



The Fairbane Group

PRODUCTIVITY COMMISSION DISCUSSION PAPER
ON RESOURCES SECTOR REGULATION

21 August 2020



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21 August 2020

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Sent by email to: resources@pc.gov.au

Dear Sir/Madam,

**PRODUCTIVITY COMMISSION CONSULTATION ON RESOURCES SECTOR
REGULATION**

We would like to extend our gratitude for the opportunity to provide a discussion paper to the Productivity Commission Consultation on Resources Sector Regulation by the Australian Productivity Information Commission.

It is imperative now more than ever that the business community is engaged with and new ideas are brought to the table. Government has a role to play in making a more inclusive and conducive environment for businesses to operate.

Our paper will discuss a limited and discrete selection of issues and do not form the entirety of our positions on all related areas of interest.



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About Fairbane

The Fairbane Group (“Fairbane”) is a consulting and private investment group that provides advice and opinions on policy issues to various industry groups and interested stakeholders. Fairbane is the successor entity to a series of consulting and investment groups that date back to the early 2000s. We are experienced in financial markets, legal services, and management consulting. Our operations span internationally and include Australia, the United States of America, the United Kingdom, Canada, Dubai, as well as parts of South-East Asia and Europe.

Fairbane is fortunate enough to have had members work with organisations such as: Deloitte, Ernst & Young, the Australian Government in the Departments of Defence, Trade, Health and Aged Care, the United Kingdom Departments of Defence, and National Health Service, various medium to large companies in industries ranging from Finance, Aerospace, Biotechnology, Communications, Computing, Construction and Resources.

Fairbane is a truly future-oriented organisation with a unique vision for the world. Fairbane’s vision is to push the boundaries and reach out to the horizons of scientific and technological boundaries and do so by ensuring there is the freedom and flexibility available to individual businesses and their industries as a whole to compete and prosper.



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At Fairbane, the world in the year 2020 is seen through the lens of what the world could and may well be like in the year 2100 and 2200. This means encouraging development of new ideas and providing a foundation for the new technologies that come from them.

Fairbane provides advice to various companies and individuals in the media industry, primarily in the emerging sub-markets and emerging technologies and platforms, particularly start-ups. Our expertise comes from a management consulting perspective and from legal advice to clients and partners, and policy advice to various entities.

The Future of Mining in Australia

Australia's abundance in resources, is one of the key factors that has made it known as 'the lucky country'. It is because of Australia's rich natural resources, that mining and its regulatory environment will continue to increase its attention from not only primary stakeholders such as the resources industry but from secondary and tertiary stakeholders, such as unions, "environmental groups" and other minority interests – who see the great benefits flowing to the people who take the risks to advance civilization as an opportunity to take their perceived entitlement to that prosperity.

Regulation therefore, stands in an awkward place in justifying itself as a means of fairness and overall integrity of an industry and a striking a balance with ensuring that society as a whole benefits equitably from the prosperity of the industry that it regulates.

In the context of the mining industry, Australia continues to have a strong appeal for investment in mining, particularly in Western Australia, and increasingly so in the Northern Territory.¹ This is not withstanding the slide in the perception of mining companies of the policy environment being less conducive to investment.²

¹ Fraser Institute Annual Survey of Global Mining Companies, p 20.

<https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2019.pdf>

² Fraser Institute Annual Survey of Global Mining Companies, p 13.

<https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2019.pdf>



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Undoubtedly this is a natural consequence of an increase in political activism by minatory interests, as well as increased political apathy of the middle class and lack of political will to properly advance the interests of business and promulgate the benefits of a strong mining industry to an Australian public.

A simple recommendation would be to create more of an incentive for mining companies, rather than burdening them with regulation, introduce opportunities to operate more freely but at the same time incentivise spending on communities, spending on under-privileged groups, encourage more integrated engagement with communities that mining companies operate in by providing longer term connections with the locale such as schools, tourism development, support programs for local work and local development.

