

14 September 2020

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE
VIC 3000
Via email: andrew.greaves@audit.vic.gov.au

Dear Mr Greaves

VAGO REHABILITATING MINES AUDIT 5 AUGUST 2020 (VAGO Report)

Small to medium quarries distributed throughout Victoria provide for quality, choice and competitive pricing of construction materials for the Victorian consumer (including governments).

The founding of the CMPA was in a large part driven by the previous Auditor General of Victoria, Report on Ministerial Portfolios "Restoration of Mining Sites" p.256 May 1999 (More on the CMPA is found at the end of this letter). The VAGO Report follows a similar format with similar conclusions. However, the rehabilitation of quarries has historically occurred throughout Melbourne and regional Victoria from returning to agricultural land use to Fitzroy Gardens, Carlton and Clifton Hill (<https://www.emelbourne.net.au/biogs/EM01213b.htm>). A more recent quarry rehabilitation proposal that provides the State with great benefit can be found at: <https://theurbandevolver.com/articles/riverlee-epping-masterplan>. Additionally, over the past 35 years approximately only \$20 000 has been expended by the Victorian government on rehabilitating quarries. This is a great testament to quarry operators, Earth Resources Regulation, and the historical legislation in place.

The VAGO Report is seriously lacking due to not clearly articulating the liability to the State as per the Mineral Resources (Sustainable Development) Act 1990. This is disappointing considering that \$570 K was expended by Government on the audit and this analysis of legislation is absent. It appears that the VAGO Report has been used as an opportunity for scare mongering leading to damaging the reputation of the extractive industry sector. Attached is a Paper prepared by CMPA and reviewed by lawyers "Why

a review is necessary of Construction Materials Rehabilitation Bonds” (2013) which clearly and rationally outlines the liability issues to which the Minister and Government are exposed.

Already, the extractive industry operates in a highly regulated environment as otherwise stated in the VAGO Report. This is compounded by other jurisdictions in Australia and internationally having less onerous but still effective legislation leading to, for example:

- Sand being imported into Victoria (Melbourne) from Moama, NSW;
- A proposal for aggregate to be imported into Victoria from Canada.

(Note, the prevailing ethos is that quarries are located close to where the construction material is being used to keep costs low as well as achieving a lower carbon footprint.)

This VAGO Report will be used to prevent greenfield site work plans and work plan variation approvals; or lead to only the multi-national extractive industry being able to afford an application.

Due to the deficiencies, inaccuracies, misleading extrapolations, misstatements, and evident bias against the extractive industry (quarries) I respectfully request that the VAGO Rehabilitating Mines Report, 5 August 2020, be withdrawn.

Please see specific comments on the VAGO Report, below.

Yours sincerely



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Cc

The Hon Nazih Elasmr MLC, President

The Hon Colin Brooks MP, Speaker

The Hon Tim Pallas MP, Treasurer

The Hon Jaclyn Symes MP, Minister for Resources

Penelope McKay, Associate Secretary, DJPR

Attached

CMPA's "Why a review is necessary of Construction Materials Rehabilitation Bonds" (2013)

