

8 June 2011

Mr Antony Nolan
Senior Policy Officer
Department of Primary Industries
GPO Box 4440
MELBOURNE VIC 3001

Dear Tony,

RE: MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 REVIEW

I refer to the Mineral Resources (Sustainable Development) Act 1990 review currently in progress and in particular the phase two of the review for which discussion papers were sent out to various stakeholders on Wednesday 11 May 2011 seeking their comments.

The attached documents are the Construction Material Processors Association comments on these discussion papers.

We thank you for the opportunity to comment on the discussion papers and would be willing to discuss our comments, concerns with the relevant staff at their convenience.

Yours sincerely



Ron Kerr
Honorary CEO

Executive Summary

The aim of the CMPA has always been to ensure that market entry is not restricted and that regulatory burdens are not placed upon the industry that ensure only those with unlimited liability have a possibility of participating.

The CMPA members are very concerned at present at the future of our industry. The costs to comply with current regulations and the enormous costs involved in applications and variations are having major impacts on our industry. There is clear evidence that the industry is not taking up the challenge alone and this is reflected in the shortage of new Work Authorities over the last ten years, and supply shortages throughout Victoria.

However, the CMPA's experience with the amalgamation of the EIDA into the MR(SD)A showed the government had no respect for the impact the amalgamation would have upon the extractive industry and was only interested in its own cost reductions. The extractive industry picked up a higher risk profile in being associated with mining, and also picked up additional regulatory obligations (particularly in terms of community engagement and the release of rehabilitation bonds).

Any further amalgamation must take into account that approximately 90% of EIWA managed by the DPI are small to medium sized businesses and there is no evidence of risks to justify further increased regulatory burdens.

If we ended up with regulations that are easier to understand and apply and actually result in saving to the industry and consequently the consumer, then there would be some sense in all the papers and all workshops and meetings that have been happening in this MRDA review process.

Key proposals in this submission are summarised below:

Lead Agency

The CMPA is supportive of a Lead Agency role performed by government enabling the central management of EIWAs. This role implies leadership and would require the following objectives:

- A strong stand in encouraging the presence of multiple material supply options across markets;
- Identifying and protecting the future stone resources of Victoria;
- Manage and placing a monetary value on extractive reserves (i.e. in a similar fashion to accounting of native vegetation)
- Coordinating and tracking the application process to its conclusion within committed timelines; and
- A new culture which supports the essential nature of the extractive industry to the Victorian economy.

The Lead Agency will need to be funded appropriately and outcome based to ensure it is a highly skilled and efficient operating unit. It must not result in additional red tape being placed upon the industry.

Work Plans, EIWA and Planning Permits

The work plan seeks far too much commercially confidential information, resulting in technical challenges being generated from the work plan through the appeals process, discrediting the application and driving up the cost of the application.

CMPA Submission – MR(SD)A Review Phase 2 Discussion

The CMA proposes that the work plan should only contain a physical plan demonstrating the site's proposed activities. An agreed industry/government standard compliance tool would then be attached to the work plan.

The CMA proposes that the EIWA is changed to:

1. Address matters pertaining to the title; and
2. Facilitate an agreement between the EIWA holder and the DPI that the former agrees to comply to the approved work plan and standard compliance tool (as outlined in response 2.2.a)

The DPI must therefore clearly define those items required on the work plan and issues required by both the DPI and local Government reviewed so that only one authority is managing these. If this proposal is taken up, then many items currently required on the work plan, Planning Permit and EIWA would be addressed by the compliance tool and would therefore not be duplicated.

Work plans should not automatically "sunset" after a set period of time.

At the screening meeting with DPI and referral agencies, the DPI should issue an EIWA number. This date should then be set as the date from which the DPI enacts temporary protection of the resource against non-compatible planning decisions and protection against legislative changes.

Committed timelines for each phase of endorsement and referral authorities are required so applicants can develop a sustainable business plan.

It would also be appropriate that all previously negotiated work plan conditions not associated with any variation are exempted from that variation process.

Statutory Endorsement

Firstly the CMA is concerned with the statutory endorsement process in that:

1. Endorsement may not be forthcoming and application to VCAT required before the Planning Permit is sought; or
2. Initial goodwill by referral agencies to endorse may become tainted following challenges at VCAT during the Planning Permit process; and
3. The financial support and willpower to manage and oversee this process may not be available to the DPI.

We would recommend reading this submission in its entirety before looking at specific Discussion Papers or questions.