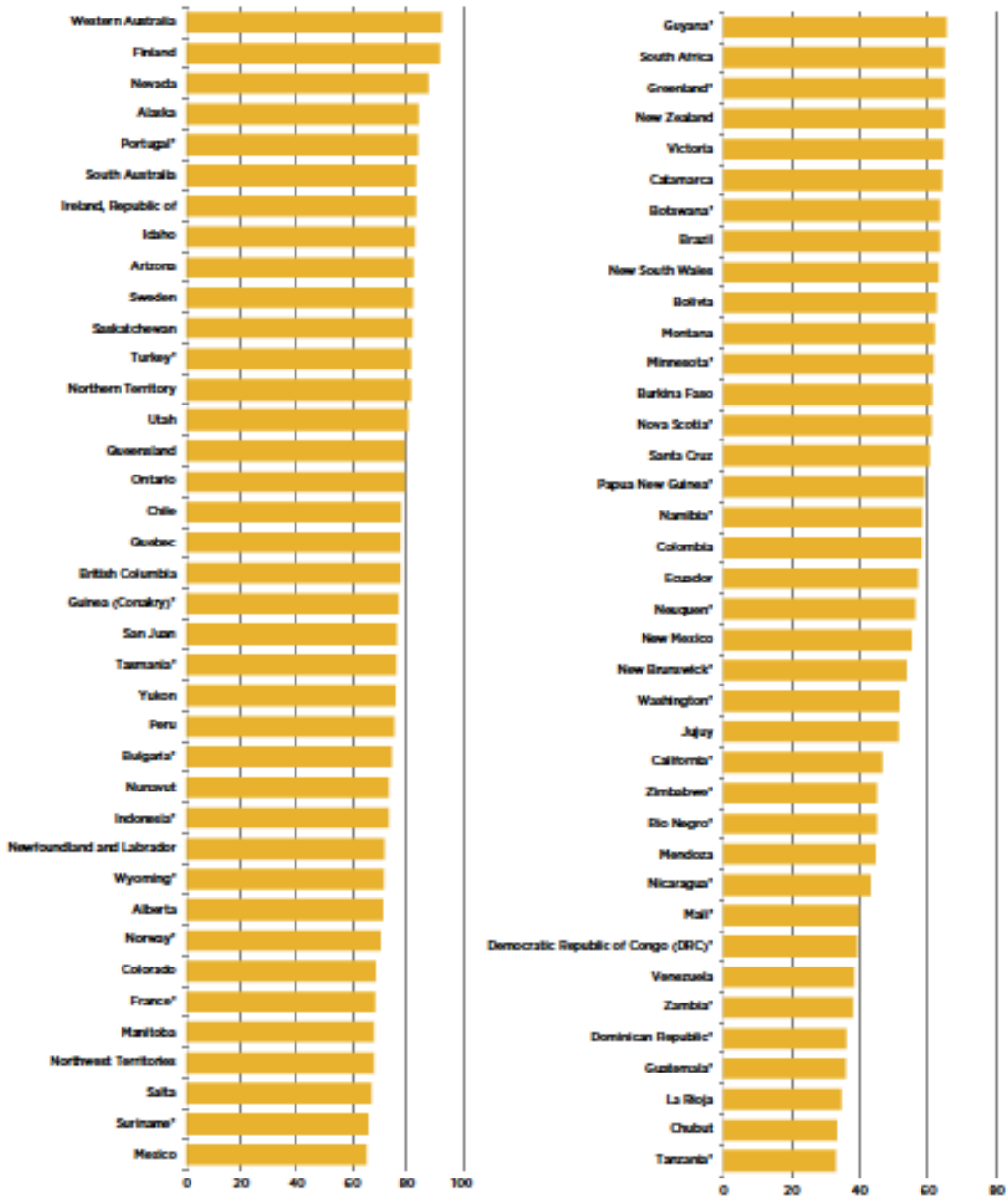
However, Australia is losing potential investment opportunities within the mining industry due to over-regulation as a result of the policy landscape. This is directly a result of unnecessary environmental regulation, land title laws, and general corporate and taxation regulation. There are not many legal subject matter areas that apply, but there are a plethora of laws and regulations that mining companies are subject to. Even when they comply or conduct themselves ethically with corporate social responsibility and triple-bottom line considerations, they are bombarded with unsavoury attention from protestors who have no interest in protecting the environment much less advocating for its conservation.

