from the perspective of mining and extractives operators, and to identify practical and implementable solutions that DEDJTR and other regulators can implement to accelerate reform.

Nous ran a co-design process with government, industry and other regulators to understand and solve the pain points experienced by both mining and extractives industry operators. The participants were drawn from across state and local government, with industry engaged throughout the process.

The following organisations were invited to participate in co-design process

Government:

CFA
Commissioner for better regulation
DEDJTR - Resources Division
EPA
Goulburn Broken CMA
Melton City Council
Red Tape Commissioner
Rivers Economic Consulting

Industries:

AMEC
BCA Consulting
Cement Concrete & Aggregates Australia (CCAA)
Construction Material Processors Association (CMPA)
Conundrum Holdings
Fulton Hogan
Hanson Heidelberg Cement Group
Kirkland Lake Gold
Matthews Quarries
Minerals Council of Australia (MCA)
Prospectors and Miners Association of Victoria (PMAV)
Tenement Administration Services

Areas of focus

The co-design participants identified two areas of concern that could reduce the regulatory burden.

1. How might we improve the application process for work plan variations to support the transition to the risk-based format with greater certainty?

An application for a work plan variation is made where there is a change in the operation. Work plans approved prior to 2015 are not risk-based. When changes do occur, there is currently a requirement from ERR to transition to the new risk based work plan.

Both mining and extractives operators have concerns about the requirements and implications of a variation to work application, and the transition to risk-based work plans.

For the mining industry, the primary concern about transitioning to risk based work plans is the complexity, and cost of consolidating a large number of different sets of past work plans and variations.

The extractives industry is concerned about the uncertainty associated with previously granted rights being re-examined by local councils – with the potential result that they are stripped of their planning permits.

2. How might we improve the experience of the work plan approval process for mining and extractives operators?

A range of issues affect the work plan approval process including: a lack of information about what is required; all operations are treated the same regardless of the operation's risk profile; and there is uncertainty around how long the process will take; and lack of transparency regarding the process. Industry operators expressed their concerns about the substantial costs and time involved in the work plan approval process.

Looking to the future

The co-design process identified a set of possible solutions to address these concerns that ERR can explore. The solutions focused on improving the mining and extractive industries' experiences of the regulatory environment, reducing the regulatory burden while maintaining regulatory standards, and meeting the regulatory objectives and expectations of the community for sustainable development.

For work plan variations, the team involved in the design session clarified the requirements and set out four types of variations and how the requirements could be adapted for each type:

- Variations with minor changes would require notification of the proposed change and confirmation that the proponent understands the risk.
- Voluntary transition where there is no change would not require consolidation of work plans and work plan variations.
- Variations with new or changed hazards, with no significant increase in risk would require operators to submit a hazard assessment and a risk management plan only for the change of work.
- Variations with new or changed hazards with a significant increase in risk would require operators to submit a hazard assessment and a risk management plan only for the change of work, without the requirement to consolidate previous work plan variations.

Adopting these risk-based processes could create greater certainty and reduce the complexity of the application process for work plan variations. It would specifically address the concern of the mining industry about the need for consolidation of work plans and variations. It has the potential to address the risk of removal of a planning permit for current operations. Implementing this new approach will require close collaboration and alignment between DEDJTR and the Department of Environment, Land, Water and Planning (DELWP).

To address the concerns about the work plan approvals process the participants developed a set of potential solutions that could improve clarity, allow for differentiation based on risk and create greater certainty about the timeline for approval of applications. The report proposes to :

- Expand the coverage of the Code of Practice (CoP) to all mining and extractive operations. Standard risks and standard controls will need to be clearly defined and agreed by all regulators. Here is how it would work:
 - Low to medium-risk operations, where there are no more than the standard risks, and the operator is prepared to accept the standard controls, the operator will be able to choose the standard work plan.
 - High-risk operations would adopt the standard work plan and the operator will provide additional detail as to how it will control the high risks.
- Rationalise the information required by ERR from operators.
- Provide more and better guidance to both the mining and extractive industries so the requirements of approval process are clearer and easier to navigate.
- Allow for concurrent applications for a work plan approval and a planning permit.
- Improve collaboration between regulators to foster a common language and shared experience across the regulatory environment.

Implementation considerations

Implementing the full package of initiatives could bring a range of benefits to both the mining industry and the extractives industry. Implementation of these potential reform options is subject to legal advice as to their consistency with the current legislative requirements. The solutions are framed as potential solutions, some of which can be achieved through changes in practice under the existing regulatory framework and some which may require legislative amendment.

Implementation will require agreement between co-regulators on the definition of low-risk and the adoption of standard work plans. It will also require engagement with DELWP regarding the options relating to concurrent planning permits as these changes are outside the control of DEDJTR.

Potential benefits include: reductions in the time spent preparing applications, reducing the time from application to decision, and increased clarity and consistency for the mining and extractives industries.

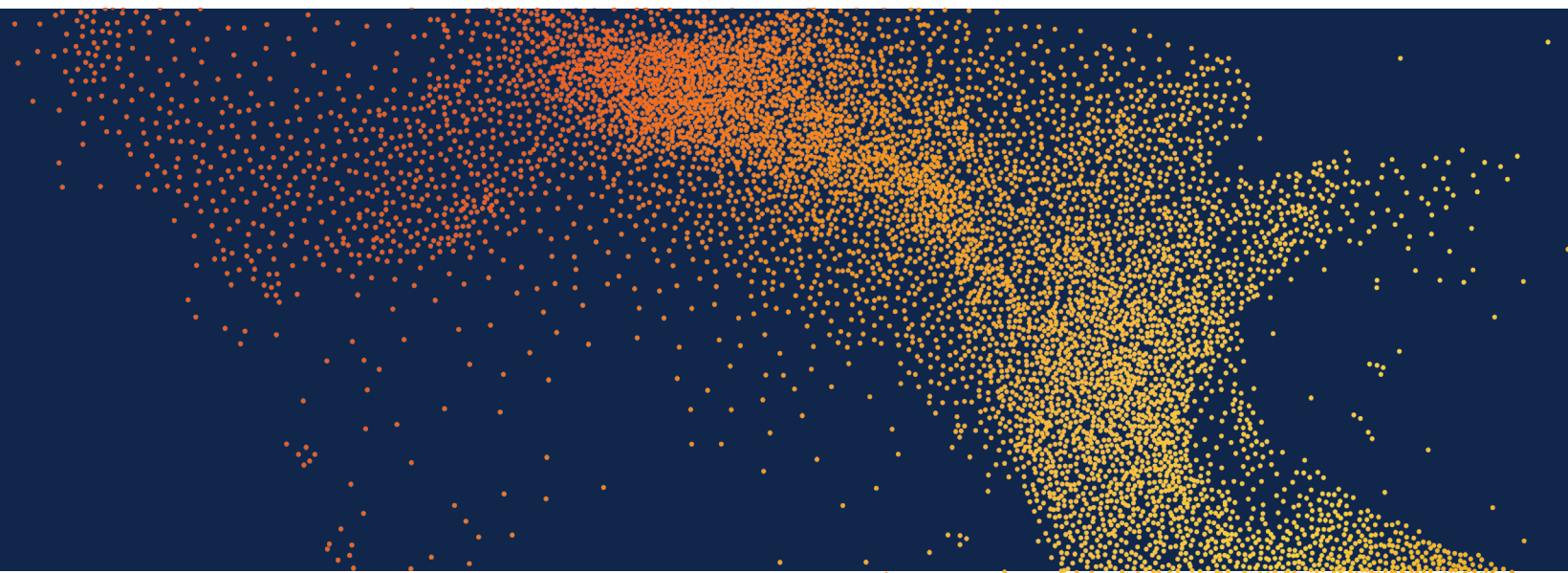
Estimated benefits are set out below and are intended to illustrate the type of improvement industry could experience if the full package of solutions are implemented. Data collection and validation of benefits needs to be considered as part of the next iteration of solutions. Currently only limited data is available and an improved data collection system in ERR would allow for more accurate estimations of the benefits of the proposed solutions and would enable ERR to track the realisation of those benefits as the solutions are implemented. For example, reliably capturing industry application preparation time before submission would help ERR understand whether improved guidance and clarity has reduced the burden on industry.

Potential benefits that could be realised through the proposed solutions

- **Time taken to obtain a work plan approval reduced by five months on average for low-risk operators:** It currently takes operators anything from 12 to 24 months to gain a work plan approval. By expanding the CoP to low-risk operators (estimated to be 60% of all applications), the time it takes to obtain an approval could be reduced by five months.
- **Time assessing applications reduced, freeing staff to focus on more strategic regulatory activity:** It currently takes staff six weeks to assess a work plan application, compared with one and half weeks for the CoP. By expanding the CoP, to cover an estimated 60% of applications, ERR can reduce the time it takes staff to review applications, and allow focus on more strategic regulatory activity such as reducing the number of applications on-hand, monitoring/reviewing higher-risk sites and compliance activity.
- **Time taken to obtain a work plan approval reduced by an average of six months for high-risk operators:** It currently takes operators anything from 12 to 24 months to gain a work plan approval. By expanding the CoP to all operators and only requiring additional controls for high risks, the time it takes to obtain an approval could be reduced by six months.
- **Greater certainty for mining and extractives operators that existing rights will be secure:** The proposed solutions if implemented (subject to legal advice and engagement with DELWP) provide mining and extractives operators:
 - an avenue to obtain a variation without triggering the planning system for administrative changes; and a process to obtain a variation for new or changed work without putting at risk existing rights
 - a reduced task that only requires operators to submit a variation for the new or changed work, rather than a consolidated work plan variation application covering the entire site
 - greater certainty over when a new planning permit is or is not required.