CMPA's "Quarries Build Communities" Brochure 2019



VAGO REPORT

Page	VAGO Report	CMPA comments	VAGO Report analysis
1	<i>"Since Victoria's gold rush in the 1850s, the state's mining and quarry industries have boosted our economy."</i>	As always, the focus is on the much higher and different risk profile of mines. The first quarries, which opened in the 1830s and 1840s, were located in the Fitzroy Gardens, Carlton and Clifton Hill. Obviously, these quarries have been rehabilitated unlike the mines in the gold rush of the 1850s.	Biased
1	<i>"However, if the operator defaults on their rehabilitation responsibilities, the cost to restore the land may fall on the state."</i>	The response confuses quarries with mines. The Victorian Government has expended ~\$20K in the last 35 years on the rehabilitation of quarries. As per the VAGO Report, for mines, this figure is of ~\$36 million. Note that already this VAGO Report is perceived as having negative connotations for the mining industry, for example, the Director of Strategic Growth, Bendigo City Council's strategy for new gold mines north of Bendigo would be weakened and this within a week of being released.	Misleading
1	<p><i>"Systemic regulatory failures encompass:</i></p> <p><i>using outdated cost estimates</i></p> <p><i>not periodically reviewing bonds for their sufficiency—</i></p>	<p>It is contended that the rehabilitation bond calculator grossly overestimated the cost of rehabilitating a quarry in 2010. To state that the figures need to be blankly adjusted by CPI of 19.8% is an exercise in laziness. The bond calculator needs to be readjusted from first principles and the current market values for rehabilitation applied.</p> <p>However, bond reviews were still conducted for statutory bond reviews (transfers, work plan variations, greenfield sites) and identified high risk sites."</p> <p>The VAGO Report ignores the legislative differences between quarries and mines:</p>	<p>Misleading extrapolation</p> <p>Misstatement</p>

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<p><i>including a four-year bond review 'moratorium' for which there is no documentary evidence that it was duly authorised</i></p> <p><i>failure to assure that site rehabilitation had actually occurred before returning bonds</i></p> <p><i>approving inadequately specified rehabilitation plans"</i></p>	<ul style="list-style-type: none"> • The quarry proponent enters into a voluntary commercial agreement/contract with the landowner who receives royalties throughout the operation of the quarry. • The mine proponent enters into an enforced undertaking with the landowner. <p>The VAGO Report also ignores the checks and balances in place as underlined below.</p> <p>From MRSDA <i>"S.82 (2) If the land is private land the Minister must not return the bond or bonds to the holder or former holder of a mining licence or prospecting licence or the holder or former holder of an extractive industry work authority <u>until after the owner of the land and the council in whose municipal district the land is situated have been consulted.</u>"</i></p> <p>The estimate that over half of rehabilitation plans do not comply with current legislation after reviewing only 18 work plans is laughable:</p> <ul style="list-style-type: none"> • The VAGO Report does not state whether quarry or mine rehabilitation plans were reviewed; • An error occurred with referring to the MRSD Extractive Industry Regulations 2019 – it does not come into effect until 1 July 2021; • Only 1.3% of total rehabilitation plans were reviewed; • It is contended that rehabilitation plans were consistent with the legislation at that time when approved by ERR. 	<p>Misleading</p> <p>Misleading extrapolation</p>
p.2	<i>"Rehabilitation bonds held by the state"</i>		

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<p><i>“\$222 million (27 per cent) for the other 1 391 mines and quarries across the state”</i></p> <p><i>“ERR acknowledges that bonds for many Victorian mines and quarries do not cover actual rehabilitation costs”</i></p>	<p>The VAGO Report ignores the differences between the lower and different risk profile of quarries in comparison to mines.</p> <p>For quarries the statement should read: <i>“ERR acknowledges that bonds for some Victorian quarries may not cover actual rehabilitation costs”</i></p>	<p>Misleading</p> <p>Misstatement</p>
p.2	<p><i>“It (ERR) found that the \$813 million figure may be \$361 million short. ERR advised that this is an estimate only...”</i></p> <p><i>“It is likely that \$361 million is a low estimate because the assessment was done largely as a desktop analysis”</i></p>	<p>These are arbitrary estimates for rehabilitation costs with no foundation having been conducted as a desk top study.</p> <p>The lower and different risk profile of quarries must be separated from mines in order to have an accurate estimation of rehabilitation bonds.</p>	<p>Misleading</p> <p>Misleading</p>
p.2	<p><i>“Nearly 89 per cent of these, or 1 239, have rehabilitation bonds of less than \$200 000. For 526 of these (covered by mining licences and work authorities), the bond value is \$10 000 or less.</i></p> <p><i>This is not sufficient to cover rehabilitation costs.”</i></p>	<p>The lower and different risk profile of quarries must be separated from mines in order to have an accurate estimation of rehabilitation bonds.</p> <p>The VAGO Report does not detail whether subject matter experts were used despite a request for the information from VAGO. The statement needs to read: <i>“This may not be sufficient to cover rehabilitation costs in quarries”</i></p>	<p>Misleading</p> <p>Misstatement</p>
p.3	<p><i>“However, we identified 275 mining licences and work authorities— whose operations do not meet the definition of ‘small and low risk’ —with bond amounts below the \$4 000 per hectare rate.</i></p>	<p>Of the 275 identified the number of lower and different risk profile quarries was not separated out.</p> <p>The VAGO Report appears to use the standard bond rate of \$4000 per hectare for the whole site and not for disturbed land.</p>	<p>Misleading extrapolation</p> <p>Inaccurate</p>