Whilst Australian jurisdictions such as Western Australia and Northern Territory remain attractive this has been put under pressure from the changing political and policy landscape. The prosperity that these regions and by consequence Australia as a whole will enjoy is likely to diminish if more restrictive and unappealing regulation continues to be put in place which does not assist in better industry but only deters new investment.

The diagram on page 6 demonstrates the changing world perspective of Australia as a mining destination.



Figure 3: Investment Attractiveness Index



* Between 5 and 9 responses



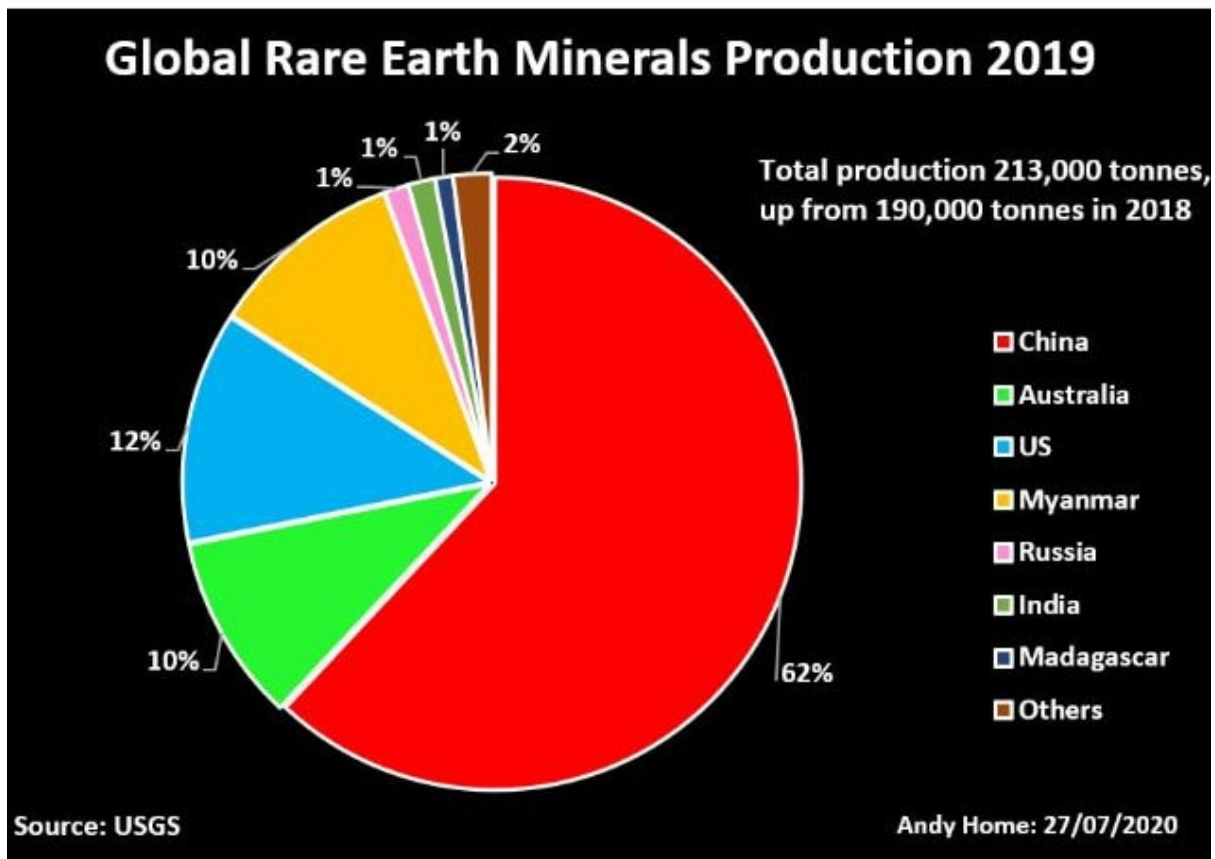
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Strategic and Geo-Political Importance of Mining