A closer look



Context

“Victoria’s earth resources sector can play an important part in delivering new jobs and opportunities to Victorians, particularly in our regional areas. The Department should continue to develop an approach that will support jobs growth in the minerals and extractive resources sectors while improving public confidence in the operation of those industries.

A strong regulator is critical to realising the benefits this sector generates for Victorian communities, while ensuring that resource projects are sustainable and operate in a way that does not pose environmental or public health risks.”

- Hon Wade Noonan MP, Former Minister for Resources

2016-17 Statement of Expectations for Earth Resources Expectations

The resources sector is a key driver of economic growth in Victoria and a significant contributor to regional economies. The state’s population is growing and urban development is showing no signs of slowing down. The projected demand for the resources this sector supplies – stone, sand, clay and other materials used in construction, infrastructure and manufacturing – amounts to 90 million tonnes annually. Brown coal is used to generate 80% of Victoria’s energy needs, with other minerals, such as gold and copper used in manufacturing.

The mining industry

Victoria’s mining industry produces important minerals for the economy, from gold and base metals to zircon, ilmenite and

coal, with sales valued at \$641m in 2015/16. Exploration in gold mining and heavy mineral sands accounted for over two-thirds of all exploration expenditure. This value doesn’t include brown coal, a significant resource used almost entirely for electricity generation. Over 400 million tonnes of brown coal is located in Victoria, with 80 per cent in the Gippsland Basin. The royalties drawn from this are valued by the Victorian State Government in 2015/16 as \$42.3 million. As of 30 June 2016, there were 439 mineral tenement licenses in Victoria, with 381 of these either for exploration or mining.

The extractives industry

The valuable raw materials extracted by the industry are crucial to the economic prosperity of Victoria, contributing raw materials necessary for construction and soil additives for agriculture. Quarries alone produce 40 million tonnes of stone annually. These quarries are a major part of Victoria’s \$21 billion building and construction industry, contributing investment and jobs in Greater Melbourne, Geelong, Ballarat, Bendigo, and other regional and rural areas of Victoria. Sales from products of the extractives industry was valued at \$785 million in 2015/16, with royalties to the State amounting to \$5.4 million over the same period.

As of 30 June 2016, there were 888 current work authorities for quarries, with the number of quarries remaining relatively constant over the last decade.

The mining industry and extractives industry are regulated by ERR

The ERR branch of DEDJTR regulates mineral and extractive exploration and production in a way that is compatible with the economic, social and environmental objectives of the state.

The regulatory scheme aims to ensure that the risks posed to the environment, members of the public, land, property or infrastructure are identified, eliminated or minimised. A set of principles for sustainable development underpins the administration of the scheme.

Mining operators must obtain a licence to explore or mine under the Mineral Resources (Sustainable Development) Act 1990 (MRSDA), after which they must gain approval to undertake work. This second step requires them to submit and gain approval of a work plan. Small mines and low-impact work is exempt from the requirement to gain approval for a work plan. Operators need to adhere to standard licence conditions and comply with the CoP for Mineral Exploration or the CoP for Small Mines.

Extractives operators must hold a work authority under MRSDA for quarries covering an area of one hectare or greater, and/or at a depth of two metres or deeper. A work plan is needed before the work authority is granted, unless the quarry is less than five hectares in area, less than five metres in depth, and provided that no blasting or native vegetation clearance occurs. Quarries that do not require a work plan must, however, comply with the CoP for Small Quarries.

ERR has embarked on a continuous improvement project to improve the regulatory framework

In 2015, a comprehensive set of reforms was introduced to drive improvements in earth resources regulation – especially to move to a risk-based regulation approach. The risk-based approach was intended to shift regulatory focus away from prescriptive conditions and towards a more outcome-focused approach, with the aim of reducing red tape and focusing regulatory resources on the higher risk and more strategic applications.

The sustainable development principles underpinning the scheme:

- a. community wellbeing and welfare should be enhanced by following a path of economic development that safeguards the welfare of future generations
- b. there should be equity within and between generations
- c. biological diversity should be protected and ecological integrity maintained
- d. there should be recognition of the need to develop a strong, growing, diversified and internationally competitive economy that can enhance the capacity for environment protection
- e. measures to be adopted should be cost effective and flexible, not disproportionate to the issues being addressed, including improved valuation, pricing and incentive mechanisms
- f. both long and short term economic, environmental, social and equity considerations should be effectively integrated into decision-making
- g. if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent
- h. environmental degradation and decision making should be guided by—
 - i. a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable
 - ii. an assessment of the risk-weighted consequences of various options
- i. development should make a positive contribution to regional development and respect the aspirations of the community and of Indigenous peoples
- j. decisions and actions should provide for community involvement in issues that affect them.

Since that time ERR has taken action to improve its regulatory performance and improve stakeholder and community confidence. This action has seen a number of key reforms implemented to address role clarity, build capability and culture, establish risk-based strategies, develop clear and consistent regulatory activities, build more effective stakeholder consultation, and improve timeliness, communication and transparency.

DEDJTR is committed to continuous improvement, and has embarked on a continuous improvement project to assist ERR to deliver the Ministerial Statement of Expectations effectively and efficiently.

The mining and extractives industries are seeking further improvements in ERR

Notwithstanding these reforms, both mining industry and extractives operators continue to express concern about the performance of ERR and the operation of the regulatory scheme.

Each of the industries is subject to distinctive regulatory requirements. At the same time, there is considerable common ground in the problems they have raised and their feedback on what should change.

During the co-design workshops, we heard clearly the urgent need to tackle two problems that are impeding investment in both industries:

- the uncertainty and cost of transitioning to risk-based work plans. For the mining industry, there are concerns with the complexity and cost associated with consolidating existing work plan variations in order to transition to a risk-based work plan. The extractives industry is concerned about the uncertainty associated with previously granted rights being re-examined by local councils – with the potential result that they are stripped of their planning permits

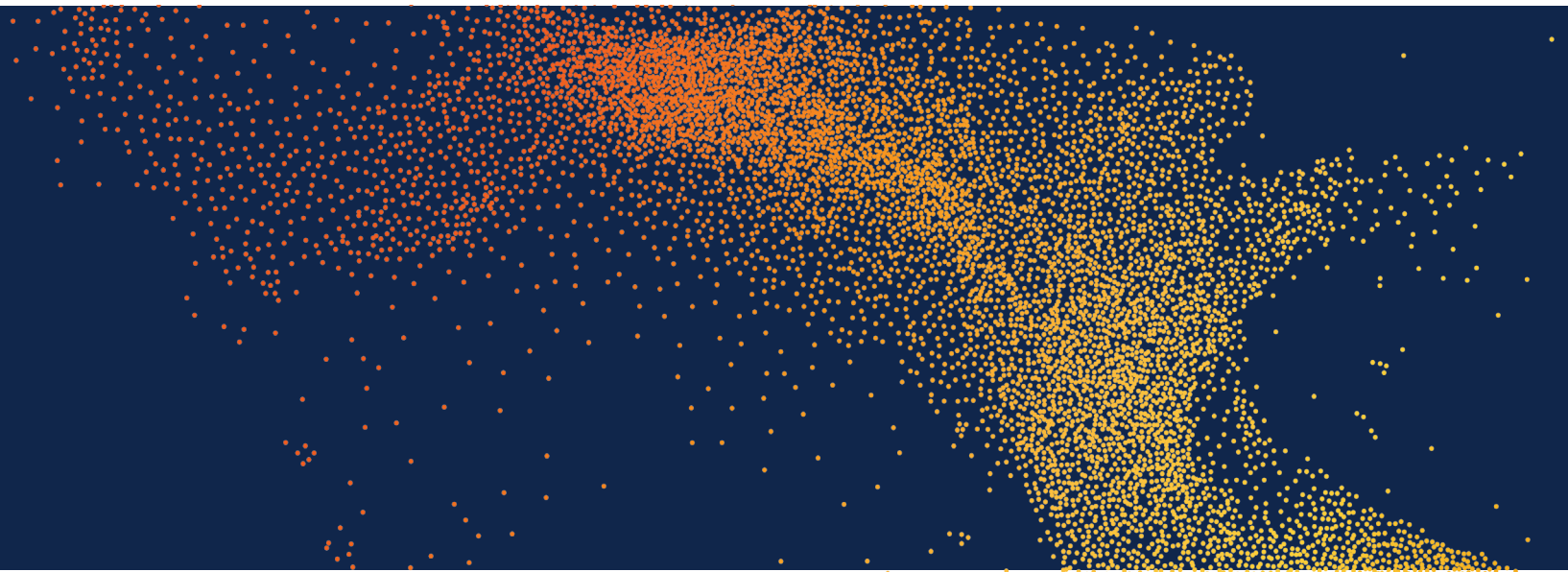
- the complexity of preparing new work plans, and the time it takes to get a work plan approved. Both the mining and extractive industry find the approval process clouded with uncertainty. Information and guidance on the process is poor and hard to find. There is a perception amongst operators that the ERR applies a 'one-size fits all' approach to regulating operations and the time an application takes is perceived as ambiguous and lengthy

Nous was engaged to help ERR tackle these concerns, through a collaborative co-design process that actively engaged the mining and extractives industries.