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Discussion Paper 1. Lead Agency Approach

1.1. Lead Agency

- 1.1.a. *Should DPI take a clearer lead agency role in relation minerals and extractive approvals, including development of a comprehensive Gantt chart showing approvals requirements from all Government Departments?*

The CMPA is supportive of a Lead Agency role performed by government enabling the central management of EIWAs. This role implies leadership and would require the following objectives:

- A strong stand in encouraging the presence of multiple material supply options across markets;
- Identifying and protecting the future stone resources of Victoria;
- Manage and placing a monetary value on extractive reserves (i.e. in a similar fashion to accounting of native vegetation)
- Coordinating and tracking the application process to its conclusion within committed timelines; and
- A new culture which supports the essential nature of the extractive industry to the Victorian economy.

The Lead Agency will need to be funded appropriately and outcome based to ensure it is a highly skilled and efficient operating unit. It must not result in additional red tape being placed upon the industry.

It is necessary that there is separation between the DPI's regulatory roles and this Lead Agency role in the public arena. The DPI's regulatory powers and their management of the EIWA process needs to be better articulated on a regular basis through both training and literature made available to all referral agencies especially local Government and VCAT.

On a footnote, based on the CMPA's discussions with its members the prior warning of the CMPA of an impending material shortage has eventuated. There is currently a severe shortage of material in the Melbourne supply area resulting in material not being available for concrete plants and earthworks contractors.

- 1.1.b. *Should there be statutory recognition of DPI's lead agency role?*

As per the above response, the Lead Agency model provided by the CMPA would require statutory recognition, but this role will not placate the number of stalling tactics that can be undertaken by objectors. The CMPA would need to understand the DPI's model of Lead Agency and its aim and purpose before making firm comment.

- 1.1.c. *Is there a need for DPI or the Minister to publish additional guidance material on its role as lead agency, including the facilitation services to be provided and in what circumstances?*

As per response 1.1.a.

Discussion Paper 2. Work plans and work authorities

The amalgamation of the former *Extractive Industries Development Act* with the *Minerals Resources Development Act* was heralded by the previous Government for its significant achievements in reducing red tape in licensing and regulatory administration. For the extractive industry, however, the much-promoted new legislation has in fact not minimised controls but has caused increased red tape¹. If any area requires simplification and revision it is the work plan and work authorities' area which is fundamental for the future extractives industry prosperity in Victoria.

2.1. Common work plan provisions for minerals and extractives

2.1.a. *Should the work plan provisions for mining and extractive industry be common?*

Our experience with the amalgamation of the EIDA into the MR(SD)A showed the government had no respect for the impact the amalgamation would have upon the extractive industry and was only interested in its own cost reductions. The extractive industry picked up a higher risk profile in being associated with mining, and also picked up additional regulatory obligations (particularly in terms of community engagement and the release of rehabilitation bonds).

The economic impact assessment of these changes (i.e. community engagement) was built around developing a plan, and a cost was declared by the DPI, but that is only a minuscule component of the total cost and this is not appreciated by government.

As such any further amalgamation must take into account that approximately 90% of EIWA managed by the DPI are small to medium sized businesses and there is no evidence of risks to justify further increased regulatory burdens.

Committed timelines for each phase of endorsement and referral authorities are required so applicants can develop a sustainable business plan.

At the screening meeting with DPI and referral agencies, the DPI should issue an EIWA number. This date should then be set as the date from which the DPI enacts temporary protection of the resource against non-compatible planning decisions and protection against legislative changes.

2.1.b. *If so, which would be the better model for common provisions – the extractive industry provisions or the mining provisions?*

As per above response.

2.1.c. *Are there alternatives?*

Any alternative would have to guarantee a better outcome than what is presently in place. The work plan seeks far too much commercially confidential information, resulting in technical challenges being generated from the work plan through the appeals process, discrediting the application and driving up the cost of the application. Approved EIWA holders are presently unwilling to undertake variations as the cost, complexity, and unknown, which will further exasperate the state's stone shortage

¹ The CMPA's concerns are discussed in detail in our submission to the VCEC's 'Inquiry into Victoria's Regulatory Framework' available from www.vcec.vic.gov.au or from the CMPA

2.2. Role of work plans - work plan requirements and triggers for variations

- 2.2.a. *Is there a need for work plans for mineral exploration, mining and quarrying operations? Is the expense and time involved in work plan preparation and approval warranted by the benefits afforded through linkages to other approvals and the clarity it provides on the work that has been approved?*

The work plan should only contain a physical plan demonstrating the site's proposed activities. An agreed industry/government standard compliance tool would then be attached to the work plan.

The DPI must therefore clearly define those items required on the work plan and issues required by both the DPI and local Government reviewed so that only one authority is managing these. If this proposal is taken up, then many items currently required on the work plan, Planning Permit and EIWA would be addressed by the compliance tool and would therefore not be duplicated.