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<p><i>These include 100-hectare gold mines.”</i></p> <p><i>“The fact that many sites have bonds that are less than what is deemed sufficient means that the state is potentially exposed to significant financial risk.”</i></p>	<p>The rehabilitation costs for a 100-hectare gold mine would be far greater than say a 100-hectare work authority.</p> <p>An estimation does not become a fact.</p>	<p>Misleading extrapolation</p> <p>Inaccurate</p>
p.3	<p><i>“Lack of rehabilitation bonds According to available ERR data, 578 mining and quarry sites have no rehabilitation bonds. Within this group, we were able to identify 24 sites that are actively operating and 14 inactive sites that are no longer operating but are yet to be rehabilitated.”</i></p>	<p>The risk to the government is far lower for quarries than for mines as stated previously. The figures quoted by VAGO are alarmist in that 578 are said to have no rehabilitation bonds leading the reader to think that all these sites have been left unrehabilitated. However, reading further on the figure is actually 38 due to the previous 540 sites either having rehabilitated their sites and the bond was returned or “the sites not yet operating”.</p>	<p>Misleading</p>
p.3	<p><i>“The state’s contingent liability”</i></p>	<p>The increase in contingent liability from 2017/18 (\$1.7 million) to 2018/19 (\$29.8 million) has not been calculated from first principles and so cannot be relied upon.</p>	<p>Inaccurate</p>
p.4	<p><i>“ERR is working to further refine its assessment of the state’s potential mining liabilities. In November 2019, it advised us that the state’s CL could be \$50 million for all Victorian earth resources sites.”</i></p>	<p>In order to have a better understanding of the contingent liability, the lower and different risk profile of quarries must be separated from mines.</p>	<p>Inaccurate</p>
p.4	<p><i>“Regulating rehabilitation bonds</i></p> <p><i>ERR’s ineffective regulation of rehabilitation bonds means that the</i></p>	<p>The conclusion that ERR is ineffective has been reached through misleading extrapolations, misstatements, biases, and inaccuracies. A separate audit of quarries would have led to a different conclusion</p>	<p>Misleading</p>

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<i>state is financially exposed to significant costs."</i>		
p.4	<p><i>"Setting the rehabilitation bond amount</i></p> <p><i>ERR has not effectively calculated and set rehabilitation bonds to cover the full cost of rehabilitating mines and quarries.</i></p> <p><i>ERR last updated its rehabilitation bond calculator in September 2010. Therefore, its input rates do not reflect the 19.8 per cent increase in the consumer price index from 2010 until 2019."</i></p>	<p>It is contended that the rehabilitation bond calculator grossly overestimated the cost of rehabilitating a quarry in 2010. To state that the figures need to be blankly adjusted by CPI of 19.8% is an exercise in laziness. The bond calculator needs to be readjusted from first principles and then current market values for rehabilitation applied.</p>	Inaccurate
p.4	<p><i>"Process for returning rehabilitation bonds</i></p> <p><i>ERR cannot demonstrate that it ensures a mine or quarry site has been rehabilitated before returning the bond to the operator. This includes ensuring that the state has no remaining liability."</i></p>	<p>The VAGO Report ignores the legislative differences between quarries and mines:</p> <ul style="list-style-type: none"> • The quarry proponent enters into a voluntary agreement/contract with the landowner who receives royalties throughout the operation of the quarry. • The mine proponent enters into an enforced undertaking with the landowner. <p>It is still not understood by the CMPA why the Minister for Resources becomes responsible for the rehabilitation of a quarry in the MRSDA when it is a commercial contract between the quarry proponent and landowner.</p>	Inaccurate
p.5	<p><i>"Bond review moratorium</i></p> <p><i>Clear documentation of the rationale and approval process is important, as</i></p>	<p>This statement is not true because where there is a transfer of a work authority, a variation to a work plan or identified high risk</p>	Misleading extrapolation

