

27 April 2005

Mr J Malempre
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RE: CERTIFIED PRACTICING QUARRY MANAGERS

Dear John

Firstly I would like to thank you for our meeting to further discuss the association's concerns regarding the proposed Certified Practising Quarry Managers as presented by the Institute of Quarrying Australia.

As you requested I have supplied a list of concerns that would need consideration to ensure this proposal was equitable and without risk to directors and acceptable to those people being certified:

- Certified Practising Quarry Supervisors/Managers referees who hold the appropriate experience should not have to hold IQA membership but be recognised through their deeds.
- Certified Practising Quarry Supervisors/Managers status must not be exclusive to those holding IQA membership. We do not have the right to force our employees to be members of industrial organisations, and equally we do not have the right to force them to be a member of a particular association.
- With the Code of Conduct being agreed to and signed by the applicant prior to them becoming CPQS/CPQM, accountability to it would be no more effective if you were a member or a non-member of the IQA. There would need to be clear evidence that IQA membership was 'one of the key components' to instigate this.
- Maintenance of CPQS/CPQM should be initially set at a maximum of 10 hours of Ongoing Professional Development (OPD) each year, and that the proposed minimum of 10 hours dedicated to IQA activities is not appropriate when considering an individual's right of choice.
- Auditing of the OPD would need to have protocols established which did not prejudice or jeopardise a CPQS/CPQM's employment position were a review to find a shortfall in hours was occurring. There would need to be a period of time available were that person found lacking in hours could update their OPD requirements as necessary.
- The cost of certification being \$25 as seen in one IQA proposal is of concern when considering that the Institute of Engineers, Australia has established that a flat rate of \$440 GST inclusive for their Chartered Title Assessment Fee and as additional \$77 to be registered with NPER/NETR (see www.ieaust.org.au). It would be noted that there are many more registrable engineers than quarry supervisors/managers and therefore the cost of such a service to our industry could be considerably higher. We would also like to have a transparent procedure for the reviewing of this fee presented.
- The obligations placed upon the board and its make up would need to be inclusive of all industry as the industry is not totally represented by the IQA. Concerns pertaining to the board members protection against litigation need to be addressed publicly, and it would also be practicable that the board consisted of a mixture of government, both private and public industry, training providers, and other experts in the industry.

The CMPA feels that this proposal requires further review and open consultation with all regulators, industry leaders, and those managers who will be required to meet these requirement before this is implemented as 'the only way to go'.

We look forward to continuing to work with the IQA on this matter and look forward to seeing a satisfactory resolution for all.

Yours sincerely

Ron Kerr
CMPA Honorary CEO

SUBMISSION TO THE
INSTITUTE OF QUARRYING AUSTRALIA

REGARDING ITS PROPOSED CERTIFIED
PRACTICING QUARRY MANAGEMENT SYSTEM

BY THE

CONSTRUCTION MATERIAL
PROCESSORS ASSOCIATION (CMPA)
VICTORIA

14 MARCH 2005

1. INTRODUCTION

This submission is in response to a Paper by the Institute of Quarrying Australia (IQA), *Certified Practicing Quarry Management System*, dated 16 December 2004 that seeks to develop a 'national' system to recognise the professional status of quarry managers and supervisors. The essence of the proposal is for the IQA, through a Certifying Practice (CP) Board, to 'regulate' the recognition of qualifications for certification of these positions within the quarry industry in Australia. The Paper provides considerable detail about the intended procedures involved for an application for certification, the experience and qualifications requirements, the assessment methodology and an audit process.

One of the prime benefits of the proposed certification system as stated in the Paper, which is intended to be voluntary, is to bring about consistency in the qualifications and experience requirements for managers in all States and Territories. Clearly, the extent to which industry adopts the voluntary system will directly relate to the benefits to be derived. Little take up will derive few benefits.

Other anticipated benefits of the system are stated as including:

- A framework for individuals to develop and maintain knowledge, skills and experience as well as the behaviour and conduct of importance to the industry and those individuals;
- A vehicle for The Institute to provide strong support for its members' competency development and maintenance by way of its on-going professional development program and by providing peer support and review in these endeavours;
- A system that encourages vocational training and development of all people engaged on or associated with quarrying;
- A system that enables owners of extractive industry operations to ensure that those they appoint are to operate their sites are competent to perform their duties, as required by legislation.

This last point is relevant to the current Victorian legislative arrangements which require that a work authority holder must appoint a person to manage a quarry who is 'competent' to do so. This matter will be discussed later in the Paper. This objective is also of particular interest as it seems to contradict the point made on page 3 of the Paper where it says "*Nothing should be construed as The Institute performing the statutory role or as The Institute certifying people as competent, the latter being the role of Registered Training Organisations.*"

If the IQA does not have a role in competence and this is left to the RTO, each owner of a quarry can ensure the qualifications and experience of an applicant by the certification of an RTO. What function would the IQA's system perform?

The IQA Paper is at pains to inform the reader that the proposed system will not replace existing mandatory/statutory certification systems. Clearly, a voluntary industry scheme cannot override any State law but the difference in the concepts of the proposed system and the existing statutory schemes should be made clear at the

outset as well as, if the IQA system has a useful role, how they might co-exist to ensure there is no duplication, overlap or confusion.