It would also be appropriate that all previously negotiated work plan conditions not associated with any variation are exempted from that variation process.

- 2.2.b. *Could work plans be replaced with a general "duty of care"?*

As per above response.

- 2.2.c. *Should work plans be made more generic and risk-based? What changes would be required to the Act or Regulations to affect this?*

As per above response.

- 2.2.d. *Would this approach reduce the need for work plan variations and what then should trigger such variations?*

Alterations on the site pertaining to reserve extensions would be seen as the primary trigger for variation as off-site issues (i.e. hours of operations) would be nominated within the Planning Permit, not work plan.

- 2.2.e. *For exploration, can area work plans be more widely used to reduce documentation requirements and the need for work plan variations? What changes would be required to affect this?*

As per response in 2.1.a. Extractive industry exploration does not and should not require a work plan.

- 2.2.f. *Should approved work plans automatically "sunset" after a period, so that the work plan must then be refreshed to meet modern standards?*

Work plans should never automatically "sunset" after a set period of time. There is no evidence to suggest that existing Work Authorities which have not been reviewed are causing any problems or concerns to the surrounding environment.

2.3. Alternatives to work plans – extending use of a Code of Practice

- 2.3.a. *Should the current exemption from work plan requirements applying to small quarries be extended to small mines?*

The CMPA would be interested to know how many of the small quarries operating under the code are assessed as compliant.

- 2.3.b. *Could the exemption from work plan requirements be more broadly applied to quarrying and mining operations, based on impacts and risks, without reducing regulatory standards or overall approvals efficiency?*

As per response in 2.2.a

- 2.3.c. *Should the definition of low impact exploration be changed to focus on impacts and risks rather than exploration activities? If so, should this be achieved statutorily by amending the definition in the MRSDA, or administratively by use of the existing Ministerial agreement mechanism?*

As per response in 2.1.a. Not applicable to the extractive industry.

2.4. Consistency of work plan approvals and statutory endorsement processes

- 2.4.a. *How should the provisions relating to approval of mining and extractive industry work plans and variations be changed to make them simpler and more consistent with the statutory endorsement provisions?*

Firstly the CMPA is concerned with the statutory endorsement process in that:

4. Endorsement may not be forthcoming and application to VCAT required before the Planning Permit is sought; or
5. Initial goodwill by referral agencies to endorse may become tainted following challenges at VCAT during the Planning Permit process; and
6. The financial support and willpower to manage and oversee this process may not be available to the DPI.

Putting that aside, refer to response 2.2.a.

2.5. Work plan process where an EES is prepared

- 2.5.a. *Should a work plan be required where an EES is prepared for mining and extractive industry projects?*

A work plan as described in response 2.2.a would be needed to prepare an EES

- 2.5.b. *Should the requirements of the work plan (mining or extractive industry) be modified where an EES is prepared?*

If applicable.

- 2.5.c. *If a work plan is required should it be part of the EES process and exhibited with the EES document?*

In most instances this would be happening at present.

2.6. Mining work authority (WA) and extractive industry work authority (EIWA)

- 2.6.a. *Should the formal grant of a WA be required? Could it be replaced with a checklist of requirements that must be satisfied before mining can be undertaken?*

Not applicable to extractive industry

Discussion Paper 4. Stone

Historically, the government has had a commitment to registering future resources; and the DPI must now pick that responsibility as per our response in 1.1.a.

The Extractive Industry Interest Areas (EIIA) currently designated by DPI are too broad scale and vague to be of any practical use and they still provide no planning protection. The EIIA's may serve as a starting point for further refinement to viable resource areas for planning protection. This refinement process should involve a committee comprising DPI, Industry, Vic Roads and DPCD.

4.1. Stone stewardship and the identification and protection of stone resources.

Another very important consideration for stone resource protection is the ongoing issue of maintenance of buffers. Quarry's, especially around the outer fringe of Melbourne, are increasingly threatened with encroachment from ever expanding residential subdivisions. The rights of the existing extractive industry need to be recognised by the local planning authorities with inappropriate land use adjacent to existing quarries limited. There are many examples of specific industries working cooperatively within an extractive industry buffer area. Buffers do not have to be sterilised, unused land. It is considered vital that any required buffers be maintained if a change use in the vicinity of the extractive industry is proposed and that sensitive land uses are not permitted within the defined buffer without the consent of the extractive industry proponent.

4.1.a. *Is further protection required to prevent sterilization of stone resources close to major markets?*

Yes.

