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27 August 2013

Dear Mr Hurst,

**Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013**

The Construction Material Processors Association (CMPA) takes the opportunity to provide input into the draft *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013* and the related Regulatory Impact Statement (RIS).

The CMPA supports responsible, balanced legislation that is in the best interests of the State and reduces red tape.

The CMPA has taken the opportunity to respond to this document because in the RIS is an activity analysis that was conducted for both the Minerals Regulations and the Extractives Regulations which proposes cost recovery from the Extractives Industry, as well as the Mining Industry, to the State Government.

**Summary**

* There is no indication of what measures will be put in place to ensure the productivity and the efficiency of Earth Resources.
* There is already “padding” in place in Earth Resources due to the removal of the OH&S function to WorkSafe without any reduction in staff numbers.
* The CMPA members should not be made to pay for RRAM which, while the concept is worthy, is overdue and over budget.
* The CMPA does not support the amalgamation of the Minerals and Extractive Industries Regulations.

Whilst CMPA understands the need for cost recovery, we do not believe that it is necessary to place additional imposts upon small and medium family business that are already struggling under the burden of legislation and the costs associated with it.

**General Comments on the RIS**

The RIS is meant to apply to the Minerals Industries only; however, it continually refers to the Extractive Industries throughout the document. For example p.28 1st paragraph 2nd sentence “where an assessment of cost recovery for the Extractives Regulation was undertaken for DSDBI...”.

Very little attention is given to the effectiveness and efficiency of the areas from which there is proposed to be cost recovery, nor how this will be measured.

**P.45, 5.3.1 Timeframes**

“... *review of the Extractives Regulations, with a view to amalgamating the regulations and streamlining requirements across extractives and minerals industries*…”

Those undertaking the RIS do not understand the differences between the extractive and the minerals industries. It is believed that there will be no real benefits and cost savings to the extractives industry to justify amalgamation.

**P.46 2nd paragraph**

“*For the preferred option there is no significant difference in the compliance burden between a small business and a large business*...”

For compliance, in general, it is becoming more complex for all businesses. Perceived exemptions are watered down by set parameters.

**P.46 3rd paragraph**

“...*prescribing the use of a website to meet advertising requirements would be onerous for small operators who do not have a website*.”

This option (to not prescribe a website) is already current for the extractives industry.

**P.46 6.2 Competition Assessment**

“*It is Victorian Government policy that legislation which restricts competition will not be passed unless it can be demonstrated that:*

* *The benefits of the restriction, as a whole, outweighs the cost*
* *The objectives of the legislation can only be achieved by restricting competition*.”

The need and outcome of the proposed benefit should be proved first before looking at the impact on competition.

**P.47 Table 6.1**

“*The impacts of the new pricing structure on competition*

*Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?*”

The number of participants in the market will reduce so the assessment should be yes (instead of no).

“*Will it be more difficult for new firms or individuals to enter the industry after the imposition of this new measure?*”

It will be more difficult for new firms or individuals to enter the industry so the assessment should be yes (instead of no).

**P.48 Consultation**

“*The proposed changes to Regulations analysed in this RIS were developed using information collected throughout consultations with industry stakeholders undertaken in previous operations, particularly through the engagement process of the review of the Minerals Resources (Sustainable Development) Act 1990*.”

From the CMPA’s perspective the meeting was more concerned with what the Department was proposing to do. There does not seem to be a clear picture on how industry input was able to be drawn out of the discussions indentified.

**P.49, 7.2.1 General 2nd paragraph**

“*Amalgamation of Minerals and Extractives Regulations*”

It is believed that there will be no real benefits and cost savings to the extractives industry to justify amalgamation of the Extractives and the Mineral Industries Regulations.

The final sentence of the 2nd paragraph should read “***Some*** *extractives industry representatives were also open to the idea*...” due to the sentence above “(*note, the proposal to amalgamate the two sets of Regulations was not taken forward due to receiving some opposition from the extractives industry;*..)” noting opposition from the extractive industries to the proposed amalgamation.

**P.50 3rd paragraph**

“*Industry suggested that licensees should be provided a longer period for submission of reports*.”

The provision of reports should not require a Statutory Declaration to be signed. If the industry is providing information within a set time then it should be consolidated and released by the Department within a set time.

**P.51**

“*Industry representatives were of the view that if industry is to pay for regulation, then net benefits must be demonstrated.*”

The regulatory work being undertaken by the department is often on behalf of the local government who are collecting site specific rates and the State government who are collecting land taxes on the planning permits approved for the site. Hence, some of the fees proposed are already being collected. The department, in consultation with industry, should be putting in place performance indicators to ensure accurate tracking of benefit/performance to prevent the appearance of being an “open check book” for the Department.

