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13 February 2006

Ms M Davison
Senior Legal Policy Officer
Minerals and Petroleum Division
Department of Primary Industries
GPO Box 4440
MELBOURNE VIC 3001

RE: REVIEW OF THE EIDA – BACKGROUND & ISSUES PAPER

Dear Megan

On behalf of the members of the Construction Material Processors Association, I wish to express our sincere thanks for the time and effort you went to in visiting and meeting with our members.

It is in this light that we provide the attached submission to the *Background and Issues Paper*. In completing this, we have worked through the Act to establish how best our members and others in the business throughout the state could be regulated.

The readers of this submission must understand that the *Extractive Industries Development Act 1995* once worked very effectively at protecting and developing the State's stone resources and placed our State in an enviable position. It is evident from the data supplied in this submission that the barriers restricting entry are gradually creating a situation where new development by family businesses is being stifled. This situation must be addressed immediately.

Key issues the CMPA feels are essential to be addressed in the review of the Act include the following:

- Efficient use of the essential stone resources;
- Ownership of material;
- Rehabilitation bonds;
- Planning process;
- Work plans; and
- Buffer zones.

Please do not hesitate to contact me should you wish to discuss this submission in more detail. Email enquiries@cmpavic.asn.au or contact me on 0418 325 303.

Yours sincerely

Grant Phillips
CMPA Chairperson

Encl 1

SUBMISSION TO THE

DEPARTMENT OF PRIMARY INDUSTRIES

REVIEW OF THE EXTRACTIVE INDUSTRIES DEVELOPMENT ACT 1995

BY THE

CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION

FEBRUARY 2006

1. INTRODUCTION

By its nature, legislation governing an industry reflects the state of the industry at a point in time and the attitude towards it by the community. As these conditions change over time, so too does legislation change through amendments or more fundamental action. The *Extractive Industries Development Act 1995* ("the Act") emanated from the earlier *Extractive Industries Act 1966* ("1966 Act") which was established recognising the particular importance of industry issues associated with extractive materials. Importantly, these issues were seen as distinct from general mining operations.

The Act has been amended several times and recently with the conduct of the Competition Policy Review the underlying basis for the Act and its provisions were given serious consideration by the Association. Some recommendations from the review that led to subsequent amendments to the Act were difficult to embrace by members. This has raised the level of questioning of legislative controls generally resulting in a more informed and interested membership.

Often amendments to the Act have been made to reflect the existence of other new legislation. The original 1966 Act existed at a time well before specific environmental and occupational health and welfare legislation. These enactments have substantially, but not entirely, addressed the issues facing the industry in the 1960's. The current issues of concern to the CMPA are:

- Efficient use of the essential stone resources;
- Ownership of material;
- Rehabilitation bonds;
- Planning process;
- Work plans; and
- Buffer zones.

Each of these needs to be fully addressed in the review of the Act. A brief discussion of these matters and their implications for the industry is provided in the following sections of this submission. These issues are presented on the basis that they are representative of our members' thoughts and feelings.

2. THE CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION (CMPA)

The CMPA is an industry Association that aims to:

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

Since the inception of the CMPA in January 2000, the Association has dealt with numerous issues in order to assist the industry in moving to the cutting edge. This has included the following activities:

- *Vocational Education and Training of Industry Participants*
  The CMPA has worked tirelessly to assist industry to adopt the Certificate II and III training from the Extractive Industries Training Package. This has included many hours of consultation with all parts of industry to ensure that training materials are of a suitable level, consulting with Government bodies responsible for training to ensure that it is relevant to industry's needs, and facilitation of units of competency that teach trainees industry best practice. This has seen industry gain a higher degree of language and literacy skills, seen the uptake of vocational education and training into all manner of industry operations from the very small to the very large, and assisted in lifting the standards of industry as a whole.

- *Defining Industry Best Practice*
  The CMPA has facilitated the definition of industry best practice by holding workshops and developing tools which inform and educate members on how they can better their businesses. Issues addressed in this manner have included taxation, site rehabilitation, site safety and employment remuneration.

- *Assisting in Making Compliance Simpler*
  Tools the CMPA have developed to assist in compliance range from 'Employee Wage Books', to various pre-start and end day safety checks, through to a collection of documents and sample forms that sites can apply without the need for dedicating considerable expense upon development. Other means by which the CMPA has attempted to make compliance simpler have been through representation of industry to Government and facilitating many different training sessions at both a Certificate II level and for managers and site owners.

- *Representing and Protecting Industry*
  Representing and protecting industry is one of the roles of the CMPA which is fulfilled by responding to the numerous proposals for change to regulation each year. This has included comment being made on a very wide range of areas, all of which effect the day-to-day operation of industry.