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<i>the decision clearly benefited mine and quarry operators, potentially to the detriment of the environmental protections that are intended by the Act and the Bond Policy.”</i>	sites, a bond review would be conducted by ERR. The number of bond reviews conducted due to a work plan variation or work authority transfer during the period 2013-2017 is kept by ERR in various databases such as GeoVIC.	
p.6	<p><i>“Conflict of interest</i></p> <p><i>The 2016 parliamentary Independent Inquiry into the EPA raised concerns about the conflict of interest in having ERR—the primary mining regulator—as a unit within DJPR, the department responsible for fostering and developing the mining industry. It noted that ERR had not regulated the environmental and public health risks.”</i></p> <p><i>However, EPA’s additional role to review work plans is unlikely to be sufficient to address the conflict of interest. This is because most of the regulatory responsibilities continue to lie solely with ERR, particularly the compliance and enforcement of environmental conditions.”</i></p>	<p>It should be noted here that EPA recognized that quarries have a much lower and different risk profile by only requiring mining work plans to be mandatorily referred to EPA in legislation (July 2019).</p> <p>There is a separate section in ERR that conducts work plan approvals which mitigates the potential conflict of interest.</p>	Misleading
p.6	<p><i>“Regulating rehabilitation</i></p> <p><i>ERR’s regulation of mining rehabilitation does not meet its responsibilities under the Act, relevant regulations and policies.</i></p>	<p>This conclusion has been deduced from a number of misleading, inaccurate, biased, and misstatements with respect to quarries. No evidence has been demonstrated that the Victorian government has made significant rehabilitation of unrehabilitated quarries (over the last 20 years this figure has been of the order of ~\$20,000) whilst</p>	Misleading

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<p><i>Until regulation is effective, ERR will not be able to:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>incentivise operators' compliance with their rehabilitation responsibilities</i> <input type="checkbox"/> <i>limit the government's exposure to rehabilitation liabilities.</i> <p><i>One consequence of ERR's failure to monitor operators' compliance with their rehabilitation responsibilities is that some mining licences become inactive before rehabilitation works are finished or even begun."</i></p>	<p>according to this VAGO Report the sum is of the order of \$36 million.</p> <p>It is noted here that only mines are referred to.</p>	
p.6	<p><i>"Rehabilitation plans</i></p> <p><i>Comprehensive and unambiguous rehabilitation plans are therefore the first step to effective rehabilitation. However, the rehabilitation plans we reviewed were not written with sufficient detail.</i></p>	<p>This statement demonstrates the inexperience of VAGO or its subject matter experts: the efficacy of a rehabilitation plan of a greenfield site is likely to change once the site preparation first commences due to, for example, the stone not being homogenous.</p> <p>See paper presented at CMIC 2018 by Adjunct Professor Bruce Harvey, Sustainable Minerals Institute, University of Queensland.</p> <p><i>"If you are opening a mine now to run for 20, 30 or 40 years – more than a human generation – and you are insisting that the operator locks in the final closure plan with all its detail 30 or 40 or 50 years out, that's ridiculous. That's not how we do things.</i></p> <p><i>How can we possibly imagine what the options are 30, 40 or 50 years out? That said, running a mine with a sense of how you want the final landform to appear is fine; that way you run the mine differently, quarries would be the same. You might cut the benches in a different schedule, you might dump waste rock in a different</i></p>	Inaccurate

