

## RE: ABORIGINAL HERITAGE ACT - RESPONSES

Following the Association's discussions with the Department of Primary Industries – Earth Resources Policy Unit, it has been recommended that we approach you with several queries that the Association has in relation the *Aboriginal Heritage Act 2006* and its interaction with the extractive industries within Victoria. We would greatly appreciate your comments to this end to ensure that we have not simply misunderstood parts of the Act.

1. Will all work authority applications made under the *Extractive Industry Development Act* have to have a Cultural Heritage Management Plan (CHMP) in place prior to its approval?

**Response:** No. It will depend on the location of proposed extractive activities, specifically the Aboriginal heritage sensitivity of the land, the past development history of the land and the nature of the impact of the proposed activity. Regulations covering the circumstances in which a Cultural Heritage Management plan (CHMP) will be required are being developed and industry will be consulted on these regulations as part of the regulatory impact statement process later this year.

2. Can a CHMP be set without the land owner's consent (assuming notification occurred in relation to s.44)? (s.45)

**Response:** The legislation provides for voluntary CHMP's (see section 45). However, these cannot be instigated on private land without the owner's consent.

3. What are the 'prescribed standards' for mentioned in s.53?

**Response:** All CHMP's must comply with minimum standards which will be prescribed by regulations to the Act. There will be a minimum standard for the quality, nature and quantity of work undertaken as part of a CHMP. These standards will be set by the Secretary of the Department of Victorian Communities.

4. If a sponsor (who is a private person or body) resolves to discontinue a CHMP as the project is not practical at the present point in time, why are they required to hand over all investigations that have been conducted at their expense? (s.67)

**Response:** It is a legal requirement of this Department to maintain an accurate and up to date register of Aboriginal heritage in Victoria. There is already a legislative requirement to report any discoveries of Aboriginal heritage to the Department, and has been since 1972. This will continue to be the case under the new legislation. If a CHMP has been conducted or partially conducted, then the Department will need to know that that area has been the subject of assessment, and the results of the assessment. This information will then be available for referral by future proponents of activities on that land. A similar requirement to provide site documentation from archaeological surveys exists under the current state legislation concerning Aboriginal and European heritage.

5. How does a sponsor establish which registered Aboriginal parties it must notify in accordance with s.54?

**Response:** The Department will keep an accurate record of registered Aboriginal parties and provide public access to this information.

6. How many cultural heritage advisors are there registered (or anticipated) in Victoria and secondly, how does one establish their work ethics and outcomes?

**Response:** There are currently about 80 cultural heritage advisors and organisations that have advisors on staff operating within Victoria. This does not include advisors and companies based interstate, many of whom also operate nationally. Many are members of the Australian Association of Consulting Archaeologists and must comply with the code of ethics and standards set by that Association to retain membership. More information is available at the Association's website: [www.aacai.com.au/](http://www.aacai.com.au/) The Act provides that all cultural heritage advisors must have appropriate qualifications (see section 189). It is intended that the Minister will publish guidelines specifying those qualifications following the establishment of the Aboriginal Heritage Council.

7. If a 'Stop Order' was evoked and the sponsor found to be complying with the CHMP, would there be any recourse for compensation for lost income? (s.87)

**Response:** It is not intended that a stop order would be made in relation to an activity for which a CHMP is in force, unless there are reasonable grounds to believe the CHMP has been (or is likely to be) contravened or the impact of the activity on Aboriginal heritage exceeds that contemplated when the CHMP was approved. In these limited circumstances, the Minister may order a cultural heritage audit (section 81) and issue an order to stop the activity to which the audit relates (section 88). All costs of the advisor to conduct the audit are met by the Department (section 83(5)). Compensation for other costs in these circumstances is not available under this legislation.

19 December 2005

Aboriginal Affairs Victoria  
Department of Victorian Communities  
GPO 2392V  
**MELBOURNE VIC 3001**

**RE: ABORIGINAL HERITAGE BILL – EXPOSURE DRAFT**

Sir / Madam

I write to you today on behalf of the Construction Material Processors Association (CMPA) in response to the draft bill titled "Aboriginal Heritage Bill" as released by the Minister for Aboriginal Affairs on October 20 2005.

The CMPA represents a broad spectrum of those involved in construction material processing businesses engaged in the extracting processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling; industry consultants, industry suppliers and any industry worker<sup>1</sup>. It is in this light that we provide the attached comments to the discussion paper.