Over the past few years, the CMPA has found it to be most effective for industry, and subsequently for the Association to be involved with the latest means of educating industry persons, to present Government with proposals rather than have them presented to industry, and to give industry the skills they need to prevent issues arising. It is with this philosophy in mind that the CMPA has maintained its strong and greatly valued relationship with the DPI and its officers. Their assistance has been invaluable to industry and of great benefit to all involved.

3. EFFICIENT USE OF THE ESSENTIAL STONE RESOURCES

The Government should be responsible for ensuring the efficient use of the State's essential extractive resources by:-

- identifying and protecting existing and future strategic resources;
- ensuring access to the best available resources so that they can be efficiently utilised and provided at competitive prices; and
- providing a regulatory framework to allow the industry to operate safely and efficiently with minimal environmental and amenity impacts.

Unlike the mining industry, the extractive industries provide essential construction materials that are vital for the continued development and maintenance of our community, domestic and business infrastructure. The importance of properly constructed and maintained road infrastructure, the safety of our citizens and our economic prosperity cannot be over-emphasised.

When using the estimated resident population figures (June 2005) from the Australian Bureau of Statistics, of 4.97 million people[1] and the DPI production data in 2004 of 38.83 million tonnes[2], it is established that just under 8 tonnes of material was used by each Victorian in 2003/04. This demand has to be provided from mostly non-renewable sources that are only found in specific geological locations. Construction material products processed from these sources are mostly of low value, very heavy and have to be transported to their point of use in large trucks. Contrary to popular opinion, the main amenity and environmental impact resulting from our industry is the transport of these materials.

Ensuring that the best and closest resources are protected and made available will have the greatest effect on reducing the real environmental and amenity impacts on the community. The result of not doing this is now becoming evident in the Sydney region where construction materials will soon be transported over 150 kilometres to the market. The economic and environmental cost of this increased transport in the Sydney region will be very significant.

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[1] See http://www.abs.gov.au-Publication3101.0

[2] 2005 Statistics not yet published. See Victoria's mineral, petroleum and extractive industry 2003/04 statistical return

Considerations

It would be appropriate to:

- Review the objective of the Act and insert '…*encourage the extractive sector to make the best use of stone resources in a way that is consistent with the economic, social and environmental objectives of the State.*";
- Ensure the identification of the State's assets; and
- Ensure the protection of access to strategic resources throughout the State.

4. OWNERSHIP OF MATERIALS

4.1 PRIVATE OWNERSHIP OF MATERIALS

In Victoria, under the Act, ownership of extractive resources is vested with the landowner, whether on old or new titles (the latter consisting of Crown strata below 15.2 metres). The Association sees it as absolutely essential that the State maintains these ownership arrangements.

4.2 CROWN LAND ROYALTIES

Remuneration to the State from Crown extractive industry assets is collected by means of a royalty on the materials produced.

Considerations

- The existing material groupings should be retained but they need to be apportioned to the average industry unit rate.
- This royalty needs to be set from a formula that is methodically calculated and transparent to all parties.
- Consideration should be given to the sale of these Crown assets as the State would gain far greater benefit through sales than revenue from royalties.
- A more appropriate method of linking Crown land managers and the Department in relation to the granting of consent and the collection of rents should be developed.

4.3 LAND OWNERS CONSENT

Section 19 of the Act provides that the Minister may only grant a Work Authority if the applicant has complied with several conditions, including a requirement that the applicant has obtained the consent of the owner of the land, where the applicant is not the owner of the land.

Section 21(2) of the Act provides that a Work Authority remains in force so long as the carrying on of an extractive industry on the land is permitted under the relevant planning scheme or Planning Permit, unless the Work Authority is cancelled or varied by the Minister or "the land owner's consent (if required) is revoked, lapses or otherwise ceases to have effect".

The concept of a requirement of continuing land owner consent introduced by the Act is a strangely subjective and personal concept. It has the consequence that a land owner can at a whim send a letter to the Department indicating the operator no longer has consent. The quarry operation then comes to an immediate halt because the Work Authority held by the operator immediately and automatically ceases to have force and effect by virtue of the provisions of Section 21(2). This can obviously provide a land owner with extraordinary leverage if there is any dispute with the quarry operator. The CMPA is aware of instances where land owners have used or attempted to use leverage in this manner. Sometimes the situation is compounded by unsatisfactory occupancy documentation. Industry has attempted to address this situation by very specific lease covenants relating to maintenance of the consent together with acknowledgment of liability for loss of profits and consequential loss. However, these provisions do not totally solve the problem. In the case of a dispute between land owner and quarry operator, where the land owner claims to be entitled to take steps to terminate the quarry operator's rights with respect to the land and this is disputed by the quarry operator, the quarry operator's ability to assert and maintain his position, or to negotiate, is massively undermined by the fact that the land owner can bring about the immediate cessation of the Work Authority.