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	<p><i>However, of the 18 plans we reviewed, 13 (72 per cent) do not have the detail required by the Act, Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 (MRSDMIR) and Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019 (MRSDEIR). Statistically, this indicates that it is highly likely that more than half of all approved rehabilitation plans are non-compliant."</i></p>	<p><i>place and process it in a different way, you might do progressive rehabilitation.</i></p> <p><i>However, when you have a look at the level of detail that new projects are being required to provide for the final closure transition, it's absolutely nonsense. In fact, it's anti-science because that's not the way that science works. In science, as we go along, we adjust and experiment at the margins and try new things, and new technology and new ideas emerge. We set out multiple working hypotheses and we explore and we adapt what we are doing with what we are learning as we go. That's what I mean by an adaptive management approach. We work best when we work using adaptive management, not long-run central planning."</i></p> <p>The estimate that over half of rehabilitation plans do not comply with current legislation after reviewing 18 work plans is laughable:</p> <ul style="list-style-type: none"> • The VAGO Report does not state whether quarry or mine rehabilitation plans were reviewed; • An error occurred with referring to the MRSD Extractive Industry Regulations 2019 – it does not come into effect until 1 July 2021; • Only 1.3% of total rehabilitation plans were reviewed. <p>The statement above from the VAGO report compounds the error in referring to the wrong legislation.</p> <p>Already this report is perceived as having negative connotations for the mining industry, for example, the Director of Strategic Growth, Bendigo City Council.</p>	<p>Inaccurate/misleading extrapolation</p>
p.7	<p><i>"If ERR continues to approve rehabilitation plans that do not meet the requirements of the Act and</i></p>	<p>ERR approved rehabilitation plans with respect to current legislation at the time of approval. As work plan variations are submitted, the rehabilitation plan is required to be updated to current legislation (at great expense to the quarry industry).</p>	<p>Misleading</p>

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	<i>regulations, then the associated rehabilitation bonds will not cover the true cost of rehabilitation.”</i>		
p.7	<i>“Consequently, DELWP, which manages Crown land, advised us that it has often been left with unrehabilitated or poorly rehabilitated mine and quarry sites.”</i>	<p>The number of quarry sites was not given nor the cost of rehabilitation.</p> <p>The crown land manager, DELWP, would have been consulted with prior to the return of the rehabilitation bond.</p> <p>DELWP also operates its own quarries on crown land.</p> <p>It appears that DELWP’s record keeping is not particularly accurate.</p>	Misleading
P.7	<i>“Monitoring rehabilitation Moreover, ERR’s rehabilitation-specific checks have not been appropriately informed by risk considerations.”</i>	<p>This is an all-encompassing statement made by the VAGO Report that assumes a level of knowledge that may not be present unless subject matter experts were used.</p>	Confirmation bias
p.8	<i>“Inactive mines and quarries As at 30 September 2019, available ERR data suggests that there were 231 inactive mines and quarries across the state. These are unrehabilitated sites that are no longer operating but still have an operator on record.”</i>	<p>It would be of interest to know how many are inactive quarries and how many are inactive mines. This categorisation would lead to a better understanding of the contingent liability to the state due to the much lower and different risk profile of quarries.</p>	
p.9	<i>“No comprehensive record on rehabilitation works and costs”</i>	<p>It is noted by CMPA that the state government has in fact expended approximately \$36 million and is aware that approximately \$20K has been spent on rehabilitation of quarries over the past 20 years</p>	Misleading
p.10	<i>“Regulator readiness</i>		Inaccurate