As a matter of importance, the CMPA has found it exceptionally difficult to provide detailed comment upon the Bill in such a short timeframe especially with the briefing being held on November 21. It is important that Aboriginal Affairs Victoria, among other government organisations, recognises that the evaluation of a proposal and preparation of a suitable submission takes a considerable amount of time especially when many people, myself included, providing comment are not paid to do so.

The following pages give a summary of our members concerns and experiences; raise several issues of a general nature, and details two concerns specific to the legislation.

Please recognise that if we have not made comment on a specific point, it cannot be taken that we agree to it. We have limited our discussions to our major concerns as a result of the timeframe.

If you would like to discuss any of these issues further or would like more information, please do not hesitate in contacting me via email at [enquiries@cmpavic.asn.au](mailto:enquiries@cmpavic.asn.au) and one of our officers will be in contact.

Yours sincerely



pp Ron Kerr  
Honorary CEO

cc. Ms Jennifer Wilcott, Department of Primary Industries  
Mr John Mitas, Department of Primary Industries

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<sup>1</sup> See Appendix 1 [The quarry industry in Victoria](#) for further information

**SUBMISSION TO THE  
DEPARTMENT OF VICTORIAN COMMUNITIES  
CONCERNING THE ABORIGINAL HERITAGE BILL  
EXPOSURE DRAFT**

**BY THE  
CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION**

19 DECEMBER 2005

## 1. OPENING

Every time that the CMPA is requested to comment upon a document, we consider a number of factors. Firstly any concerns our members have previously aired in relation to this issue are documented. Secondly we raise any issues of a general nature that apparently have not been addressed at all in the development of the proposal. Finally, we discuss any points of call within the document that will undoubtedly cause difficulties for most of the association's members. This process is our attempt to ensure that any proposal does not restrict entry into the industry and opens the industry up for smaller operators. It is with this in mind that the following submission is made.

## 2. MEMBERS EXPERIENCES

The CMPA represents many small to medium sized enterprises involved in the extraction and processing of construction materials. Issues relating to Aboriginal culture and the management of this area are often brought to our attention, particularly during the planning phase of the businesses. In recent times a number of smaller members have reported being forced to close existing operations or restricted upon putting forward any variations of their operation as a result of variable and expensive archaeological assessments. This has created a climate of frustration and mistrust between the parties involved which clearly needs to be addressed.

Examples include:

- Members being required to pay exorbitant and inconsistent fees and charges to the parties involved in order to carry out assessments, get applications passed, and engaging for monitors
- Monitoring programs suddenly changing and increasing in frequency
- Concerned parties not attending meetings after indicating that they would
- Assessments that leave too much open to interpretation

## 3. GENERAL ISSUES

There are several issues that the association feels have not been given the attention they deserve in the Exposure Draft. Without these being addressed, we struggle to see how the Bill will operate without restricting entry.

### 3.1. Work Load and Timeframe

We are concerned that there has been insufficient investigation to establish the workload of the Council. For instance, how many assessment approvals will be required each week and the cost this will have to the state government? It is important that this is established to ensure that the time limits given in legislation are suitable and neither excessive nor understated.

Currently, turnaround time between the time when an assessment is proposed and gets the final approval of the Council is far too long. Businesses will be looking at a minimum of 77 days not including the actual assessment. This means that this portion of the planning process will take at minimum little under 3 months. To further increase the frustration, there is no guarantee that the assessment will even be accepted meaning that it would be financially risky to continue with other planning requirements concurrently. This needs to be reviewed and adjustments made where possible.

### 3.2. Regulation Impact Statement

It is absolutely essential that a Regulation Impact Statement (RIS) is conducted prior to the passing of this Bill to ensure that the costs to the community, government and sponsors will be able to be sustained. This RIS will need to clearly define the cost of developing and processing each assessment and made publicly available. It will need to ensure that it is not excessively prohibitive to business, overly time consuming upon the Registered Aboriginal Parties, nor too costly to the Secretary or Government.

### 3.3. Compensation for Businesses

Approximately half of our members own the title of the land from which they wish to operate a quarry from. It is important for these members that details are to be given as to what, if any, compensation would be made available if their proposal were denied on grounds of Aboriginal heritage or cancelled due to excessive on-going costs even after having approached VCAT.