Given the personal and subjective nature of the required consent, there is uncertainty as to the precise meaning of "revoked, lapses or otherwise ceases to have effect" in Section 21(2). For example, what happens if the land owner dies or sells the property?

Considerations

- As the consent of the land owner is a prerequisite for the initial grant of a Work Authority, the only issue is whether the holder continues to have legal access to the land, and if the Minister is satisfied that the holder has ceased to have this right. For example, if a lease expires or is terminated, the Minister should have the power to revoke the Work Authority.

5. REHABILITATION BONDS

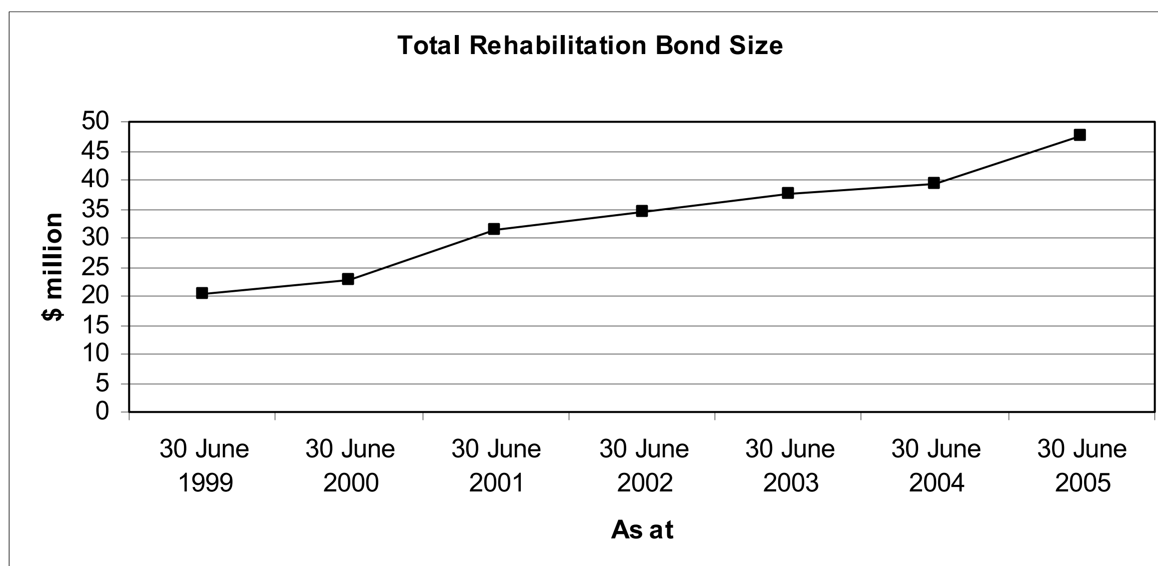
In recent years, there has been a growing interest in environmental and associated issues such as corporate governance, triple bottom line reporting, ethical investment and other theories and concepts which address the processes associated with business behaviour and accountability.

Adapting to these developments often makes good business sense, with improved community perceptions and an improved financial bottom line. However, on occasions, specific environmental and other requirements can affect the very viability of businesses.

The legislated objective of the rehabilitation bond system is to return the land on completion of the extractive industry to a 'safe, stable and visually pleasing' condition to ensure that no future responsibilities are placed upon the Government.

The economic objective of the rehabilitation bonds system is to reduce potential costs to the community from Work Authority sites at the end of their economic life while still making the best use of these resources.

A Work Authority holder must set in place a bond to cover expected costs of rehabilitation of the site, in case the Work Authority holder does not perform sufficient rehabilitation. Since 1999, the extractive industries have seen the quantum of rehabilitation bonds held by the State increase from $20.2 million at 30 June 1999 to $47.6 million at 30 June 2005 and massive increase of more than approximately 130% in the six-year period to 2005 as seen in the graph below. It must be recognised that this later amount is underpinned by private assets of around $79 million value[3].



[3] _An Economic Analysis of the Rehabilitation Bonds System_, Dr David Prentice, April 2000 for the CMPA. The given amount it based on the maximum security required of 166%. This varies depending upon the characteristics of the business.

The disproportionate increase in bonds in recent years is having a range of negative effects:

- It is curtailing investment by small firms in the industry;
- It is reducing the ability of firms in meeting their community, environmental and safety obligations; and
- Is affecting the financial viability of small firms.

A major problem of the bond system is that it is not an expense as such but a liability on a firm's balance sheet, tying up working capital and escalating the borrowing burden being placed upon those businesses. Furthermore with monies sterilised in the bond, this leaves the operator having to double the working capital required to carry out their ongoing rehabilitation program.