**P.52 Appendix A Defining Cost Recoverable Activities**

“*The activity analysis was conducted for both the Minerals Regulations and the Extractives Regulations.*”

The RIS includes the extractive industries, which goes beyond its scope.

**P.52 Methodology**

“*The list of activities was then assessed to determine the appropriateness of recovering costs associated with each of these activities*.”

Insert a 6th dot point “*Do the extractive industries already pay for this ‘long list’ through taxes etc*?”

**P. 61 3rd dot point**

“*Regulatory creep or over-regulation – where additional or unnecessary regulation is imposed without adequate scrutiny. Regulatory creep or over-regulation can impose significant additional costs that are recovered from affected parties.*”

This is as seen in the bond formula propensity for huge increases in the cost of rehabilitation bonds and fewer approvals for Work Authorities.

**P.61 1st paragraph, last sentence**

“*In addition, the historic under recovery across the sector provides little incentive for DSDBI to cost pad*”.

What actions will the DSDBI take to ensure that “cost padding” will not occur once cost recovery is introduced? The transfer of the responsibility for safety to WorkSafe in 2008 saw no reductions in the number of staff in the Earth Resources Regulation Branch; hence, there is already “padding” in place.

**P.62 1st paragraph**

“*The appropriateness of cost recovery is assessed according to the framework outlined in the Cost Recovery Guidelines. This framework requires consideration of five key questions to determine the overall appropriateness of cost recovery..*”

Insert a 6th dot point “*Do the extractive industries already pay for this ‘long list’ through taxes etc?*”

**P. 70 1st paragraph**

“*As stated in The Victorian Liberal Nationals Coalition Plan for Energy and Resources: ’A Liberal Nationals Coalition Government will support the continued promotion of geoscientific data and analysis to assist industry to have access to high quality information to promote the responsible development of Victoria’s minerals and resources sector*”

The high quality information needs to be promptly made available. At the time of sending this report the data for last year was not yet available. The data is also provided to the Australian Bureau of Statistics (ABS) by the State Government.

**P.73 1st paragraph**

“*Potential parties to be charged are those that benefit from the policies and programs delivered by the Earth Resources Development Division. These include individuals using the Business Services unit’s client services function, specific businesses within the mining and extractives industries, the mining and extractive industries as a whole and the community more broadly.*”

There should be safeguards in place to ensure no perceived advantage or double dipping of charges.

**P.75 *Minerals and extractives regulatory functions* 2nd paragraph**

“*With the exception of the complaints handling and community functions, the outputs of these functions are classed as government regulation. Consistent with charging considerations outlined in Table A.6, it is appropriate that costs associated with these functions be recovered through fees charged to minerals and extractives industry.*”

There are many functions and not all should have a fee applied to the extractives industry. The area would need to restructure to justify this charge.

**P.75 Last paragraph**

“*In particular, the pure public good aspects relate to the handling of complaints from the community that are vexatious or motivated by politics, i.e. those that the industry has no control over. The function of engaging with the community and handling vexatious or politically motivated complaints represent the broader role of government and should be funded through general taxes. According to DPI, these activities represent around 50 per cent of the overall effort expended in this area.*”

The CMPA would like a better understanding of what the 50% of complaints is made up of before Members are charged for it.

**P.76 *Earth resource information compliance***

“*The outputs of this function are classed as government regulation. This function involves working with teh Tenements unit to ensure that reporting obligations for exploration and mining licence holders being met and that the required data is being provided to the Government.” “...it is appropriate that costs associated with this function be recovered through fees charged to minerals and extractives industries.*”

This should not be charged as there already is a great cost for the industry to provide information to Government in the first place and this information is then provided by the Government to the ABS and others for the public good.

**P.78 Mining Warden**

“*Disputes not involving the Government*

*The outputs of this function are classed as private goods.*”

The CMPA would want to know who was at the cause of the dispute before the cost was applied.

**P.86 Table B.4**

“*Estimating total and recovered costs per activity (2011-12).*” “ *Notes: (1) These cost estimates include salary, operating and overhead costs as well as capital costs associated with the RRAM administrative system*”

The inclusion of the cost of the RRAM administrative system is unmerited. The project has been in development for many years (since 2008) and is overdue and over budget.

**P.88 4th paragraph**

“...*only the costs associated with the Mining Warden’s involvement in disputes where the Government is not a party to the dispute can be regarded as recoverable.*”

The CMPA would want to know who was at the cause of the dispute before the cost was applied.

Please contact me if you would like to discuss CMPA’s response further.

Yours sincerely

Dr Elizabeth Gibson

General Manager

CMPA