This is just one input into a broader program, and should be read in conjunction with other consultations and work undertaken by DEDJTR to understand the problems and determine a response.

The objective was to identify practical and implementable reforms that would address the regulatory and process problems experienced by mining and extractives operators, while maintaining an effective regulatory scheme that meets the objectives of the legislation and the expectations of the community for sustainable development.

Methodology



The co-design process

Nous partnered with DEDJTR in a co-design process to identify potential reform options to address the different pain points experienced by operators in the approvals and work plan variation processes. The co-design process engaged a range of stakeholders to help develop and refine the solutions. A team made up of ERR staff and staff drawn from DEDJTR, DELWP, the Environmental Protection Authority (EPA), and a local council worked together throughout the process to understand the challenges industry operators face and develop a range of solutions that could improve industry's experience. This team engaged with mining and extractives operators early in the process to develop an understanding, with insights gained from this engagement helping to identify the potential solutions. The team tested these solutions with staff from the Department of Premier and Cabinet and senior staff from DEDJTR and DELWP, with feedback helping to refine and adapt the potential reforms put forward in this report.

DISCOVER

We developed an understanding of the challenges facing industry

- Conducted desktop research to situate the challenges in the regulatory and legislative environment and learn about industry's experience of approval pathways.
- Interviewed a range of senior officials from ERR, DEDJTR and co-regulators to verify our understanding of the challenges and industry's experience.

DEFINE

We established the baseline for the challenges identified

- Baseline packs were developed for the co-design participants, with the main challenges identified.
- The baseline pack included journey maps, which set out the painpoints experienced by industry and ERR along the approval pathways.

DESIGN

We ran two co-design sprints to tackle the challenges identified

- The first sprint focused on the approval pathways for work plan applications.
- The second sprint focused on the challenges industry is facing in transitioning to the risk based work plans.

DELIVER

DEDJTR will take the proposed solutions under consideration, with their implementation subject to legal advice and further engagement with DELWP, councils and other co-regulators.

Two different industries, with similar needs from ERR

During the co-design process, participants developed a set of principles to guide the development of possible solutions. Design principles are a useful checklist that summarise what each industry's need from the regulator. These principles were used throughout the process to test solutions against and to ensure that the solutions being developed were solving problems in a way that would really improve the regulatory experience and reduce the regulatory burden for the industries.

“ CLEAR AND TRANSPARENT

“Be clear with me, so I understand what is happening, when and why”

“ COLLABORATIVE

“Work together so I can provide information once and know it will be drawn on by all regulators in the process”

“ CONSISTENT

“Treat my applications consistently so I can learn over time and get the same answer regardless of who I deal with”

“ FIT FOR PURPOSE

“Tailor your approach to the risk profile of my site with an understanding of the nature and objectives of my business”

“ EFFICIENT AND ECONOMICAL

“Use my time and resources in an efficient and economical way. Do the same with your time and resources”

“ CONFIDENCE BUILDING

“Build my trust and confidence in ERR”





Issues and potential solutions



PROBLEM

There is reluctance to transition to risk based work plans

The introduction of risk-based work plans was intended to shift regulatory focus away from prescriptive conditions and towards a more risk-based, outcome-focused approach. Risk-based work plans were meant to reduce the red tape in the process and focus regulatory resources on the higher risk, and more strategic applications, while reducing the regulatory requirements placed on mining and extractive operators running low-risk sites. The approach, however, has not met the expectations of industry, with regulatory activity not adequately differentiating between high and low-risk operations.

Some mining and extractive industries operators have been left frustrated with the transition to risk-based work plans. Important concerns with the process have been raised but have not yet been addressed. During the engagement process representatives from the mining and extractives industries raised the importance of clarifying the requirements for transition, simplifying the process and addressing potential adverse outcomes.

Three issues fuel the reluctance to transition

Both mining and extractives industries operators are reluctant to transition to risk-based work plans, but their concerns vary.

For extractives industry operators, the primary issue relates to concerns over whether the transition will jeopardise their existing rights.

For mining operators, the reluctance has more to do with the requirements for transition – namely the consolidation of all existing work plan variations into a single risk-based work plan.

Both are equally frustrated with the lack of clear guidance on the transition to risk-based work plans.

“Transitioning all existing work plans is dismissive of the hard-fought conditions and Work Authority holder’s obligations. Transitioning will cost in the order of \$27 million to the industry and to what purpose? Existing work plans when read in conjunction with their Work Authority conditions address Schedule 1 of the MRSD Regulations.”

- Body representing the extractives industry

Operators from the **extractives** industry fear their existing planning approvals will be put at risk

Operators from both the **extractives** and **mining** industries find the requirements for transitioning to a risk-based work plan burdensome

The **extractives** and **mining** industries don't have the guidance they need to understand what a risk-based work plan variation looks like

Operators in the extractives industry are principally concerned that they will lose their existing planning permissions if they submit a variation to a current work plan.

A variation approval is required if an operator wishes to change the operations, undertake additional work on their site. Operators are concerned that any application for a variation will trigger the planning system and require council to approve a new planning permit. This, they fear, could result in the council refusing to grant a new planning permit, effectively ending the operations of the quarry. Consequently, at the time of this report, only one extractives operator has transitioned to a risk-based work plan.

“Any change to a work plan (i.e. transition to a risk-based work plan) is viewed by ERR as a ‘variation’ under the Act triggering full referral (potential new planning permit) and creating significant risk to industry of loss of tenure. This has been raised repeatedly and must be addressed urgently if industry is going to even enter into a new system.”

- **Body representing the extractives industry**

Operators from both industries often have several work plans in the old format for a given site. Prior to 2015, new work plan variations were required for all new work or changes to existing operations. With each variation, came a new application, resulting in some operators having up to 30 or more work plan variations to manage. This complexity of work plans resulted in cumbersome monitoring requirements for operators. New risk-based work plans are meant to reduce this complexity, with a variation updated in the single risk based work plan.

ERR has told both mining and extractives operators that they must consolidate all their existing work plan variations into one risk-based work plan in order to transition. Where there are 30 or more current variations to be consolidated, it requires considerable time and resources to complete. So, if you only want a relatively straight forward variation, it may not be worth the associated cost. According to one industry association, the process of consolidating work plan variations could cost industry \$27 million. Why would they spend that money when they fear it might result in them losing their rights or if the cost of transitioning outstrips the commercial benefit they can derive from the change of work?

“For the department to interpret that all previously created work plans are required to be transitioned is a waste of resources.”

- **Body representing the extractives industry**

Operators in the mining and extractives industries have not received the guidance they need to translate existing work plans into the new risk-based work plans. There is, as a consequence, a lack of clarity around what ERR wants and what industry needs to do. This lack of clarity only compounds the frustration and concerns felt by the industry. Operators do not know what is required for a risk-based work plan. This issue is of particular concern to the mining industry.

There is also limited guidance or indication as to whether transitioning to a risk based work plan requires a new planning permit application. The lack of clarity and guidance on this issue is of particular concern to the extractives industry.

Mining and extractives operators are stymied by these issues

Mining and extractives operators are choosing not to vary their existing work plans because of their concerns around existing planning permits and the burdensome requirements that come with little guidance. This means necessary and desirable changes to operations are not being made – changes that may have positive economic, environmental and community benefits. It also means some operators are not expanding their existing operations. This can have the effect of stifling innovation in the sector and undermine the economic value and benefit the industry delivers for Victoria.



SOLUTION

A snapshot of the solution that will smooth the transition to risk based work plans

Increasing clarity and easing the transition

Industry has sought clarity regarding the requirements for approving a work plan variation application to a workplan approved prior to December 2015. The co-design team identified two categories of variation – those where there is no new or changed work proposed, and options where there is new work on the site. The solutions clarify the requirements and provide options that can reduce the burden of switching to a risk-based work plan. There is scope to provide greater certainty about if a planning permit is (or is not) required. DEDJTR will need to work with DELWP and the Municipal Association of Victoria (MAV) to confirm the requirements and to ensure the processes run smoothly. There are four changes that ERR could explore in the short term that will alleviate a number of concerns, while DEDJTR works with DELWP to ensure the planning permit issue is fully resolved. These potential changes were developed in the co-design process, and tested with representatives from both the mining and extractives industries. Legal advice is required to confirm whether they can be implemented under the current legislative regime.

No new or changed work is proposed

1. Minor changes to a work plan



LEGAL ADVICE NEEDED

Where there is no new or changed work proposed to the site (as defined by ERR), operators could make minor changes to their existing (pre-2015) work plans, without having to transition to a new risk-based work plan. Consultation with councils may not be required and ERR could approve the variation as long as the changes satisfy the definition of minor. This would require legal advice & needs to be agreed with DELWP.