Underlying problems with the bond system and how it is administered are outlined as follows:

- There is no foundation to warrant the present assessment process;
- Insufficient data exists to properly evaluate the effectiveness of the bond system and the level of funds derived relative to the potential cost of required rehabilitation;
- The system does not provide any incentives for Work Authority holders to carry out rehabilitative work on their own initiative and on an ongoing basis;
- The system is complex, subject to field operative's interpretation and given to bureaucratic wrangling, with an eight-step process for revising a rehabilitation bond, leading in some cases to protracted disputes between Work Authority holders and the Government; and
- Pre-assessments for greenfield sites are restricting entry as the assessed liabilities are not coming into being for some time.

In the review of the Act future legislative scenarios are likely to be considered and a comparison with mining legislation is inevitable. In terms of the rehabilitation system, the State's potential rehabilitation liability is increased in mining compared to quarrying due to the following:

- Some mining processes produce mullock heaps containing millions of tonnes of extracted and processed material;
- Some mining processes include settlement pondage covering many acres;
- Some mining processes require toxic processing systems;
- Mining products are subject to international product volatility underpinning activity;
- The legal structure of mines commonly involves minimal personal guarantee of directors;
- The lack of ownership of minerals by the miner, as against quarrying where the materials are owned by the land owner; and
- Mining often has a rate of advance of working faces which is significantly faster than quarries.

Considerations

- This issue hinges on Government's need to continue to identify itself as having an obligation for the rehabilitation of Work Authority sites within the extractive industry sector.

  The present practice of extinguishing these projected liabilities through rehabilitation bonds is an ineffective method for businesses to fund long-term liabilities and prejudices small family businesses who retain a limited asset base with which they can support the process.

  The system should allow the capacity to pay more early on in the process. It should be a system which supports the principle whereby the end user pays for the total charges associated with the production of the materials (including rehabilitation). There would be less pain if any assessed liability outlay, which is not expected to come back for many years, were treated as an expense and not sterilised as in the present fashion.

- The Association would welcome the opportunity to work with the Department to formulate a new assessment process. The CMPA considers that any system put in place to ensure these responsibilities are met should be equitable, transparent, and affordable to all sectors of the industry; consider both the liabilities and benefits of an operation; and encourages operators to outlay the projected monies (liabilities).

- That prior to any revised system being proposed, careful consideration is given to ensure that the extractive industries and general mining are each assessed on the proven risk of their sector not meeting their rehabilitation requirements.

6. PLANNING APPROVALS

Historically, planning schemes evolved individually with their own zonings, but for some years now the zonings have been standardised. All schemes include a State Planning Policy Framework and a Local Planning Policy Framework. The zoning categories are standard. In each zone Section 1 lists uses which are as of right, i.e. no Planning Permit is required, although very often conditions are specified which must be complied with. Section 2 lists uses which require a Planning Permit and conditions may also be specified. Section 3 lists uses which are prohibited in the zone and in respect of which a Planning Permit cannot validly be issued. Under many zonings, any use which is not actually specified in either Section 1 (i.e. a use not requiring a permit) or Section 3 (i.e. a prohibited use) can be the subject of a permit as a Section 2 use.

Mining, however, is a Section 1 use in nearly all zones. Effectively no Planning Permit is required if an environmental effects statement has been prepared and a Work Authority granted by the Minister under the Mineral Resources Development Act. In addition, a Planning Permit may be issued even if the proposed activity is a Section 3 prohibited use. A distinction from extractive industry is often made on the basis that minerals are owned by the Crown, being reserved from alienation under Crown grants, whereas extractive industry relates to stone and other materials which are the property of the land owner. This does not seem to justify different treatment, as apart from any other consideration, a lot of stone is quarried on Crown land or beneath depth limitations applying to privately owned land. Is there any reason why minerals are more important to the community than extractive industry materials and that mining of them should be largely excluded from the planning process?

The Victorian Planning Provisions require a Planning Permit for extractive industry operations[4]. This is in addition to the Act's Work Authority and Work Plan and causes considerable frustration to those within the industry due to the substantial time involved and insecurity associated with the planning process. However, the assistance and direction given by the Department is greatly appreciated by industry.

The CMPA's proposition is that because an extractive industry requires a Planning Permit it becomes mainly an amenity argument with individuals who, perhaps understandably, do not want a quarry in the vicinity of their properties. Bearing in mind that extractive industry is a prohibited use in nearly all zones other than the Rural Zone, rural related zones and Industrial Zones and that, leaving aside the metropolitan supply area, a large number of quarries are situated in rural areas, the problems are very often with lifestyle rural residents. Our contention is that the process of exploitation of stone resources should not be driven and determined by these considerations. The resources can only be exploited where they are geologically located. Mineral resources have a much better opportunity for exportation and the Association contends that extractive industry should be treated in a similar manner (see Appendix 1 for further details).