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	<i>These factors have resulted in ineffective compliance and enforcement, leaving the state at risk of taking responsibility for poorly rehabilitated mining and quarrying sites."</i>	The lower and different risk profile of quarries needs to be separated from mines. There are numerous examples of well rehabilitated quarry sites throughout Victoria.	
p.11	<i>"ERR Resourcing"</i>	Whilst it is understood that ERR may be short staffed, their recruitment process is flawed in that those appointed do not have the qualifications and experience necessary for the effective management of mines and quarries. For example, appointing a manager of statutory approvals for quarries and mines from the taxi directorate.	
p.11	<i>"Information Management System ERR has no centralised information management system for mining rehabilitation information."</i>	The issue with poor records management is inadequately understood in the VAGO Report. It is compounded by overly complex, ever increasing and sometimes unnecessary legislative processes for approval of work plans and work plan variations. The ever increasing raising the bar for operating a quarry will lead to the decline in small to medium quarries (~50% of Victoria's supply of construction materials) who service regional and metropolitan Melbourne areas and provide competitive pricing, choice and quality materials.	Inaccurate
p.13	<i>"Quarries in GBCMA's (Goulburn Broken Catchment Management Authority) jurisdiction DJPR has identified most of the floodplain of the Goulburn River as a source of gravel for Melbourne. GBCMA is concerned that sustained quarrying in the area</i>	There has been long standing intransigence amongst certain staff within the GBCMA surrounding legitimate extractive industry activity in the Goulbourn Broken Catchment. It should be noted that gravel can only be sourced from flood plains.	Prejudice

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<p><i>will have significant environmental implications for the Goulburn River, and pose risk to people, land and infrastructure.”</i></p>	<p>A report was prepared for GBCMA by consultants Jacobs and Moroka. This report titled “<i>Risk assessment of floodplain mining pits in the mid-Goulburn Valley</i>”, 20 July 2015 is alarmist, grossly exaggerates the impacts of extractive industry in floodplains and demonstrates a flagrant bias against quarrying in the mid-Goulburn Valley.</p> <p>One operator has been trying for several years to gain approval through the GBCMA to undertake simple repair works (involving 3-4 weeks work) after a pit breach from an adjoining creek. These works could have been completed at least two years ago. Many meetings have been held with GBCMA with ERR present to resolve the issue. The operator has engaged three specialist consulting groups in trying to gain approval for these works. However, the GBCMA keep changing their requirements and asking for more information, including the extraordinary requirement for modelling of a 1 in 1000 year flood event.</p> <p>One of the most respected consultants involved has given up trying to deal with GBCMA. It has become clear that the only outcome acceptable to the GBCMA will be a cessation of all flood plain extraction.</p> <p>Jacobs have a one page disclaimer in the Report citing the GBCMA as the source of much of the data relied on.</p> <p>What is equally disturbing is the unquestioned acceptance of the report by ERR, is the draft Section 110 notice directing that a detailed risk assessment be undertaken by the operators in accordance with AS/NZS ISO31000:2009 involving an expert panel acceptable to ERR and involving an independent facilitator.</p>	

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		<p>Given the nature of the issues involved and the intransigent history of the GBCMA, the cost of this process could run into hundreds of thousands of dollars with no guarantee of a viable outcome for the operators. One of the operators who employs 12 people and has a flawless record over at least 20 years in the operation and rehabilitation of their pits has declared that they will have no viable alternative but to close their pit if this notice is enforced.</p> <p>The Report is flawed, for example, in its application of the ISO31000:2009 Risk Management Standard and, hence, alarmist. The likelihood has been wrongly applied in that where the likelihood criteria is rated as “almost certain” the implication is (if ISO: 31000 is applied correctly), for example, that the destruction of the Sydney to Melbourne railway line has already occurred during the past 12 months. Clearly, this is not the case.</p> <p>Furthermore, the Report stipulates a “... <i>specific recommendation be made that the maximum depth of pits remains above the invert of the Goulburn River and adjacent anabranches and tributaries</i>”. This will effectively render most pits economically unviable due to being unable to access construction material at this shallow depth.</p> <p>Extraction from flood plains has been carried out extensively for many decades in Victoria and throughout Australia and overseas particularly the Rhine River valley with relatively minimal impact</p>	
p.21	<i>“Contributions to the Victorian economy”</i>	The focus of this section is mostly on mines: highlighting gold production. It is silent on the importance of quarries and their products to the economy of Victoria such as Victoria requires ~8 tonnes stone per person per annum.	Bias
p.22	<i>“Environmental impacts”</i>	This section details environmental impacts that are not relevant to the lower risk and different risk profile of quarries. For example, stone does not catch fire nor do quarries use arsenic and mercury in their operations.	Confirmation bias