2. Voluntarily transition to risk-based work plan



LEGAL ADVICE NEEDED

Where there is no new or changed work proposed to the site operators can voluntarily transition to a risk-based work plan. Consultation with local councils may not be required and operators may not be required to consolidate existing work plan variations.

Options that do involve new work on site

3. New or changed hazard, without significantly increasing risks



LEGAL ADVICE NEEDED

If a proposed variation results in new or changed hazards, without significantly increasing risks, operators submit a hazard assessment and a risk management plan only for the change of work. If accepted, ERR consults the local council of the change and the local council will determine if a new planning permit is required.

4. Variations where there is a new or changed hazard, which significantly increases the risks posed to the environment, public, or the land, property and infrastructure in the vicinity



LEGAL ADVICE NEEDED

Where there is a change of work that results in new or changed hazards that do significantly increase the risk posed to the environment, public, or the land, property and infrastructure in the vicinity, the process would be the same as the third but the consultation with local council could trigger the planning system. However, operators submit a hazard assessment and a risk management plan only for the change of work, without consolidating previous work plan variations. Current approvals would, therefore, remain intact.



SOLUTION

How the solution works and the benefits it could deliver

SOLUTION: Simplified work plan variation processes clarify requirements and ease the transition

THE PROBLEM IT SOLVES: Industry operators are not changing or expanding their businesses for fear that any application for variation of a work plan will require a new planning permit, with the potential for local council refusal

How it works

DEDJTR and DELWP need to clarify the requirements for approving the application for a variation for pre-2015 work plans – particularly the circumstances under which a new planning permit is required. The solution provides for four variation processes based on the nature and consequence of the changes underpinning the variation to the work-plan. The policy intent identified in the co-design workshops is for ERR to provide a greater level of certainty around transitioning extractives operators to risk-based work plans, especially as to when a planning permit is required. It would also allow ERR to reconsider the requirement to consolidate all previous work-plans and variations into a single risk-based work plan and thereby address the mining industry concerns about the burden involved.

ERR will require legal advice to confirm whether legislative change is needed to give effect to the policy intent. In addition, ERR will need to work with DELWP to gain greater certainty over the planning permit issue.

Four processes clarify the variation requirements

1. Variations for minor changes to a work plan

ERR could approve work plan variation applications without the need to consult local councils when there are only minor, administrative changes to a work plan that do not require the statutory endorsement process. In such cases, operators would notify ERR of the change through an application process, and approval would be granted on the basis that it meets ERR's definition of minor change. The notification would provide ERR with the information they need without requiring operators to submit a detailed risk-based work plan. This allows operators to make minor changes without having to transition to a risk-based work plan.

DEDJTR needs to define what constitutes a minor change. It is anticipated a minor change would be where there is no new or changed work. This should be done in collaboration with DELWP, with a number of scenarios tested against the definitions to ensure they are robust and address the complexity of council planning schemes. Examples could include:

- preparing plans, such as a ground control management plan, traffic management plan
- new maps for the work plan to reflect changed site conditions.

2. Variations that allow operators to voluntarily transition to a risk-based work plan over time, where there is no change to work

Operators wishing to transition to risk-based work plans in order to take advantage of the relative benefits of the new risk-based approach can do so as long as there is no new or changed work.

In these circumstances, the transition to the risk based work plan would include submission of a hazard assessment and risk management plan in line with the new risk based work plan approach. It would not require the consolidation of all other work plans and variations. This should ease the burden on industry operators, while moving them towards a more risk based approach.

3. Variations with new work that creates new or changed hazard and no significant increase in risks

Where the variation to the work plan comes with new or changed hazards, but without a significant increase in the risk posed to the environment, public, or the land, property and infrastructure in the vicinity, the operator would submit a hazard assessment and risk management plan, but only for the new work. This safeguards an operator's existing rights (as approval would only be for the new or changed work) and reduces the work it takes to vary existing workplans, as they would no longer be required to consolidate existing variations at when making the application.

ERR could agree with the operator that they will consolidate existing work plan variations into the new risk-based work plan format over time. This would be done on a case by case basis. ERR would then work with the operator to enable this consolidation and the transition to a risk based work plan.

ERR would review the application, and would consult with council on its recommended decision before approving. The approach would build the confidence of councils in the approvals process.

This approach can be developed with local councils and could lead to operators no longer being required to deal separately with councils, as part of the process. The nature of the interactions between ERR approval processes and the planning system will need to be agreed between DEDJTR, DELWP and local councils. DEDJTR and DELWP need to engage with local councils across Victoria, with the aim of coming to a shared understanding of the approach taken by ERR, the basis for their approvals and how that interfaces with the planning system.

This should culminate in a formal agreement of this understanding so mining and extractives operators have the certainty they need.

4. Variations with new or changed hazards; and significant increase in risks

Where there is a significant increase in risk because of a new or changed hazard, consultation with council would be required to address the increase risk from the operation. The approach to be taken would form part of the agreement noted above.

Operators would submit a variation for the new work that has resulted in the significant increase in risk. Any approval would therefore be for the new work only, rather than for the entire site. This has the potential to address the concerns of the extractives industry operators that the variation would put at risk the entire site.

The consolidation of existing work plan variations would also not be required, and the amount of work necessary to submit the application (the hazard assessment and risk management plan for the new work) would be reduced.

Effective cooperation necessary for these processes to work as intended

Good cooperation is at the heart of all effective regulatory systems when different government bodies are involved. This is particularly the case where DEDJTR is not in control of parts of the system, as is the case for the planning system. DEDJTR, therefore, needs to foster effective cooperation with DELWP around the nature of interactions between the mining and extractive approvals processes and the planning system so that these processes can work effectively.

DEDJTR and DELWP are already working together on strategic resource areas and high priority projects, running local government pilots and identifying changes to the Victoria planning provisions. Further cooperation around the interaction between the variation approvals processes and the planning system could make a substantial contribution to the economic and environmental goals of the state.

The approach to reform

SHORT TERM

Guidance material

- ERR should further develop the guidance material that communicates the clarification of the process and the requirements to industry, while developing the range of scenarios for the variation processes. The guidance material should include the decision tree and a set of frequently asked questions to guide industry through the various processes to help them determine whether, and what kind of, variation is needed. In the short term, the decision tree should be presented as a diagram on ERR's website or in hard and soft copy guidance material.
- Subject to the legal viability of this approach under existing legislation, ERR is already developing guidance on risk-based work plans. Current drafts could be improved through a user-centred approach. ERR can redraft this material to be clear, concise and user-centred. This material should be developed with industry representatives, with ERR and industry operators collaborating on what the guidance should contain to assist the industry through the variation processes.

Process review

- Implementing the solution will require ERR to change its internal variation processes. This could start with a staff led process review, using rapid solution development processes to quickly reengineer current processes. Staff involved in this review would then play a central role in training others in ERR in the process, with an external agency supporting with training as necessary.
- As part of the process review, ERR should clearly define what are minor and administrative changes.

Engagement with DELWP and councils

- DEDJTR can continue to work with DELWP and MAV to gain broad agreement to the processes as set out in this solution, working with them to come to a shared understanding of the interaction between ERR's approval decisions and the planning system, and the nature and extent of advice, and consultation for the different processes set out.

Establish test cases for the process

- ERR should quickly engage with industry operators wishing to apply for a variation, and support a select number in order to establish some successful demonstration examples to show that these processes deliver the intended outcome. These successes should help build industry confidence in the processes, helping ERR establish the momentum needed to tackle the challenges this solution sets out to solve.

MEDIUM TERM

Develop an interactive decision tree on the ERR website

- ERR should develop an interactive decision tree that guides industry through the relevant processes on the ERR website. The user would be directed to relevant guidance material and useful information as they progress through the decision-making process to determine whether they need to make a variation application and what it should contain.

Redesign ERR's website to make it easier to access guidance material

- Industry needs to be able to access this guidance quickly and easily. Industry operators indicate the current website is difficult to navigate, with current guidance hard to find and not easily understood. It would benefit from a refresh to address these issues.

The potential benefits of delivering the solution

For the mining and extractive industries, these solutions will:

- Facilitate more operators to move towards risk based work plans without fear that existing rights will be put at risk by:
 - establishing a process that provides them an avenue to transition to risk-based work plans where there is no change to work without triggering the planning system
 - establishing a process that only asks operators to submit applications that cover only the new or changed work, rather than for their entire site. They would not need to consolidate all work plans. This would provide greater assurance that existing rights will be maintained.
- Save mining and extractive operators the time and costs associated with the current variation process, which requires the consolidation of all work plan variations. One industry association has estimated that consolidating work plan variations could collectively cost operators \$27 million. No longer requiring this consolidation would result in significant savings.





PROBLEM

The approvals process is clouded with uncertainty

Information is poor and hard to find

The process of obtaining a risk-based work plan for new sites has been identified as a significant pain point for operators in both the mining and extractives industries. Although there has been, over the last several years, many independent reviews and changes proposed, the approvals process, in the eyes of industry operators, remains costly, uncertain and lacking in transparency. A particular pain point expressed in the consultations was the difficulty in determining what the exact application process is; when an application is needed; and once submitted, where it is in the system. Specific details on requirements are hard to find, out of date, or not seen to be consistently applied. Obtaining information on the progress of your application is also challenging, leaving many in the dark, unaware of where their application sits.