Comments in relation to Work Plans from a very disillusioned participant on this issue:

"My experience with the process is that of frustration and our company made a decision not to undertake this type of work as the system inevitably reflected badly on our company reputation. Specifically Work Plans needing to be issued before Planning Permits and vice versa, Planning Permits needing to be issued before working plans. Overall it has been very confusing to the client and in most cases placed our company in a poor light beyond our control."

Considerations

- That Extractive industry should become a Section 1 use in the Rural Zone and in other zones where it is currently possible to obtain a permit, but subject to conditions including:
  - a Work Authority under the Act is obtained and that the conditions of the Work Authority must be complied with;
  - take into account broad issues in relation to public buildings, public safety and public access.
- That a linkage is created between Planning Permits and work authorities;
- The identification and recovery of the management costs of the Department from local councils; and
- Guidance material is needed that clearly sets out to the industry under what circumstances an Environmental Effects Statement is required.

[4] State Planning Policy Framework, Clause 17

7. WORK PLANS

The concept of Work Plans is integral to the industry and has ensured that best practice occurs. They have increased the standard of the extractive industry sector in the public arena.

New Work Plans and variation applications, however, are not being approved in a timely manner due to problems in documentation quality, inconsistency from the inspectorate and other Government organisations, and a lack of clarity within existing guidance notes. The untimely completion of Work Plan approvals is contributing to the downward trend in new applications. External factors may be contributing to this spiral; however this is one factor that can easily be resolved.

The cost of developing a Work Plan is inhibiting interested parties from entering or remaining in the industry. It is essential that businesses have clear direction concerning Work Plans to ensure that they can be submitted once and correctly.

It is also recognised that there is a shortage of consultants to support the industry and that those available are restricted as they are reworking plans multiple times to meet the Inspectorate's and others requirements.

Considerations

To address the above issues the following actions are required:

- Accountabilities and recommended timeframes for completion of the stages of the process need to be set in legislation to prevent Work Plan applications becoming stalemated.

- The “Guideline for Work Plans” and “Triggers for Work Plan Variation” and the proposed guideline for Environmental Effects Statements need to be set in legislation.

- The Work Plan needs conditions that are on the Planning Permit, but first the exact purpose of the Work Plan needs to be nominated. The purpose of the Work Plan is to ensure that the impact of the proposed works on the amenity of the surrounding community is managed effectively.

- That the Work Plan becomes a more generic document offering proponents greater flexibility in their daily business operations, whilst ensuring that the principles of the operation are appropriate for the resource.

8. BUFFER ZONES

New Victorian Planning Provisions require that extractive industries must own or control defined buffer areas which are appropriate to the nature of the proposed operations. For existing operations and where extensions are requested the DPI requires the operator to demonstrate that the impacts on sensitive land uses will not increase above current levels and must comply with the performance standards for new sites.

Buffer zones effectively sterilise the land because the operator is unable to use it for any wealth generating purpose. This has significant economic and financial implications. The ENRC review of 1994 identified sterilisation caused by urban spread as a major issue that would affect the future development of the industry.

Considerations

- Legislation should require any proposals affecting or within a Work Authority operation's buffer zone to firstly gain approval from the Work Authority operator. This is vitally important as such proposals have the potential to severally hamper operations, or in the case of older operations nearing the end of their economic life could assist in their rehabilitation.

- Buffer zones should be reclassified in order for them to be exempt from both land rates and sales tax valuations.