4.1.b. *Should industry be required to report stone reserves held under current EIWAs and EIWA applications?*

The confidential nature of the information will tend to make it difficult to secure this information. Secondly, this can only take into account approved and proven reserves which are categorised into end use classifications to an agreed standard.

4.1.c. *Should government take a greater role in the identification and protection of stone resources?*

1.1.a.

4.1.d. *What role should industry take in the identification of stone resources? What forms of planning protection could be applied to stone resources?*

Areas accessible to a EIWA application at a minimal cost are so scarce that there is little point in industry participating any longer. Looking at land that is sterilised (i.e. watercourses, roads, houses, native vegetation, aboriginal artefacts, national parks, and local government overlays) and overlaying geological maps results in almost no areas suitable for resource extraction into the future.

4.2. Search for stone provisions

4.2.a. *Are the searching for stone provision required in their current form?*

Only apply to Crown Land and should be kept.

Discussion Paper 5. Financial Assurance

This discussion paper has not been included as part of this set of papers.

Discussion Paper 6. Enforcement

In relation to annual returns, it is absolutely vital that the requirement to get a statutory declaration is removed. Even tax returns do not demand this!

6.1. Inspector powers

No comment

6.2. Enforcement tools

As per response 2.1.a

6.3. Penalties

As per response 2.1.a and keeping in mind that many EIWA holders are not large businesses, penalties need to be reflective of the ability of industry to pay.

Discussion Paper 7. Native Vegetation

The CMA's members are deeply concerned about the impact of the native vegetation management framework upon their businesses. These concerns have been raised with the Department of Sustainability & Environment and the Department of Primary Industries on numerous occasions without a clear or sustainable resolution.

The native vegetation management framework is forcing our members' out of this industry as a result of:

- No clear, commercially attainable arrangements or outcomes
- Complex interpretations requiring exorbitant legal and consulting fees throughout the site life-cycle for all business sizes
- An inability to consider the positive environmental benefits of accessing the resource resulting in large, highly valuable sites being locked up.

7.1. Mineral exploration

7.1.a. *Are alternative arrangements to managing native vegetation disturbances resulting from mineral exploration activity required?*

Not applicable to extractive industry.

7.1.b. *What alternative solutions would maintain the objectives of the framework?*

The objectives of The Framework are not met by the current arrangements. The current arrangements cause an expensive, distorted, counter-productive environment for the conservation of 'Native Vegetation'.

7.2. Offset Arrangements

7.2.a. *Is more flexibility required with the current offset arrangements for native vegetation disturbance by mineral and extractives activities?*

NO and YES. Offsetting as a trading concept should cease.

7.2.b. *What options would maintain the objectives of the framework, and importantly the no net loss principal, while providing an offset approach that is more flexible and streamlined for the mineral and extractives industries?*

The 'no net loss principle' is paid lip service but does not occur. Almost all transactions involved in 'Net Gain' under The Framework have a net tangible loss of 'Native Vegetation' in perpetuity; transactions achieve 'Net Gain' only through intangibles.

Discussion Paper 8. Aboriginal Heritage Regulations

The cultural heritage legislation applies similar infringements on land ownership as native vegetation discussed earlier. That is, the regulatory demands of the cultural heritage legislation impose significant risks for landowners and ownership no longer assigns rights to the landowner but shares these rights with potential claimants under the legislation.

The Association infers no disrespect to the recognition of the country's heritage, and in particular aboriginal heritage. A balanced regulatory approach to regulation of this important aspect of the State's culture will see respect for all parties, the heritage of the country's forebears, alongside respect for current and most importantly, future generations. It is not a sustainable argument that bestowing respect for earlier generations at the expense of future generations is a balanced regulatory approach.

The CMPA has made comments on sections of the *Aboriginal Heritage Act* that need revision, refinement or simply need to be removed³ and will continue to do so. The initial costs of AAV investigations were initially estimated by the DPI to be \$4-8,000 for a desktop study. Now a desktop study is \$25,000 and a complex study costs \$120,000. A recent similar "desktop" study involving a sand deposit has cost \$88,000 and is unfinished.

Our members are extremely concerned about this legislation due to it's:

- Costs of compliance (i.e. far more demanding, time-consuming to obtain, and the results more difficult to predict)
- Unpredictable and inexact nature of the assessment process

These make the purchase (or lease) of land for extractive operations a black hole for a proponents risk capital that can quickly exhaust investment interest.

In view of the impact of the cultural heritage requirements it is proposed that compensation clauses also apply in the cultural heritage legislation where a landowner needs to spend money complying with the legislation merely to be able to conduct business for which the land was purchased. Compensation should be set at the highest value use of the land.