ERR applies a 'one-size -fits-all' approach to regulation

There is a perception that the ERR applies a 'one-size fits all' approach to regulating operations, which industry does not consider 'risk-based' – i.e. the same conditions apply whether the proposal is a low-risk gypsum mine or a high-risk, complex project. This perception is counter to the intention of ERR to be a risk-based regulator.

Without knowing what ERR considers an acceptable work plan, industry operators are flying blind. Anecdotally, there appears to be contradictory advice and uncertainty as to whether a plan would meet the requirements.

The process length is uncertain

The time an application takes is perceived as ambiguous and lengthy. This issue is less about statutory timeframes, and more about the actual time things take, with the uncertainty and lack of clarity on how the application is progressing and why delays occur also a frustration.

A common complaint is that what ERR asks for is increasingly divorced from how to operate a mine or quarry. This is combined with being continually asked for additional information, and being subjected to requests that do not appear to be required by the legislation. An example is the initial site visit by all regulators. The intention is to engage referral agencies early to identify potential issues at the outset and smooth the application process. Some industry representatives questioned the value of the site visit which they feel is time consuming to arrange and provides little assurance that the process will be smoother.

On the coordination of co-regulators, ERR is not seen as playing its role as the lead agency. Too much unnecessary information is shared and then discussed and debated, that doesn't require co-regulator sign-off.

The confidence to invest is low, particularly affecting Regional Victoria

All the identified issues are affecting the viability of the mining and extractives industry in regions by:

- stymying investment in the sustainable development of Victoria's earth resources
- inhibiting innovation, affecting industry's ability to remain competitive nationally and globally
- increasing the cost to both industry and government, through increased work load and unreasonably long approval times
- undermining the confidence and trust of ERR as a regulator.

"Today's work plans are so complex and convoluted that we are in the process of developing a document, that we can't call a work plan, that would provide our internal stakeholders with an understanding of how we are going to operate the deposit on a daily basis and how we would remediate the site in due course. It's duplication but [also] an endorsed work plan is not a practical document."

- Extractives industry

"The risk-based work plan guidelines are still only available in draft format, despite the legislative change being made in December 2015..."

- Mining Industry

"What is crucial is that information requested in or supporting the work plans links directly to the outcomes seeking to be achieved. At present, additional information is requested that does not align with the premise of a risk-based work plan or relate to desired outcomes."

- Minerals Council of Australia

"The current system equates risk to size of operation rather than impacts and is a disincentive for innovation and operational innovation and flexibility."

- Extractives Industry

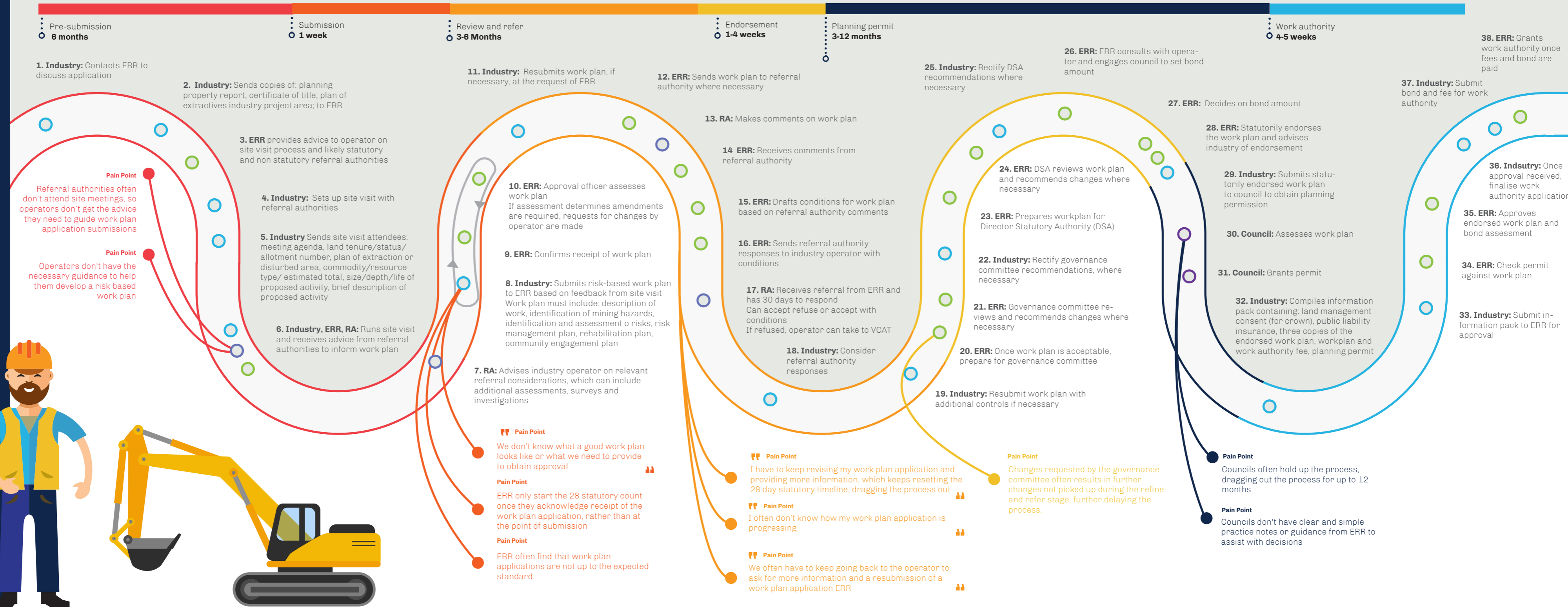
Investor confidence has been curtailed and supply shortage risk increased by the exponentially increasing approvals costs and time ... being placed upon the industry, resulting in the attrition of participants and the prevention of on-going investment. As a result of the misdirection of limited capital into the application process, the application's future capacity, even if successful, has been financially impeded. Such costs can run into the millions of dollars without any certainty of outcome, and could be perceived to be a barrier to entry.

- Extractives Industry

Current State: work plan approval pathway

Using extractives as an example

- Industry
- ERR
- Referral Agencies (RA)
- Council





SOLUTION

The solutions that will bring clarity and certainty

A new future: Two risk based pathways

The vision for ERR's new future is one where a true risk-based approach is taken to work plan approvals, with two different pathways proposed.

The first is a "low-risk" pathway, which would eliminate the need to supply much of the current documentation, where the focus is instead on ensuring regulatory obligations are met. The second is a "high-risk" pathway that would concentrate on the additional controls needed for high-risk sites, with additional support offered where required.

If implemented, the mining and extractive industries would encounter much clearer pathways, which come with a more certain experience and a reduction in the cost and time it takes to progress through them.

To move towards the two future state pathways, we set out four headline solutions below, with further detail on how they work, the benefits they deliver and the key steps that must be taken in the following section.

Expanding the coverage of the CoP

The coverage of the CoP has the potential to be expanded, enabling ERR to take a more risk-based approach to the approval process. The extent to which the CoP can apply more broadly to all mining and extractives would require confirmation through specific legal advice. We propose that all mining and extractive operations would be covered by the CoP, with standard risks and standard controls clearly defined and agreed by all regulators. For **low to medium-risk operations** where there are no more than the standard risks, and the operator is prepared to accept the standard controls, the operator will be able to choose the standard risk management plan.

High-risk operations would adopt the standard risk management plan and provide additional detail as to how it will control the high risks. These high-risks, along with the controls proposed by the operator, would be assessed by ERR. This would reduce the amount of paperwork proponents provide to gain an approval, while allowing ERR to focus its resources on the high risks associated with a site. This is consistent with the shift to risk-based regulation.

The improved consistency of risk assessments and controls through the standard risk management plan should also provide useful guidance for councils in considering their planning approval processes.

Rationalise requested information

ERR currently asks for a lot of information – some of which is not absolutely necessary. Over the years, the 'ask' has grown. The team identified an opportunity to review the current information sought to ensure ERR requires only the necessary information to inform effective regulatory decision making. This would start with an audit of the current ask against what is statutorily required. This creates the potential to reduce information requested as an early reform opportunity.

Better Guidance to Operators

The information ERR provides to the industry could be improved – particularly around low-risk-based work plans. When the standard risks and standard controls are developed with the extended coverage of the CoP this will provide clarity for industry of the standards they are required to meet.

The current guidance (in draft form) could be improved by orientating the information around the language of operators and the way in which they run their business, rather than the needs of ERR.

Tracking should also form part of the information flow to proponents. Weekly emails could be sent to proponents to update them on the status of their application. Long term, ERR should look to draw on RRAM's tracking functionality or develop its own online tracking system so proponents can stay across where their application is in the process.

Case managers should also be assigned for those applications that are complex or deemed of a strategic nature. Introducing a competent consultant scheme, similar to EPA, will increase certainty and transparency for everyone.