9. MOVING FORWARD

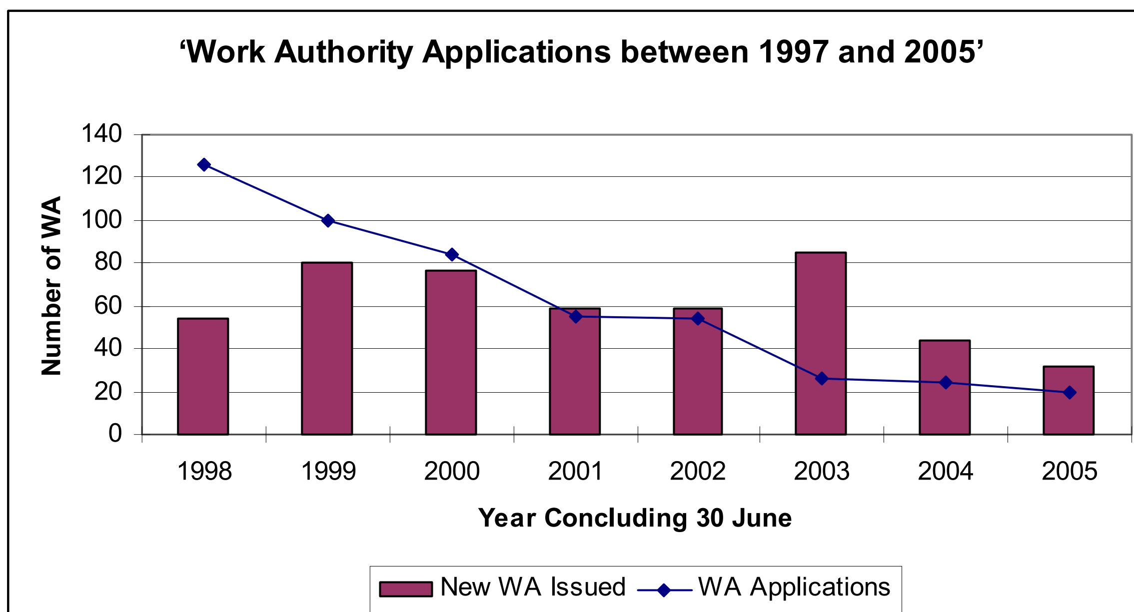
9.1 RELEVANT GOVERNMENT POLICIES

The review of the Act must proceed in accord with policies and initiatives put in place by the Government. For instance, the Brack's Government has a policy to minimise the regulatory impact on business, and particularly small business such as the majority of the CMPA's membership. The Government recognises that the burden of regulation continues to be a major concern for small business due the economic impact of investment distortions and disincentives. In addition, and this is very pertinent to the extractive industry, small business faces the costs of complying with regulation a particular burden – these costs arise from the cost of requirements for new equipment, training, administrative costs and the time required to complete paperwork. The ever rising level of rehabilitation bonds is the most dreaded regulatory action under the EID Regulations and as discussed earlier this has a limited rational basis and more limited application.

The compliance burden of regulation is often a fixed cost; small businesses disproportionately feel its effects. They can access fewer resources to interpret and implement compliance requirements and to keep pace with the cumulative burden of regulation and the ever changing regulatory environment.

The review of the legislation must be cognisant of the Government's small business policy and ensure that any new controls do not impose a net increase in costs on the industry. The CMPA considers that the existing legislative measure inappropriately applies a 'one size fits all' approach to the industry that is characterised by three or four large operators and the balance (>600) small to medium operators. There are likely to be legitimate opportunities to exempt very small scale quarrying operations from the provisions of the Act and Regulations as their impact is minimal. A further gradation of application may also be justified.

Notwithstanding increases in production the spiralling regulatory costs of entry to the industry and ongoing compliance costs combined with marginal returns appears to be the primary reason for the plummeting industry entrants as illustrated by applications for a Work Authority depicted in the following chart.



Appendix 2 provides a detailed timeline of the experience of one CMPA member with an application for a Work Authority. The site was first surveyed on 6 November 2003 and despite significant actions since then and necessary procedures being followed formal notification of refusal to grant a Planning Permit has just been advised (7 February 2006). While not detailed, the very substantial costs in consultant's fees, application process time and effort etc make such a initiatives by an individual futile and a complete disincentive to investment.

Another Government policy of particular relevance for our industry is the promotion of the economic prosperity of regional and rural Victoria. The policy paper, *Moving Forward: Making provincial Victoria the best place to live, work and invest*, outlines the Governments investment strategy in new growth and regional infrastructure development to ensure sustainability of the communities, jobs and growth. The extractive industry in Victoria, being regionally based, is a key player in these initiatives by providing the means to infrastructure growth, in the provision of material for roads, building, construction and housing. Moreover, while comparatively small, the industry is an important employer in the regions.

A comment by a CMPA member reflecting the views of many members on the costs of compliance associated with increasing regulatory demands.

"It is as though we are being deliberately forced out of our livelihoods by the ever increasing number of hurdles that we have to jump, most of which have absolutely no relevance once we begin the process of serving our communities. At this present rate, there will be not one family business remaining inside the next 15 years."

9.2 INVOLVEMENT OF THE CMPA IN THE REVIEW PROCESS

From its inception in 2000 the CMPA has sought to achieve benefits for its membership by influencing policy makers and regulators in the most effective and fair way of approaching their objectives. The Association has managed to make inroads in various areas but clearly change is an avalanche and not all issues can be dealt with. The review of the Act is, naturally, of vital interest to the Association and its membership: probably of more economic importance than to the large operators who, due to their scale, can more readily adapt to new legislative demands. The viability of small extractive industries hinges directly on the cost impositions of the Act and its administration.

The Association therefore expects that it will have a continued opportunity to shape any new legislative environment. For example, the Association is best placed to provide information about the impact of any new arrangement on the small business sector of the industry. This will need to be quantified at some stage in the process in a Business Impact Assessment to accompany a Cabinet submission for new legislation or significant change or Regulatory Impact Statement for new or amending regulations. The Association also has other more detailed comments to make about the Act's provisions and it is happy to provide these in due course.