8.1. Mineral Exploration

8.1.a. *Should drilling works inclusive of site levelling and construction of sumps be excluded from the definition of high impact activity?*

Yes

8.1.b. *Alternatively given the AH Act's link to other authorisations, would a new category / definition for exploration works involving limited earthworks to undertake exploration drilling to separate these activities from activities involving more broad scale clearing be useful?*

Not applicable to extractive industry

8.1.c. *If so, (from 8.1.b. above) what would be an appropriate definition for exploration activities that do not involve broad scale disturbance but have higher disturbance footprints than low impact exploration works?*

Not applicable to extractive industry

³ The CMPA's concerns are discussed in detail in our submission to the VCEC's 'Inquiry into Victoria's Regulatory Framework' available from www.vcec.vic.gov.au or from the CMPA

8.2. Searching for Stone

The CHMP should not be related to searching for stone.

8.3. CHMP requirements

No questions.

8.4. MRSDA Section 45 Requirements

8.4.a. Should the MRSDA 45 provisions relating to the protection of Aboriginal cultural heritage be removed?

Yes

8.5. Work plan approval

8.5.a. Should the applicant for a work plan approval be required to sign a proforma statement stating the work plan has fully addressed the requirements of the CHMP?

No

8.5.b. The AH Regulations (schedule 1) enables changes to areas of cultural heritage sensitivity as new information about areas emerges. Would it be feasible for AAV to update their website and GeoVic in circumstances where mapping from a CHMP identifies areas containing no cultural heritage sensitivity? What would be the most appropriate mechanism for this data to be captured and updated on the AAV website and GeoVic?

This area needs a major revision and simplification of processes as currently unworkable.

Discussion Paper 9. Water

CMPA is currently preparing a response to this Discussion Paper and will make it available shortly

Discussion Paper 10. Other Matters

10.1. Reporting, geoscience data submission formats and release of geoscience data

Not applicable to extractive industry

10.2. Extractive industry secrecy provisions

10.2.a. Should secrecy provisions apply to extractive industry in the same manner that they do to mining?

Yes

10.2.b. Should all approved work plans be available for public scrutiny?

In general the work plan is submitted with the planning permit, and if the revisions proposed in response 2.2.a were enacted, then this would not be an issue.

10.3. Codes of practice, ministerial guidelines and departmental guidelines

No comment

10.4. Marking out and surveying of licences

Not applicable to the Extractive Industry

10.5. Mineral resource management

10.5.a. Should government be involved in mineral resource management?

As per response 1.1.a and Discussion Paper 4.

10.5.b. Are specific resource management provisions required? If so, what form should they take?

See above response

10.6. Crown land access

10.6.a. How could the consent process for access to restricted Crown land be streamlined to provide more timely approvals?

10.6.b. What other changes could be made to improve land access for prospecting, exploration and mining without adversely impacting on Crown land values?

Members have found access to Crown land is very difficult and time consuming, and in many cases requires educating Crown Land Managers of the temporary nature of extractive industries and the strict operating conditions placed upon such businesses.

10.7. Clarification of threshold area for EIWA work plan exemption (work area or EIWA area)

10.7.a. A minor amendment is proposed to clarify that the 5 hectares of land referred to in the Act is the area of the EIWA or EIWA application, rather than the area of works or proposed works. Is this an issue?

The present situation, assuming sites are complying with the Code of Practice, allows for the gradual and efficient use of resources and as such CMPA does not wish to see any change to the Act and there is no evidence of a need to change.

10.8. Transfer of licences and EIWAs – linkage to work plans and bonds

10.8.a. Should the transfer of licences be linked to the adequacy of the work plan and the rehabilitation bond?

No comment.

10.9. Surrender of EIWAs and excision from EIWAs

10.9.a. Is there a need to amend the Act to provide for surrender and partial surrender of EIWAs?

As per response in 2.1.a, the present system works well, and does not require change.

10.10. Rehabilitation (repair) of areas of searching for minerals under a miner's right

Not applicable to extractive industry.

10.11. Carrying over work approvals between licence types

Not applicable to the Extractive Industry.

10.12. Well performed authority holders

10.12.a. Could a simplified approval process and reduced regulatory requirements be applied to well performed licensees under the MRSDA? If so, what changes in processes and requirements should be considered and what standards of past performance and governance would be required for the simplified approval process to apply?

We would have to be able guarantee that the model was not flawed by humans, is site specific (not whole company) and has in-built time frame. It would be exceptionally difficult to operate over time, but if it could bring about **reduction** in regulatory burden then it would be welcome.