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Office of Aboriginal Affairs Victoria  
GPO 2392  
Melbourne  
VIC 3001  
Via email: [Aboriginal.heritage@dpc.vic.gov.au](mailto:Aboriginal.heritage@dpc.vic.gov.au)

Dear Sir/Madam

## SUBMISSION TO THE ABORIGINAL HERITAGE AMENDMENT BILL - EXPOSURE DRAFT 2014

The Construction Material Processors Association (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, soil, and gypsum. CMPA members also operate recycling businesses. CMPA members are typically small to medium sized family businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The Extractive industry underpins growth and development in Victoria through supply of the construction materials described above (58 million tons in 2011/12, approximately \$833 million). CMPA members account for approximately half of this production.

The CMPA recognises and respects the State's Aboriginal Heritage and Culture and the need to preserve significant and important sites. The CMPA also supports responsible, balanced legislation that is in the best interests of the State.

Our comments on the key elements of the Exposure Draft relevant to the CMPA are given below:

Proposal	CMPA Comments	CMPA Recommendations
Amendments to approved Cultural Heritage Management Plans (CHMP) – the proposed amendment to a CHMP has to be a CHMP and must not be amended until five years after its original approval and accompanied by a prescribed fee.	This will add further costs however, CMPA supports the ability to amend a CHMP.	No age limit should apply to approved CHMPs that are to be amended. The amended CHMP should then replace the current CHMP.
Optional Preliminary Aboriginal Heritage Test - a person who prepares a Preliminary Aboriginal Heritage Test must apply to the Secretary for certification of the test.	Whilst this test may provide certainty to CMPA Members there is the concern that Councils and DSDBI will require the test on every application thus adding additional costs to the proponents that will not just be due to the prescribed fee.	This process should be tested by Sponsors, councils and technical heritage officers prior to finalisation of the legislation.  The Bill must contain appeal rights on the Secretary's decision and address the concern that the test will effectively become mandatory for all applications.

		Once implemented the process should also be audited. Additionally, if subsequent to a sponsor operating without a CHMP due to a PAHT not requiring it, then the decision of the PAHT should stand.
A Registered Aboriginal Party may also advise on evaluating a CHMP of “recommendations” to be replaced with “conditions”.	The change from “recommendations” to “conditions” implies that there will not be any flexibility in their implementation and whether controls are in place to ensure that conditions are reasonable.	CMPA does not support this change. The Bill should insert “reasonable” in front of “conditions”.
Proposed Activity Advisory Group (AAG) a Traditional Owner Group appointed by the Secretary where there is no registered Aboriginal party (RAP)	Whilst this may lead to a reduction in time and costs a clear line of accountability needs to be established.	The Bill should contain clear lines of accountability to the Secretary for an AAG and adherence to the same statutory timeframes as applicable to RAPs.
Introduction of prescribed fees, for example, for RAP evaluation of a CHMP.	CMPA does not support the need for cost recovery for what is an already very costly process. Care should be taken to ensure that RAPs do not excessively depend on fees for evaluating CHMPs.	The activity of evaluating CHMPs should be funded by the State Government.
Request for further information for CHMP by RAP thereby stopping the statutory timeframe until the information is received.	There is nothing to prevent the RAP from requesting unreasonable information or coming to just before the end of the statutory timeframe and requesting trivial information.	The Bill should dissuade the RAP requesting unreasonable information or trivial information just prior to the end of the statutory timeframe.
Additional range of penalties have been inserted including: failure to prepare a CHMP and failure to not comply to an approved CHMP.  Criminal liability of officers of bodies corporate – failure to exercise due diligence. Where a body corporate commits an offence under the Act an officer of the body corporate also commits the offence.	The CMPA understands the need to have a robust enforcement framework, however, this is an excessively punitive approach which, if results in more convictions, would be completely counter-productive.	The CMPA does not support an expanded range of offences - a more facilitative and educational approach is warranted to ensure protection of Aboriginal heritage.
Introduces costs to be paid by the sponsor where a cultural heritage audit has been directed unless there has been no contravention of the CHMP as determined by the audit.	CMPA notes that this clause has introduced an additional cost. The transparency of cultural heritage audits including the accountability of RAPs, statutory timeframes and appeal provisions have not been addressed.	The Bill must address the accountability of RAPs, appeal provisions and statutory timeframes for when cultural heritage audits are undertaken.
Introduces Aboriginal Heritage	CMPA does not support the	If appointed there must be a clear

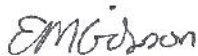
Officer (AHO).	appointment of AHOs.	line of accountability to the Minister and procedures for ensuring ethical conduct, training in administering legislation and so on in addition to a time limit on their appointment.
Introduces 24 hour stop work orders that can be issued by an AHO (and an Authorised Officer – replaces inspector) including heavy penalties and indictable offence.	Previously, these stop work orders could only be issued by government inspectors. A potential conflict of interest can occur in that the AHO (that is RAP officer) is both the assessor and regulator which is clearly a conflict of interest.	CMPA does not support the concept of AHOs issuing 24 hour stop work notices or improvement notices.
Introduces improvement notices that can be issued by an AHO (or AO) including heavy penalties and indictable offence. Amendments to improvement notices can also be made.	As above.	CMPA does not support the concept of AHOs issuing improvement notices.
VCAT to approve the CHMP with insert “minor” amendments.	VCAT no longer has the authority to approve CHMPs with amendments (only “minor” amendments), hence, there are more CHMPs likely to not be approved at VCAT.	CMPA does not support this change. There should be a definition of what is meant by “minor”.
No mechanism for timely, binding arbitration between RAP and the sponsor.	Disagreements between sponsors and RAPs are frequent and a mechanism is required to allow for equity in the process.	The mechanism for timely, binding arbitration between RAP and the sponsor at all stages of the CHMP should be introduced.
RAP delays during the CHMP process.	Many delays occur during each stage of the CHMP, from initial RAP consultation, to fieldwork, to post-fieldwork consultation through to final submission of the CHMP.	CMPA recommends that statutory timeframes of 14 days for the areas of RAP involvement must be introduced to provide some degree of certainty about the duration of CHMPs. There should also be the ability to appeal to VCAT where statutory timeframes are not met. The Office of Aboriginal Affairs Victoria should assume the role where the RAP does not have the necessary resources or personnel.
Isolated artefacts and low density artefact scatters	CMPA strongly supported simplification of the CHMP process for isolated artefacts and low density artefact scatters as per the Issues and option paper April (2012). It is noted that this has not been addressed by the Bill	The requirement of a complex assessment of this type of material, if this type of material is discovered, should be removed.

In the Victorian Government Response to the Parliamentary Inquiry into the establishment of and effectiveness of RAP May 2013 the Victorian Government states that the Victorian system is widely recognised in Australia as being best practice. It goes on to say that there is certainty for industry with an efficient and effective best practice system. The CMPA is of the opinion that this is not the case. There are a number of issues that have not been addressed by the Bill, including:

- Costs and delays in the CHMP process – the average time for a CHMP approval is 9.5 months;
- Lack of a prompt and binding arbitration mechanism;
- RAPs delay the process;
- Triggers for CHMPs - inaccurate or excessive mapping of cultural heritage sensitivity;
- Excessive penalties and enforcement.
- Mandatory public reporting of the total cost for each approved CHMP with a breakdown between the RAP fees and consultants' fees and the time taken for the conduct and approval of the CHMP.

Additionally an economic impact statement needs to be conducted. I thank you for the opportunity to comment via this submission. I would be happy to discuss our submission further.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The signature is written in a cursive, slightly slanted style.

Dr Elizabeth Gibson  
General Manager