Because of the importance of this issue the Association has formed a Legislative Review Committee and its representative will be the Association's contact for this matter.

APPENDIX 1 – THE PLANNING PROCESS AND THE EXTRACTIVE INDUSTRY –A COMMENTARY

Section 19(2) of the Act specifies the conditions which must be satisfied before the Minister may grant a Work Authority. These include the requirement that the applicant has complied with any relevant planning scheme and obtained any necessary Planning Permit under that scheme. This in itself appears to be a misconception in that Planning Permits are not personal and it is not necessarily the applicant who has or must comply with the scheme or obtain a Planning Permit. All that can be relevant is that the proposed use is in accordance with the applicable planning scheme, which may mean several things, e.g. the use is justified as an existing use predating any necessity to obtain a permit, there is a Planning Permit already in place obtained by either the land owner or some previous operator of a quarry on the site, or that someone, whether it be the applicant for the Work Authority or the land owner has applied for and obtained a Planning Permit in conjunction with the application for a Work Authority.

Following the commencement of the Act, the Department indicated that under the new legislative framework the Planning Permit process would be the main approval process to establish an extractive industry operation.

Historically, planning schemes evolved individually with their own zonings, but for some years now the zonings have been standardised. All schemes include a State Planning Policy Framework and a Local Planning Policy Framework. The zoning categories are standard. In each zone Section 1 lists uses which are as of right, i.e. no Planning Permit is required, although very often conditions are specified which must be complied with. Section 2 lists uses which require a Planning Permit and conditions may also be specified. Section 3 lists uses which are prohibited in the zone and in respect of which a Planning Permit cannot validly be issued. Under many zonings any use which is not actually specified in either Section 1 (i.e. a use not requiring a permit) or Section 3 (i.e. a prohibited use) can be the subject of a permit as a Section 2 use.

Extractive industry is a Section 2 use in the Rural Zone and in other zones including the Rural Living and Industrial Zones and therefore requires a Planning Permit. Extractive industry is a prohibited use in the Residential 1, Mixed Use, Township, Business and other zones. Extractive industry is not a Section 1 use in any zone.

The position therefore is that the establishment of a quarry has become a Planning Permit issue, subject to compliance with the statutory provisions as to approval of Work Plans, rehabilitation bonds etc. The trouble with this is that no-one wants to live near a quarry, but unlike other similarly unpopular uses, e.g. broiler farms, quarries can only be located where the resource is, and this is usually not a matter of choice for the quarry operator. It is true that this is to some extent recognised in the State Planning Policy Framework and sometimes in Local Planning Policy Frameworks, e.g. clause 17.09 of the State Planning Policy Framework deals with extractive industry and articulates the objective as identifying and protecting stone resources accessible to major markets and providing a consistent planning approval process for extraction in accordance with acceptable environmental standards. The implementation provisions which follow provide that planning schemes must not prohibit extractive industry in non-urban zones unless the activity is prohibited by statute. General principles are enunciated for establishment of buffer zones between new and existing extractive industries on the one hand and sensitive land uses on the other. The concept of extractive industry interest areas is endorsed, but it is understood that the development of this concept has been largely confined to the Melbourne supply area with some definition of areas around mainly the large provincial cities. Obviously there are quarries scattered throughout Victoria and it, does not seem practical to think in terms of surveying and identifying resources over the whole of the State.

The problem is that despite these reassuring declarations of principle, applications for Planning Permits with respect to quarries more often than not degenerate into *not in my backyard* amenity arguments and what is more, get decided on that basis. It is very cheap to object to a Planning Permit application and even an application for review to VCAT can be no more expensive than a tram or train fare to King Street if objectors decide to appear without representation, which the system warmly accommodates. The permit applicant on the other hand has normally invested significant time and money in securing the site and developing over a period of time the Work Plan to the point of Departmental approval. However reasonable the proposal is, the permit applicant will normally have too much at stake to do anything other than mount a full blown case with legal representation and various consultants engaged. The permit applicant still runs the risk of encountering an objector sympathetic Tribunal member and either losing entirely or being subjected to a large number of restrictive and expensive conditions.

Contrast this position with respect to mining, which is a Section 1 use in nearly all zones. Effectively no Planning Permit is required if an environment effects statement has been prepared and a Work Authority granted by the minister under the Mineral Resources Development Act. In addition, a Planning Permit may be issued even if the proposed activity is a Section 3 prohibited use. A distinction from extractive industry is often made on the basis that minerals are owned by the Crown, being reserved from alienation under Crown grants, whereas extractive industry relates to stone and other materials which are the property of the land owner. This does not seem to justify different treatment, as apart from any other consideration, a lot of stone is quarried on Crown land or beneath depth limitations applying to privately owned land. Is there any reason why minerals are more important to the community than extractive industry materials and that mining of them should be largely excluded from the planning process?