Concurrent applications

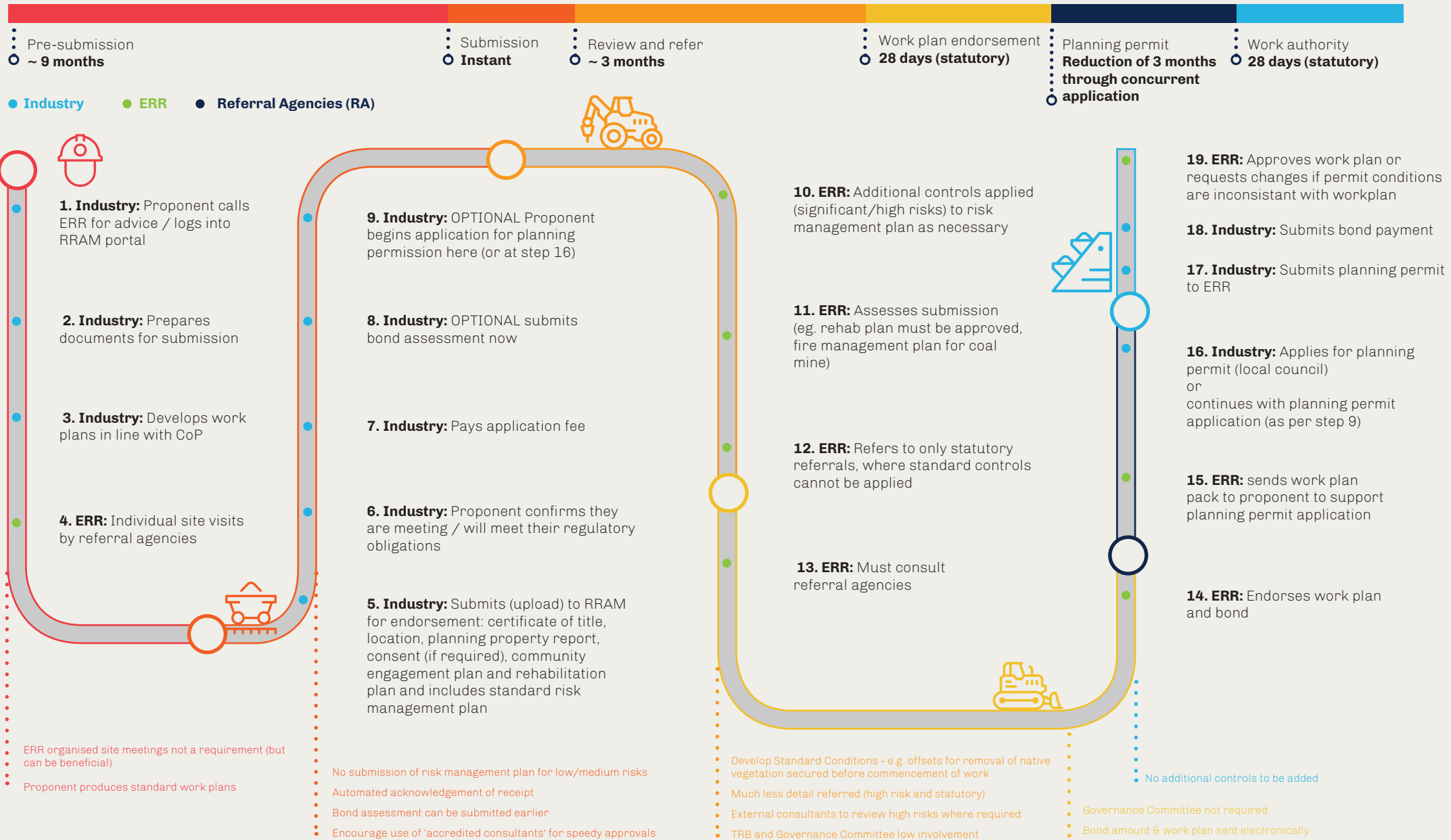
Subject to legal advice, proponents could have the option to apply for a planning permit and work plan application concurrently, which could save over three months in elapsed time in the approvals process. Running the process concurrently would be a choice proponents can make, either to test with council the likelihood of a planning permit being granted before they invest too much time in the work plan approval process or shorten the time to put the shovel to the ground where they are confident a planning permit would be relatively straight forward.

Improved co-regulator collaboration

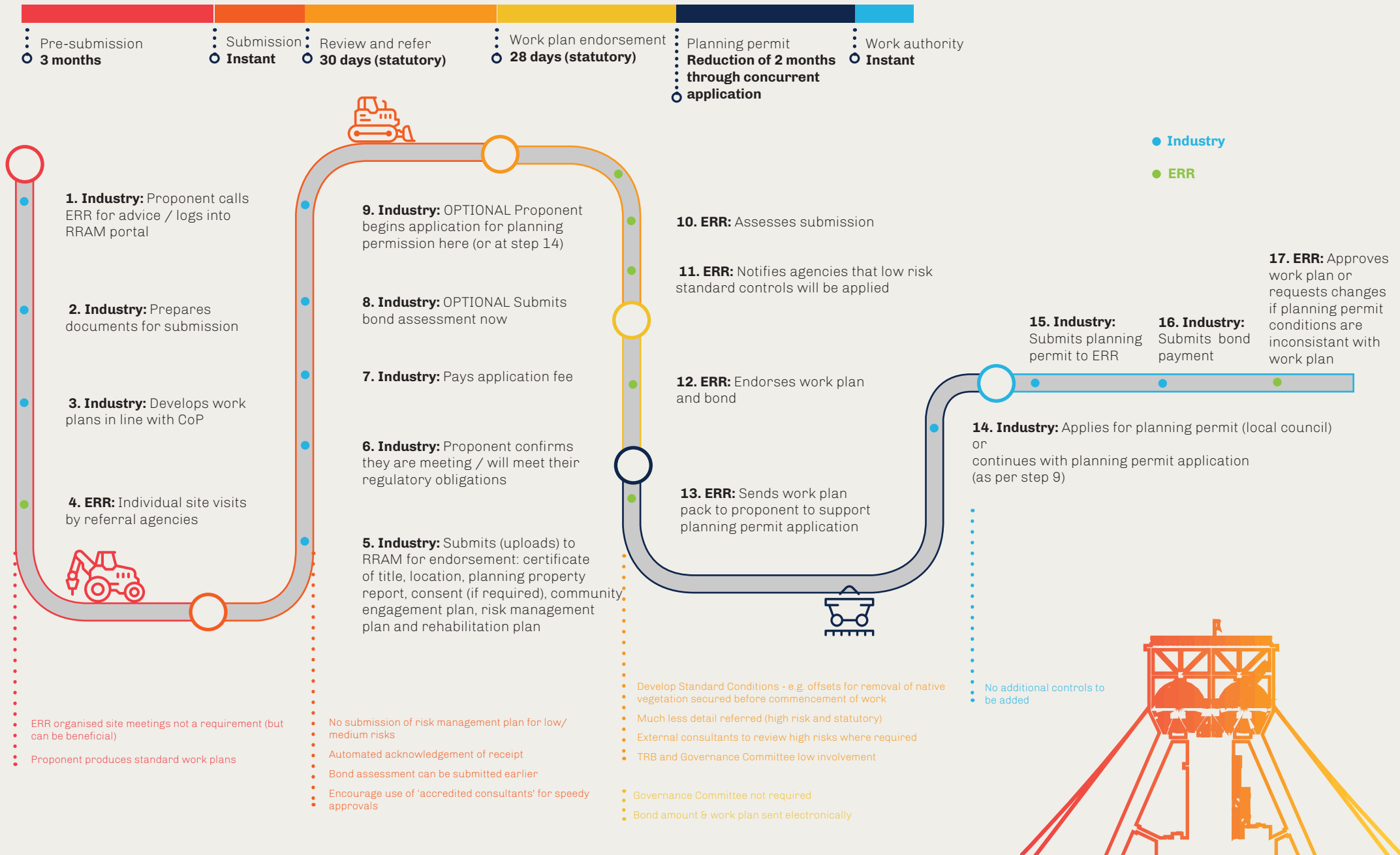
ERR can improve inter-agency collaboration by building on existing institutional and executive level arrangements, to provide a clearer understanding of who does what, reducing the likelihood of mistakes and delays due to poor communication. Relationships should be fostered across regulators through joint training and secondments; updated MOUs and agreements and escalation forum of executives across regulators to address delays or complex cases. Better standard operating procedures in ERR will also assist in collaboration with co-regulators.



Future State: Work plan approval pathway for high risk



Future State: Work plan approval pathway for low risk





SOLUTION

How the solutions work and the benefits they could deliver

SOLUTION: CoP expansion

THE PROBLEM IT SOLVES: The approval process is excessively long and not commensurate with risk

How it works

Expanding the coverage of the CoP

For most mining or extractive operators, the process to receive approval of a new work plan is time consuming, costly, and not commensurate with risk. The solution revises the CoP to make it clear it applies to all operations, regardless of size, scale or complexity. It should set out standard risks and standard controls applying to sites, which should form the basis of a standard operating work plan. With this, all operations would have the option to build these standard controls into their site work plans.

The standard risk management plan should make clear the standards and controls required, both by ERR and its co-regulators, including clear thresholds (e.g. noise levels do not exceed 100 decibels).

The proponent would need to:

- list all relevant regulators
- sensitive receptors and/or categories of risks
- confirm that these are of low and moderate risk, and list the appropriate controls, as provided by the CoP.

Alongside this confirmation, they would be asked to submit a/an:

- certificate of title
- planning property report
- site plan/regional plan
- rehabilitation plan
- application fee, and bond assessment.