#### 4. ISSUES RELATED TO THE EXPOSURE DRAFT

This Bill, although an attempt to address concerns such as those held by our members, seems to have involved too little input from the wider community too late in the consultative stages. Accordingly, our submission has focused on two big issues. The association's key concerns lie with:

- The lack of balance in the Victorian Aboriginal Heritage Council
- The variability and impressionability of the Aboriginal Cultural Heritage Assessments

We are pleased to see the inclusion of a clear system of objection through Victorian Civil Appeals Tribunal however overall see little reason to support this Bill. Without refinement, it does not provide greater clarity nor does it make the process more efficient.

##### 4.1. Victorian Aboriginal Heritage Council

The Victorian Aboriginal Heritage Council has been established in order to assist the Minister in making decisions regarding the management of Aboriginal land management issues throughout the State. Whilst we applaud this concept in principle, we feel that the membership structure is not appropriately balanced to ensure that the needs and expectations of all Victorians are considered in the decision making process.

##### 4.2. Aboriginal Cultural Heritage Assessments

Aboriginal Cultural Heritage Assessments as detailed in the Bill and its supporting papers raise a number of concerns especially in regards to the lack of clear requirements for what they cover and the lack of detail as to what will be prescribed activities.

##### **Assessment Template**

Under the system proposed in the Bill, every Assessment will be different as there is no template available as is currently the case. Our members have reported that without a template, there will be no clarity as to what is required, and it will be difficult to know who to engage in the process and interpret the meaning of the assessment. Additionally, without a template it could be reasoned that assessments will take into account the interpretation and personal bias held by the person undertaking that assessment. It may therefore be simpler for all parties that a standard form of assessment be developed detailing what needs to be checked, standard methods for checking this, and standard terminology to be used.

##### **Prescribed Activities**

Prescribed activities are causing concern due to the lack of clarity given as to what this will encapsulate as our members are not sure if this will include their businesses. This requires clarification and the CMPA would appreciate being involved in this process.

## APPENDIX ONE

### THE QUARRY INDUSTRY IN VICTORIA

#### Introduction

This submission is provided to Aboriginal Affairs Victoria in response to its exposure draft of the *Aboriginal Heritage Bill* and the matters relating to that Bill as seen by the Construction Material Processors Association (CMPA) and more particularly its members potentially affected by this investigation.

The submission introduces the extractive industry that the CMPA represents, and the role and purpose of the CMPA for AAV's information. Discussions then centre upon matters arising from the exposure draft. Finally, concluding comments are presented as a summarisation of this paper.

#### Brief Outline of the Industry

A key component of the construction, building and in many cases manufacturing industries is the supply of competitively priced rock, stone, sand, clay and gravel products which are essential for the production of concrete, cement, bricks, tiles, asphalt, crushed rock products and a host of other applications. Stone is primarily used for construction of roads and buildings but it also has other uses in engineering and manufacturing.

While Victoria has an abundance of good quality extractive resources, unlike metallic minerals and ores, stone resources are low in value and therefore to be viable extraction needs to occur close to market sources. During the 2003-2004 financial year, the Victorian industry produced around 24 million tonnes of hard rock and stone products, 13.5 million tonnes of sand and gravel product, and 1.5 million tonnes of clay products. It had an annual turnover valued at \$446 million from 848 work authorities or quarry establishments.<sup>2</sup>

The industry is characterised by relatively few large operators (3) and many medium and small operations. Adopting the Australian Bureau of Statistics definition of a small business as one that employs fewer than 25 people, it is likely that small businesses in the quarry industry in Victoria represent in excess of 85% of all quarry businesses. Many small-scale quarry operations have developed in rural and regional areas to satisfy local demand.

#### Role and Purpose of the CMPA

The CMPA is an industry association, and will:

1. Conduct its affairs with honesty and integrity;
2. Demonstrate its commitment to the:
  - a. Viability of the industry
  - b. Protection of the environment
  - c. Community in which it exists;
3. Vigorously pursue with the government and others issues of widespread concern to members;
4. Demonstrate leadership and a sense of direction for the industry;
5. Act as a resource and provide support to members through the delivery of cost savings and assistance in complying with legal obligations;
6. Foster unity and cooperation between members and others;
7. Promote continuous improvement through education, training, and other activities

The CMPA represents a broad spectrum of those involved in construction material processing businesses engaged in extraction processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling, industry consultants, industry suppliers and any industry worker.

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<sup>2</sup> 2004, Department of Primary Industries, Victoria's minerals, petroleum, and extractive industries 2003/04 statistical review