Another consideration in the future of mining in Australia is the contextual position in which it sits in the world and the strategic and geo-political importance mining has. The position of rare earth metals in the production of military hardware has seen a race for their acquisition and development. Australia sits in a position of strategic importance as we have considerable deposits of rare earth metals. It is relevant to note that just one F-35 Lightning II Joint Strike Fighter requires 417k kilograms of rare earth metals. An Arleigh Burke Class Flight III Guided Missile Destroyer requires over 2.3 tonnes of rare earth metals. A Virginia Class Nuclear Submarine requires a staggering 4.2 tonnes of rare earth metals. All of the above are the spearhead classes of air superiority, naval surface and naval submarine warfare capabilities of the United States. To spell it out.



China and Russia are well resourced in rare earth metals. In relative terms, the USA is not. Australia has both an opportunity and an obligation to ensure that both its own interests and



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the interests of those who will protect liberty and freedom – are able to provide an appropriate geo-political counterbalance.

The USGS identifies the great disparity in the resource production. This does not take into account actual resource deposits. It should also be qualified that rare earth metals are used in many consumer staple products such as mobile phones, computers, appliances, micro-chips and semi-conductors which goes far to explain China's dominance, but the military context must not be ignored.

There are other examples beyond just rare earth metals. Gold and silver, for instance has been accumulated by all BRICS countries with Russia leading the way in per capita terms. India and China in nominal terms have expanded their gold reserves and are reluctant to even report it. Undoubtedly there is a move in the world's financial markets that will see US bonds supplanted as the primary currency-backing mechanism and Australia needs to be cognisant of these changes and position itself in terms of precious metal production but also reserve accumulation.

In the same way Australia has not stockpiled strategic oil reserves, we would like to see a Strategic Precious Metals Reserve, because at current Australia has no hedge against a global currency crash or default. These are very serious risks that need to be on the radar of Australian policy makers and in open discourse.

Supply Chain Integration

Whilst outside the scope of any review related to the mining industry, the relevance of mining to supply chain management cannot be overlooked. Regulation should encourage Australia to have a business landscape that is conducive to investment and retention of intellectual property and real property assets that support a total supply chain – from ore to final product.

Before China, this kind of integration was just a theoretical construct found in Marxist ideologies of communal production galvanising the populace to produce products from scratch to end product. The closest example before the rise of China was the Soviet Union's ability to take iron ore from Siberia cart across a country 5 times the size of Australia and produce



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upward of 10,000 T-35 tanks a week which was the only thing (apart from a bitter cold winter) that stopped Hitler from entering the Kremlin in 1941.

In the 21st century that productive capacity has been seen in China's ability to take complete control of its populace when needed and mobilise them toward production. Part of this success has been to fully integrate their supply chains. The virus outbreak of late 2019 and 2020 has shown that supply chain management is vital to survival and prosperity. There is a balance to be struck with the counter-veiling benefits of global trade.

In the context of mining, Australia should position itself as being able to mine the core materials needed and to some, and if not all, or at least as best as it can, produce the end products that are key to its survival as a sovereign nation. As it stands the political class in Australia has subordinated that sovereignty through economic subservience to other sovereign nations. This is evident from the shortage of medical supplies, basic products such as Panadol for babies, wet wipes, masks, and hand sanitizers in the early months of 2020.

As much of a crisis as the media and governments have claimed had (and perhaps claim still is occurring) around a virus pandemic, one can only imagine what kind of crisis would have transpired had Australians lost access to mobile phones during the last year.

Regulation of mining should include incentives for local miners to link with local manufacturers. This means bring robotics and AI technologies into and across both resources and manufacturers industries. Policy could encourage these things. Policy could guide rather than coerce. Policy could facilitate rather than control.