The aim of the solution is to acknowledge that low-risk operations can apply standard controls, and that operators are best placed to ensure these are developed. Importantly, this will also provide clarity for industry around the standards they are expected to meet.

Low-risk work plans notified to ERR

The biggest fundamental change should see ERR adopt a truly risk-based approach to regulation. For sites using the CoP, this means a requirement to notify the ERR that they have established a work plan for their site based on the standard risks and standard controls, and consistent with the model risk management plan. It is estimated this choice could apply to approximately 60% of all operations.

High risks assessed by ERR

Operations that have high risks would need to submit a hazard assessment and risk management plan (alongside the documentation listed above). This would be assessed by experts in ERR and focus only on the additional controls above those in the standard, seeing a shorter turnaround for comments, changes and approvals.

The approach to reform

SHORT TERM

Review the legislative environment and receive legal advice around the boundaries of the CoP.

- Define the criteria for low and high-risk operations in consultation with co-regulators. In particular, the definitions and classifications for sensitive receptors should be a priority.
- Develop the list of all standard controls that apply to low and moderate risk approvals.
- Form agreement with DELWP on standard controls for native vegetation (for low-risk).

- Develop internal training programs to update knowledge and train staff on the new risk-based approach ERR will be taking. Ensuring there is common agreement and delivery of this approach will be important to ensuring its effectiveness, and significant resources should be made available to communicate the change.

MEDIUM TERM

- Update risks and controls into the CoP and confirm changes with all parties.
- Once updated, a communication plan should be implemented to update industry on the effect of the changes, including their statutory obligations. Emphasis should be placed on the ease of using the system, while making clear that ERR would focus more effort on compliance in the future.

The potential benefits of delivering the solution

Low-risk operations

We heard from the mining and extractive industries and ERR that operators can take at least 12 to 24 months to pass through the current work plan approval process. This is not only lengthy, but also quite varied (some taking 12 vs others taking 24 months). By expanding the CoP, the time it takes to gain an approval could potentially be reduced by up to five months for low-risk operators, with the CoP application process being much simpler and straightforward. This should also reduce the time variance of the application process. The time savings are in large part due to the following:

- It is estimated that low-risk operators spend six months on average preparing work plans prior to submission. By moving these operators to the CoP, it is estimated the new process would take on average three months to prepare, saving approximately three months in elapsed preparation time.
- Reviewing and refining work plans for low-risk sites is estimated to take on average three months. The new approach could reduce this to the statutorily required period of 30 days, saving on average two months for the proponent.
- The reduction in the time it takes to review and refine a work plan application is partly due to the time it would take ERR to assess an application. Based on estimates provided by an internal ERR review, it currently takes ERR an average of six weeks to assess extractive work plans and 6.5 weeks to assess mining work plans, whereas CoP assessments take 1.5 weeks. By moving low-risk operators to the expanded CoP (estimated to be up to 60% of applications), ERR, could reduce the effort of staff in reviewing work plan applications by 4.5 weeks per application. This time saving could enable ERR to re-allocate staff effort to more strategic regulatory activity, which could include the processing the backlog of applications and focus on more strategic and high-risk cases.

Higher risk operation

- It is estimated that high-risk operations spend upwards of 12 months on average preparing work plans prior to submission. Through these changes it is estimated the new process might take on average nine months to prepare, saving approximately three months.
- Reviewing and refining work plans for high-risk sites is estimated to take on average six months. The new approach could be expected to reduce this time approximately three months, saving on average three months.

SOLUTION: Rationalise requested information

THE PROBLEM IT SOLVES: The pathway requires a burdensome amount of information at a high cost to proponents

How it works

ERR needs to refine the information it asks for from proponents. There is a lot of information currently requested that may not be required under the legislation. This solution refines 'the ask' by helping ERR rationalise the information requested so proponents do not provide information that is not necessary to support effective regulatory decision making.

Audit of material to reflect requirements for effective decision making

ERR should audit what it currently asks from proponents. This could be done relatively quickly. Involvement of representatives from the mining and extractives industries would be beneficial, where appropriate, so their experience can be drawn on to refine what is asked for.

The process would involve mapping all the information requested from proponents and asking:

- Why is this being asked of the proponents?
- For what purpose?
- Does it link to the intention of the legislation and regulations?
- How does it support regulatory decision making?

A simple scoring framework would help to prioritise information requests against each of these questions, allowing ERR to quickly identify areas where 'the ask' could be refined without any detrimental effect on their ability to regulate the sector.

If the CoP is expanded as recommended, there are many areas where 'the ask' could be refined based on the relative risk of a site. In carrying out the audit, consideration should be given to this proposed future state, so that once it comes into force 'the ask' has already been refined to reflect the changes.

Examples of changes could include removing many of the details not necessary unless high risks are involved, the need for all to attend an initial site visit, the role of oversight committees and better understanding of statutory referrals required under the legislation.

The approach to reform

SHORT TERM

- ERR to perform an audit of the information requested from proponents, rationalising requests to the minimum level of information needed to satisfy regulatory obligations. This includes not requesting low-risk site plans, only requesting documents statutorily required and more flexible requirements for site visits.
- Institute a regular review of requested information to ensure ERR only asks for information for effective regulatory decision making and compliance.
- Report on the findings from this audit and develop an implementation plan to update information and guidance. The outcomes contained in the report should be addressed in the solution Improve information flows to operators, to follow.

The potential benefits of delivering the solution

The benefit will be realised through clearer information, better guidance and a reduced 'ask', outlined in more detail in the following solution.

SOLUTION: Better guidance to operators

THE PROBLEM IT SOLVES: There is insufficient and ineffective guidance to operators, which affects the transparency and certainty of the approvals process

How it works

Operators need guidance – guidance on the application process, the requirements they must meet, and where they are tracking in the process. Without it, the process is harder, less transparent and more uncertain. This solution is all about improving guidance to operators throughout the approval process; starting with better information before operators start an application, through to progress updates as they move through each stage.

Improve guidance material

Guidance material is currently only in draft. It is also quite lengthy with the three draft guidance documents an average page length of 117. With the changes proposed in this report, this guidance material will need to be revised. This presents an opportunity to produce clear, concise and accurate guidance to improve the quality of applications. New guidance could be developed from a user perspective – what is most helpful for the industry to assist in developing quality applications. This should help reduce the average length of the guidance material and create material that is tailored for operators.

We recommend taking a modular approach to producing the guidance. This approach would break the current draft guidance into bite-size pieces focused on specific areas of the approval process. This would allow ERR to quickly provide short guidance material. This would maximise the impact of the guidance in the short term and allow ERR to gradually release guidance that covers all aspects of the approval process.

Model risk-based work plans that build in the standard risks and standard controls will enable operators to choose this approach. Guidance on the more detailed information for high risks should also be developed. Guidance material can, for some, feel abstract, so model work plans would be extremely useful for those needing more practical guidance.

Standard operating procedures will also need to be developed to reflect proposed changes. This should take a user-centred approach, with consideration given to ERR staff and their needs for guidance so the procedures effectively guide the actions of staff towards a more risk-based approach to regulation. These standard operating procedures can also include how to work with local councils and other regulators to promote and support better collaboration.

Tracking

Guidance material will go a long way to providing industry operators with the information they need to make an application. When they are in the process, more information is needed so they can keep track of how their application is progressing. We heard from industry representatives that they are frustrated with the lack of transparency and certainty about where a proposal is up to. This solution – tracking – aims to provide the information proponents need as they progress through the approval pathway.

The solution can start simply with a regular email to proponents to provide them with a status update on progress, but should progress to an online platform either through RRAM or a standalone portal. Whatever the platform, it should allow proponents to login, see where they are in the process, what actions need to be taken (by ERR or the proponent) and estimations for when an approval would be granted.

Case managers

Complex and strategic applications need special attention to ensure they progress smoothly through the approvals process and at an appropriate pace given their strategic nature.

Case managers can provide the necessary engagement providing proponents with a single point of contact that would shepherd their complex and strategic application through the approval pathway.

Case managers would be assigned high-risk and complex applications (for example Strategic Resource Areas and/or identified High Priority Projects). The case managers would be assigned in the pre-submission phase of the approval pathway, based on initial contact with the operator. This is to ensure the operator receives the relevant guidance they need to determine whether their application will be successful before they submit, thereby avoiding unnecessary applications and a lot of back and forth on applications that do not meet the requirement. From there, the case manager would:

- liaise with co-regulators to ensure all obligations are communicated and understood
- escalate the application to senior decision makers where necessary
- engage with the operator throughout so they are kept up to date on progress and understand what they need to do at each stage of the process
- engage with councils so they are aware of the application and its designation as a Strategic Resource Area and/or high priority project.

These case managers should be drawn from senior members of the ERR team. These people will likely have the necessary experience to competently deal with complex and strategic cases, and the appropriate level of expertise to effectively engage with industry operators, co-regulators and councils.

Accredited consultants

Mining and extractives operators often draw on consultants to help with applications. At the moment, anecdotal evidence suggests the quality of these consultants and the quality and information and advice they provide varies considerably. ERR should work with these consultants to ensure proponents receive the right information and advice they need to submit quality applications that are likely to meet the requirements of regulators.