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p.32	<i>"Extractive Resource Strategy"</i>	The VAGO Report failed to include outcomes in the Strategy that focused on rehabilitation. See below: <i>"Engage with industry and Victorian communities on the benefits of post-quarrying land uses that can be achieved through innovative planning and progressive rehabilitation." P.36 Extractive Resource Strategy 2018.</i>	Prejudice
p.34	<i>"Mining rehabilitation responsibilities"</i>	<i>"DJPR (ERR)"</i> omits Mineral Resources (Sustainable Development) (Extractive Industry) Regulations 2009 and 2019.	Inaccurate
p.35	<i>"Rehabilitation Liabilities Conclusion"</i> <i>The amount ERR holds in bonds is likely to be at least \$361 million short of the estimated cost of rehabilitating Victoria's existing mines and quarries."</i>	<ul style="list-style-type: none"> • The figure of \$361 million shortfall is a guestimate at best based on a bond calculator that overestimated the costs of rehabilitation to the extractive industry and then applying CPI on top of that. • The figure (\$361 million) does not separate mines from the lower and different risk profile of quarries. • The rehabilitation liability quoted is alarmist and does not factor in the reality of every quarry and mine in Victoria abandoning the rehabilitation responsibilities at the same time is an extremely low risk. 	Misleading extrapolation
p.48	<i>"Regulating rehabilitation Conclusion"</i> <ul style="list-style-type: none"> • <i>neither operators nor ERR clearly understands the outcomes that rehabilitation plans aim to achieve at mine and quarry sites, or the cost</i> 	The conclusion contains sweeping statements (see left) which unfairly discredits operators (the vast majority were not interviewed or visited for the VAGO Report) who are very aware of their rehabilitation responsibilities. There are numerous historical examples of good rehabilitation undertaken since the establishment	Confirmation bias

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	<i>required to complete rehabilitation</i>	of Melbourne with examples of historical quarry rehabilitation having been submitted prior to the commencement of the audit to VAGO by the CMPA to assist them with their audit.	
p.49	<i>“Rehabilitation plans”</i>	The small number of rehabilitation plans reviewed (18) together with the lack of experience of VAGO or its subject matter experts (if used) in this area should have led to less damning comments. The work plan and rehabilitation cannot be set in stone at the commencement of an approved Work Authority. An opinion can be given as to the extent and viability of the resource, but no amount of drilling will give its exact nature across the whole site. For example, the resource is not homogenous which impacts the way in which it is quarried. So, a rehabilitation plan is only an approximation of what will occur during the lifetime of the quarry. The rehabilitation plans are kept as general as possible by the operator due to any changes requiring a work plan variation (as per the MRSDA) which is a long drawn out and costly process.	Misleading extrapolation
p.51	<i>“Review of rehabilitation plans This shows improved practice in recent years and that the risk of poor rehabilitation plans largely lies with plans prior to 2017.”</i>	Again, a sweeping statement based on a review of only 18 rehabilitation plans that did not separate out quarries from mines. As stated previously there are numerous examples of good rehabilitation of quarries undertaken in the past prior to 2017 with what the VAGO report is calling inadequate legislation. A “good” rehabilitation plan (post 2017) is just a plan on a piece of paper what really matters is well rehabilitated quarries. The VAGO report appears to be silent on the undertaking of any site visits to rehabilitated quarries by the auditors.	Bias
p.54	<i>“Annual reporting of rehabilitation information</i>	This is one of the rare examples where the legislation recognises the much lower and different risk profile of quarries compared to mines.	