If the fall of every empire since Rome need remind us, controlling people will make them want to break free from those shackles of oppression. Empowering and inspiring them will make them want to give back more to society and to humanity.



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An opportunity to Revolutionise Regulation

One of the major indications from industry groups has been the reduction in the company tax rate.³ Australia is already uncompetitive compared to other OECD countries with company taxation only higher in countries such as France and Germany. This does not include the plethora of other taxation instruments: GST, FBT, CGT (a sub-species of income taxation), royalties, excises, and state taxes such as payroll, stamp duty, insurance schemes, which all form part of the regulatory environment.

This is an opportunity to revolutionise taxation as a concept. The current trend towards increased taxation (notwithstanding a slight decrease in company taxation in Australia which is commendable) is not sustainable. Overall, there is an increase in tax and regulatory instruments each compounding to create a less and less appealing environment to do business.

One critical note on taxation – it is not only the rates of taxes and the vast number of them – it is the administration of those taxes – and the cumulative effect of having to administer each one by way of a separate system or sub-system whether through cloud computing and advisors and specialists. Each type of tax effectively requires a separate sub-system, separate forms to be filled out, separate communication with tax authorities/regulators, separate advisors or consultants and separate dedication of scarce business resources to administer.

For a regulator it is hard to fully comprehend, fully appreciate and fully empathise with a business who has to be accountable to its costs (and if not run a loss) and time spent administering regulations and taxation, draws precious valuable time and funds to fight to survive in the real world.

The only tangible and ostensible benefit of regulation is to larger players which can absorb these costs owing to their economies of scale. The impacts on society and the environment are all but self-regulated by the information and communication that reaches the market and

³ Minerals Council of Australia, Productivity Commission Report, 2019, pp 3 and 8.



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broader society and those community expectations that courts think they ensure are actually resolved in the decisions of the consumer.

The real cost to businesses far exceeds the nominal amount of adding all the taxation (and other non-tax regulation such as ASIC costs). In nominal terms those costs can be 40-50% of small business operations and at best 30% of larger businesses' operations. It is no wonder they are continually creating offshore means of operating and "externalising" their tax obligations.

A more efficient system would dispense with additional laws to regulate and additional taxes, and rather create incentives for benefits to flow to citizens based on productivity, based on potential to contribute to society.

The mining industry is such an emphatic leader in technology and process evolution. Countless anecdotal examples could be drawn on from each and every time a mining engineer opens their mouth and comments on ways things can be done better. This is a golden opportunity for the productivity commission, in its very design, to provide an open door to a more productive and business friendly environment.

The higher taxation and regulation is the less incentive there is for businesses to invest in Australia, and more to that same point, for small businesses in the mining space such as junior mining explorers up to smaller mid-tier producers, the cost of being hit with taxes and managing the cost of additional regulation at a time when they are just making breakeven can have a cumulative effect on their profit-cycles, especially with their constant exposure to underlying commodities' prices. This is with the off-setting effect of government grants and other taxation mechanisms.

The suggestion with taxation and regulation is to streamline it as best as possible. Less types of taxes, less types of regulation. It is in every stakeholders' best interests to have a stable environment but regulation as it stands does not always provide a level playing field nor does it ensure that market integrity and stability that it seeks to provide.



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Space and Asteroid Mining

Another area that should be considered is asteroid mining and this should form part of the policy framework such that for once in history, may a law not lag 20 years behind industry and science and actually have a framework in place to efficiently manage and thoughtfully consider the integration of extra-territorial mining and how best to support and facilitate Australian companies to benefit from this.

Examples could be forming a Joint Space and Mining Task Force to explore the necessary framework for Asteroid Mining and how best Australia's Space Industry (and we desperately need to encourage this industry more) can work together with the Mining industry to achieve the most efficient and accountable regulation possible.

The actions and operations of businesses in space will always to some extent be governed by what is happening back on earth, but like the Wild West of the 1800s the Frontier of the 21st and 22nd century will be the Wild West of its time, there will need to be a strong customary law system or ethical framework with which to operate in.