Other regulators, notably the EPA, have leveraged consultants playing a similar role. The EPA's model identifies training bodies best placed to provide training to ensure consultants meet an acceptable minimum standard of competency, and certifies them. ERR could adopt a similar approach to ensure consultants preparing work plans have the necessary competencies to carry out the work.

To develop the scheme, ERR would need a competency framework for the 'accredited consultants' and a process for certifying training bodies. Competent consultants would provide industry operators with greater certainty of the standards ERR accepts, and go a long way to reducing the number of resubmission. Reducing resubmissions would save operators and ERR considerable time and money.

The approach to reform

SHORT TERM

- Based on the 'refine the ask' audit, ERR should outline the modules for the guidance material and prioritise them based on industry needs and ERR main concerns.
- ERR should develop initial guidance modules, drawing on a user-centred approach and working with representatives from the mining and extractives industry. As this guidance is developed, internal standard operating procedures can be adapted to reflect the guidance material and RRAM will need to be reviewed to ensure consistency. This guidance material should be published on the ERR website.
- ERR should develop model risk-based work plans as examples for mines and quarries for different risk profiles. This could be commissioned from an external body or created in house, drawing on the wealth of experience within ERR. Involving industry in the development of these model work plans will ensure they can be used by operators, while also drawing on available best practice.
- ERR should begin sending regular tracking emails to industry immediately. This should be a relatively low-cost intervention that would provide immediate benefit to industry. ERR should, at the same time, start investigating whether RRAM has the functionality to track applications through the approval process to understand what is feasible.
- ERR should assign staff to case manager roles for strategic and complex applications, working with those selected for the role to identify training and support needs.
- ERR should develop selection criteria for certification providers and begin to identify a range of potential providers.

MEDIUM TERM

- ERR should continue to develop the guidance modules, reprioritising their development with industry representatives to ensure guidance needs continue to be met.
- Based on RRAM functionality, decide whether tracking is feasible through the current system. If it is, start developing functionality so it aligns with approval process. If not, start scoping alternative tracking systems.

- Work with shortlisted providers to develop scope of the certification process. Initial contact with providers would help develop the concept, which ERR can then tender, with shortlisted providers setting out how they would deliver the process at the appropriate level of quality, with a budget doing so.

The potential benefits of delivering the solution

By providing better guidance and information during the preparation of work plans, proponents would see a simpler and clear process. Importantly both ERR and proponents would be able to target efforts to work more effectively, ensuring a smoother, less adversarial process in the future.

SOLUTION: Better guidance to operators

THE PROBLEM IT SOLVES: There is insufficient and ineffective guidance to operators, which affects the transparency and certainty of the approvals process

How it works

Faster approvals

By offering the proponent the opportunity to begin the planning application concurrent with a work plan application, time can be saved along the approval pathway. Currently, proponents are asked to submit and receive an endorsed work plan prior to applying for a planning permit. With the planning approval process taking several months, the opportunity to apply for both the work plan and planning approvals concurrently has the potential to save several months for the proponent. This would mean testing the appetite with local councils earlier to iron out issues, or simply to begin resolving known issues earlier. DEDJTR would work with local councils to ensure that this would not increase their workload, through collaborative engagement aimed at providing guidance to local councils on DEDJTR's continuing involvement in the process. Consistency of risk assessments and controls through standard work plans should also provide useful guidance for local councils in considering their planning approval processes. DEDJTR could also seek to ensure they are recognised as a Statutory Referral body integrated into the planning scheme. This solution is subject to legal advice.

The approach to reform

SHORT TERM

- Update guidelines for proponents to account for the concurrent option. Develop communication plan for the industry, to be included in the information provided in the previous solution.
- Develop guidance for planning authorities, including communicating the changes and assuring them there should be no impact on work load through the proposed changes.

The potential benefits of delivering the solution

For low-risk operations, the benefit would be saving, over the length of the entire process, 58 days (the statutory timeframe for work plan referral, 30 days, and endorsement, 28 days) by applying for both applications concurrently. This benefit would still allow proponents to provide the same information to local councils and advise them when the endorsement is likely to come – still months shorter than estimated local council decision timings.

For higher risk operations, the benefit is even greater, due to the length both processes would still take. It is estimated that proponents could save at least three months, the future expected high-risk referral and endorsement timeframe.

SOLUTION: Better guidance to operators

THE PROBLEM IT SOLVES: There is insufficient and ineffective guidance to operators, which affects the transparency and certainty of the approvals process

How it works

Inter-agency collaboration could be improved by building on the existing institutional and executive level arrangements in an effort to foster a common language and shared experience across the regulatory environment.

Joint training programs would be established across staff in different regulators around common training modules. This could include training around:

- What are the roles and responsibilities of different regulators (drawing on the already established MoUs)?

- What does a 'good' work plan look like, and how does a regulator use it?
- Initial inspection sites: how can regulators work together at inspections to understand the risks and identify potential points of conflict between regulators?

These joint training arrangements would foster better relationships and empathy across regulators, reinforced through secondments and job swap arrangements.

A regulators' forum was established in response to the Hazelwood Mine Fire Inquiry. This forum will be best placed to identify common training/ secondment opportunities. Key features of the program would be:

- to resolve bottlenecks and manage approvals to improve timeframes for earth resources projects
- to consider policy and process options to streamline approvals across government for earth resource projects
- to provide advice to government about opportunities to improve approvals processes, regulations and legislation for earth resources projects.

Finally ERR should establish a clear escalation pathway for regulator executives, which would function as a 'clearing house' for complex and/or delayed cases. The 'clearing house' would deal with regulatory system blockages, helping to deal with contentious issues, systemic risks and cases with either undue delays or significant complexity. This is a feature of Western Australia's lead agency model.

The approach to reform

SHORT TERM

In the short term, the regulators' forum should:

- Identify priority bottlenecks and co-regulatory approval pain points to make in-roads on the current back-log issues. Where internal policy gaps or common understanding exists, prioritise these for resolution.

- Identify existing training programs and secondments for joint training and secondments with industry operators, and initiate first set of secondments. These will be key to developing common understanding and empathy across regulators and industry.
- Develop terms of reference for a clearinghouse based on Western Australia's lead agency model.

MEDIUM TERM

Joint training and secondments

- Joint training and secondments should be established in early 2018, with pilot programs to evaluate the benefit of the approach. The ERR regulators' forum should use the results from these pilots to determine the best model for training and secondments, with training modules subsequently designed to meet the needs of the range of regulators involved between regulators/agencies, relevant departmental policy areas and regional offices, to experience closer contact with industry operators.

The benefits it delivers

Collaboration will be key for ERR to deliver the proposed changes, with its role as lead regulator of mining and extractives in Victoria enhanced through a focus on structured collaboration. Both the executive clearing house and the ERR regulators' forum should provide certainty to the industry that there is an effective escalation process in place for issues that are cross-departmental, and the improved relationships and upskilling of capability through shared learning would deliver improved service to the industry.





BENEFITS

The potential benefits of implementing these solutions

We heard from industry operators that there would be significant benefit to improving the approvals pathway for both the mining and extractives industries. Not only is the experience frustrating, uncertain and lacking in clarity, it appears to be unnecessarily long, creating additional expense and investment uncertainty. There were four distinct opportunities to improve the experience, without weakening regulatory standards or compromising community expectations, which were as follows:

- Reducing the length of the process and taking a risk-based approach could reduce the length of time and resource involved for both industries and government without increasing the risk to the state.
- Providing clear and more accessible information would result in a better experience for both industries, where they understand what is expected of them and how to take the next step.
- Refining the information ERR asks from proponents so they only provide what is absolutely necessary to progress an application will also significantly reduce the burden on both industries.
- Providing certainty to operators over who, how, and when they need to use risk-based work plans will instil confidence and provide greater clarity about their investment decisions.

These opportunities offer potential benefits to the mining and extractives industries and the regulator, if the recommended solutions can be delivered as set out in this report. The extent to which they are delivered is subject to legal advice on areas that touch on legislative matters, cooperation between co-regulators on the definition of low-risk, and the adoption of standard work plans, and engagement with DELWP on the planning permit issue.

As a summary, these benefits include:

Low-risk operators pass through the approval pathway much quicker.

By expanding the CoP to low-risk operators (estimated to be 60% of all applications), the time it takes to obtain an approval could be reduced by five months. It currently takes operators anything from 12 to 24 months to gain a work plan approval.

Staff time freed up to focus on more strategic regulatory activity.

It currently takes staff six weeks to assess a work plan application, as compared with one and half weeks for the CoP application. By expanding the CoP, therefore, to cover an estimated 60% of applications, ERR can reduce the time it takes staff to review applications, allowing ERR staff to use the time saved to focus on higher risk/complex applications.

High-risk operators can gain an approval within a shorter timeframe.

It currently takes operators anything from 12 to 24 months to gain a work plan approval. By applying standard risks and controls to all operations and only requiring additional controls for high risks, the time it takes to obtain an approval could be reduced by six months.

Mining and extractives operators can have more confidence that existing rights will not be put at risk through the variation process.

The solutions proposed can establish a clear process (subject to legal advice and engagement with DELWP) providing mining and extractives operators greater certainty over when a new planning permit is or is not required.



About Nous

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