The CMPA's proposition is that because an extractive industry requires a Planning Permit it becomes mainly an amenity argument with individuals who, perhaps understandably, do not want a quarry in the vicinity of their properties. Bearing in mind that extractive industry is a prohibited use in nearly all zones other than the Rural Zone, rural related zones and the Industrial Zone and that, leaving aside the metropolitan supply area, a large number of quarries are situated in rural areas, the problems are very often with lifestyle rural residents. Our contention is that the process of exploitation of stone resources should not be driven and determined by these considerations. The resources can only be exploited where they are. Mineral resources have a much better opportunity for exportation and we would contend that extractive industry should be treated in a similar manner.

The CMPA suggests that extractive industry should become a Section 1 use in the Rural Zone and in other zones where it is currently possible to obtain a permit, but subject to conditions. This leaves the protection given by the planning schemes in all other zones. It is acknowledged there are difficulties in specifying conditions which provide appropriate environmental protection and which at the same time are sufficiently flexible to cover differing circumstances. One possibility is that the only planning scheme condition should be that a Work Authority under the Act is obtained and that the conditions of the Work Authority must be complied with. This would involve placing greater responsibility on the Department in terms of specifying buffer distances and environmental measures etc., but work authorities already deal with these issues and there is a degree of overlap at present. It could also be necessary for the Act to require the Minister to consult such authorities as the applicable water authority and the EPA before deciding to grant a Work Authority. This would address catchment and pollution issues. We appreciate that this all goes against the flow, which is to push all this into the planning process, and presumably to largely remove the Department from the public firing line. However, we contend that the process should essentially be a Departmental administrative process rather than these matters being thrown into the maelstrom of a public planning process driven almost entirely by amenity considerations and the whim of individuals. At least on a Departmental basis there would be opportunity for a more ordered approach in relation to situation of resources and local and regional need.

It is also to be noted that the above represents basically a planning issue, rather than an issue involving the provisions of the Act or replacement legislation, and involves the numerous planning schemes in Victoria. However, there is provision in the Act for amendment of planning schemes in a manner which short cuts the normal amendment process.

APPENDIX 2 HISTORY OF THE APPLICATION FOR WORK AUTHORITY

The following is the history to date:

6/11/03	Site surveyed and existing condition plans prepared
30/12/03	Requested Aboriginal Affairs Victoria (AAV) for initial site inspection
16/3/04	AAV site visit
26/4/04	Form an AAV response
31/5/04	Requests to consultant for Heritage Study
14/7/04	Archaeological Heritage Consultant appointed
6/8/04	Draft of Work Plan submitted to DPI
9/8/04	Archaeological Survey completed – no items of interest found
11/8/04	Response from DPI received with an extensive list of required alterations
17/9/04	Revised Work Plan submitted to DPI
8/11/04	Response from DPI received with a list of further required alterations
27/12/04	Revised Work Plan submitted to DPI
1/3/05	Quarry road intersection design commenced
2/3/05	Resubmission of information submitted on 27/12/04 (December document apparently went astray)
8/3/05	Extra copies of Work Plan submitted to the DPI
9/5/05	Response from DPI received with a request for one further minor change
7/6/05	Revised Work Plan Submitted to DPI
21/6/05	Extra copies of Work Plan submitted to DPI
18/7/05	A further extra copy of Work Plan submitted to DPI
26/4/05	Draft Work Plan endorsed by DPI
28/7/05	Planning Permit application submitted to Shire
1/8/05	Shire acknowledges receipt of Planning Permit application
5/8/05	Shire provides details of Public Notification of the application
23/8/05	Notice of application for Planning Permit in local paper
25/8/05	VicRoads require further information relating to the Planning Permit application
30/8/05	Consultant requested to undertake Traffic Impact Assessment as required by Vic Roads
18/10/05	Road Design and Traffic Impact Report submitted to the Shire
18/10/05	Road Design submitted to VicRoads for approval
22/12/05	Shire requests a copy of the Archaeological Report
29/12/05	Copy of the Archaeological Report submitted to Shire
2/1/06	Report prepared in response to objection to the Planning Permit and submitted to the Shire
24/1/06	Application for Planning Permit considered by the Shire Planning Committee
1/2/06	Formal notification received of Shire refusal to grant a Planning Permit
7/2/06	Letter sent to lawyer and town planner regarding the lodgement of appeal against the Planning Permit refusal

There was also a site meeting between the proponent, his representative and a representative of the Shire Planning Department in early 2004