This needs to be thought out and mapped out now before asteroid mining itself explodes on to the mainstream of mining and space business operations.

Asteroid mining seems as far-fetched today as travelling back and forth from London to New York was just a couple hundred years ago. In a couple hundred years from now traveling back and forth from the Earth's Moon or Mars will be the transatlantic trip of 22nd century.

Asteroid mining sounds incredibly simple but it is the end goal of what it encourages humanity to become that must remain in sight:

“...land robotic drilling machines on the surface of the asteroid and begin harvesting the resources - flying them back down to Earth's surface periodically. Committing to this method of mining, or essentially -- space mining... but also



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propels humans forward as a civilization that is now utilizing [sic] the resources in our solar system.”⁴

UK-based Asteroid Mining Corporation plans to mine the Asteroid 1986DA by 2027 so this process is already started and Australia needs to be at the forefront of it.

Recommendations

- The first recommendation would be to provide some exemptions to various taxes to mining companies to allow them to operate with less administrative burdens. Whether that is CGT or FBT or one of the many state taxes. Removing that requirement will not necessarily reduce their tax burden overall but it will reduce their administrative burdens allowing them to operate more efficiently and more productively so as to be more profitable and provide more tax revenue to Government.
- Reverse taxation instruments are another option that operate in the form of deductible incentives or put another way – incentivised deductions. This could include providing super deductions of 200% on mining companies expenses that are directed at community engagement, schools or VET learning institutions, other industry in the locations that they are operating.
- “Soft” regulation in the form of a “Guidance Task Force” for Space and Asteroid Mining, which could be integrated with Space Industry leaders so as to provide a framework and advance the interests of both industries to have Australia lead in asteroid mining.
- Supply Chain management should feature in regulatory considerations, rather than regulating to control, policy should regulate to encourage and incentivise, and provide links and connections and help integrate mining with the later parts of the supply chain in manufacturing and export. This is not hard to do, it just needs to be lead by business people not bureaucrats.

⁴ <https://www.tweaktown.com/news/74542/heres-how-space-mining-could-be-the-solution-to-pollution-on-earth/index.html>



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Final Comments

We want to again express our gratitude for having an opportunity to comment. Australia is at a unique crossroads, not so much as a consequence of a global virus pandemic, nor the economic challenges that Australia faces as a country, or even on account of unprecedented dilutive monetary policy that has followed, but rather the once-in-a-generation geo-political sub-plot that will see Australia take a greater role in its role as a regional Asia-Pacific leader and a global sub-superpower.

As Australians we are not ostensibly proud of what we have achieved as a nation, as a group of people, who have come to this island (some came 40,000 years ago before it was even an island) but whom have made this beautiful land what it is today.

We should be prouder of that fact, and we should also not be shy of taking the opportunity to be something more, something greater. That humility is somewhat engrained in our sun-bathed culture and lifestyles and in that regard, we do appreciate what we have.

However, the world is constantly changing and both technology and geo-politics requires us to ensure that industries such as mining be seen as critical industries and the regulation that surround it be respectfully limited so as to allow business to operate effectively and efficiently.

A final thought – the term “digger” for which the Australian soldier is colloquially known as came from the first world war where accounts of British soldiers both identified Australians as having volunteered from mining towns, and they were known for their ability to dig the trenches that were so iconic (albeit now like the war and those who fought it – forgotten), but history should enlighten us with wisdom and respect for the past:

Australia has mining in its DNA, and regulating it carefully, thoughtfully and respectfully is important to the vibrance and prosperity of the nation as a whole.

We would welcome the opportunity to both write and speak to the issues raised in this paper so any further discussion or public hearing would be gratefully appreciated.



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If you have any questions or wish to invite us to talk on any issues, we welcome any further consultation. You can contact us at office@fairbane.com.au.

Yours faithfully

Francois “Frank” Brun

Director

B Bus Com, B Laws (Honours), GDLP, M Laws

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