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	<i>Mining operators submit annual expenditure and activities returns to ERR. This information allows ERR to monitor licence holders' rehabilitation activities. While quarry operators must also submit annual returns to ERR, they are not required to provide rehabilitation information."</i>		
P.57	<i>"One consequence of ERR's failure to monitor operators' compliance with their rehabilitation responsibilities is mining licences and work authorities may become inactive before rehabilitation works are completed or even begun."</i>	The first sentence should read " <i>One possible consequence...</i> ". Little evidence is presented that work authorities are not being rehabilitated. It is noted by CMPA that the state government has in fact expended approximately \$36 million and is aware that approximately \$20K has been spent on rehabilitation of quarries over the past 20 years	Misstatement
p.57	<i>"And while ERR continues to have enforcement powers until sites are closed post rehabilitation, there is usually little incentive for operators to comply with their rehabilitation responsibilities especially when bonds are less than the expected restoration costs."</i>	The use of the word incentive is pertinent, though not in the context written in the VAGO Report. One of the reasons for the moratorium on bond increases between 2013 and 2017 was to implement an incentives-based rehabilitation scheme that rewarded (through reduced rehabilitation bonds) Work Authority holders for undertaking progressive rehabilitation. The ramifications of the Hazelwood Coal Mine fire, which had no relevance to quarries whatsoever, prevented the implementation of an incentives-based scheme.	Bias
p.58	<i>"Figure 3G shows that more than 63 per cent of these sites have been inactive for more than five years. ERR</i>	From Figure 3G it is shown that there are ~185 unrehabilitated mining licences that are inactive. Whilst for quarries this figure is 40 (18% of total). Additionally, quarries have a lower and different risk	Bias

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<i>has not taken effective action to ensure that licence and authority holders undertake and complete rehabilitation, despite the many years of inactivity."</i>	profile to mines due to, for example, the resource does not catch fire; quarrying is not conducted underground; toxic chemicals are not used to extract minerals etc. It would be of interest to have included numbers of unrehabilitated quarries on private land.	
p.73	<i>"For example, GBCMA believes that having access to preliminary work plans before the onsite consultation meeting with the licence or work authority applicant could help clarify potential environmental issues."</i>	The work plan approval process is already extremely lengthy, costly and unnecessarily complex. It includes referral to CMAs prior to the endorsement of the work plan in addition to attendance at the first site meeting. GBCMA appear to require an additional stage with the requirement for a "preliminary work plan". The GBCMA require that quarries are undertaken elsewhere, yet the vital construction material is only available on flood plains. See p.13 response.	Prejudice
p.76	<p><i>"2017 Getting the groundwork right—better regulation of mines and quarries</i></p> <ul style="list-style-type: none"> • <i>Has reduced application backlog.</i> • <i>Has published new guidelines for work plan preparation and variation.</i> • <i>Electronic document management system quick wins project delivered.</i> 	<ul style="list-style-type: none"> • The application backlog reduction has in part been achieved by returning applications to proponents for further information which is compounded by an apparent limited expertise of the approvals tea. This has led to the outsourcing of work plans approvals, in some cases, to organisations that also prepare work plan applications. • The new guideline for work plan preparation are not scalable in that small to medium sized quarries incurring the same costs as for large and higher risk projects. • The electronic document management system (EDMS) is far from fit-for-purpose with another EDMS being developed to address all the issues with the previous system. However, the funding for its development, which has only recently commenced, ends in September 2020. 	Misleading

Page	VAGO Report	CMPA comments	VAGO Report analysis
	<ul style="list-style-type: none"> Commenced developing work plan notification pathway. 	<ul style="list-style-type: none"> A work plan notification pathway (to avoid the lengthy work plan variation process for low/medium risk changes to a work plan) has always been an option for work authority holders. It has now been formalised. 	
p.95	<i>"The cost of this audit was \$570,000"</i>	This appears to be excessive with a cost of \$7 403 per page. The money would have been better spent addressing the risk to the community from mine shafts.	

Construction Material Processors Association (CMPA)

The CMPA is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2018/19, the sector supplied 63 million tonnes of construction materials to the market, at a value of approximately \$1.1 billion. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia.