In Victoria, by December 2005 the mandatory Quarry Manager's certification process will be abandoned. Notwithstanding the IQA's claims that the proposed system is not designed to replace a State-based scheme, it is clear that the proposed IQA system and the existing certification process are about the same things – uniform assessment of qualifications for appointment to managerial positions in a quarry. It is relevant then to examine the reasons the Victorian quarry manager's certification scheme was abandoned and to assure ourselves that the reasons for abandonment would not apply to the IQA proposal. Again, this will be discussed in some detail later in this Paper.

2. THE VICTORIAN SITUATION – COMPETENCE AND HOW TO ASSESS IT

As indicated earlier, the mandatory certification of Quarry Manager's in Victoria will no longer be required after December 2005. Instead, under the new legislation the holder of a work authority will be required to ensure the quarry manager is 'competent' (one would think this would not be necessary to be put into law as clearly all work authority holders would themselves require their quarry managers to be competent.). However, 'competence' is defined in the new Act as the work authority holder reasonably believing the person:

- Has acquired appropriate and adequate knowledge and skills, through training or experience or both, to be able to safely and competently control and manage the extractive industry operation; and
- Has an adequate knowledge of the Act and regulations and any other relevant legislation; and
- Is authorised to carry out, or supervise the carrying out, of any activity on the land in the work plan that is regulated by or under any Act.

At this stage it is left to the industry to determine how the new requirements will be complied with. That is, how a work authority holder will determine *competence*.

Discussion to date in Victoria has included the establishment of an industry body, similar to the IQA's proposal, to determine the experience and training of applicants but there are difficulties with this. For example, how is such a body funded and what experience and educational standards would be adopted. It is noteworthy that nowhere in the IQA's Paper is there any reference to how the scheme will be funded and what costs will be levied on members and others who use the system. This is an important omission, as without a clear understanding of the costs of the system the anticipated benefits cannot be assessed in any context.

The National Competition Policy review of the certification scheme in Victoria found that costs of up to \$25,000 per applicant were involved with certification. Overall efficiency benefits were estimated to be derived however the extent they could be claimed in terms of safety and relevant quarry operations was found to be unclear. Any safety benefits appeared to be in providing a focus on safety in a quarry and in assisting an employer fulfil his or her statutory responsibilities.

Another issue is whether an industry certifying board will reduce and/or increase the owner's liability in the case of an accident.

The certification scheme as outlined in the IQA's paper provides an indication to a work authority holder or quarry owner that, at one point in time, the person had been assessed as having some knowledge. This has no bearing on the liability faced by the business owner in the case of an accident. Another side to this issue is what liability/exposure would the IQA have with the affected manager if an accident occurred? Moreover, are there any benefits to the quarry owner of certification with respect to insurance premiums or litigation? This whole issue of liability needs careful analysis.

Within the industry in Victoria another option canvassed is to rely on other legislative requirements as the incentive to ensure competence. This is examined further below.

Rely on other legislative requirements - What this means in practice

In effect the existing Quarry Manager's Certificate in Victoria serves to provide an assurance that the holder had, at some point in time, possessed experience and knowledge in:

- the safe operations of a quarry and the relevant Victorian legislation governing these matters; and
- environmental and rehabilitation requirements pertinent to quarrying and the relevant legislation governing these matters.

The certification process also had some elements that suggested that the holder was equipped to manage a quarry but these were hardly the role of government regulation and could not be used by a work authority holder to imply particular managerial skills or business acumen.

In the absence of the certification process what changes?

In the absence of a certification process safety in a quarry will remain the responsibility of the employer under the *Occupational Health & Safety Act, 2004*. Environmental matters will still be regulated by the Environmental Protection Authority (EPA) and the Department of Primary Industries (DPI) with the former organisation having broad responsibilities in air quality, noise etc and the latter organisation having a focus on quarry rehabilitation through the vehicle of the work authority and work plan.

What then will change with the abolition of the Quarry Manager's Certification process and who will be affected? Do representatives from the EPA or WorkCover ever ask to see the Quarry Manager's Certificate? No. Do these bodies even know about the system of certification? Again, probably not. As the DPI administers the certification process its officers will be aware of the changes but how will this affect its operations? DPI will continue to regulate the industry through the work authority and will continue to conduct routine audits (including assessing the competence of the manager) and investigate incidents.

In effect the only party affected by the change in the certification process will be the work authority holder who, when selecting a person for a position of Quarry Manager,

will no longer have a 'second opinion' about the applicant's experience and qualifications, in the form of a Quarry Manager's Certificate.

How then will a work authority holder select a Quarry Manager?

Answer: In the same way as other employment arrangements in many other industry sectors. By satisfying him/herself that the applicant has adequate skills and abilities. This can be done in a variety of ways from checking employment claims, referee checks, sighting education certificates, on-the-job assessments etc. Most businesses have had to work through a selection process that suits its needs. Sometimes an industry association or body assists by providing a basic checklist of skills and abilities considered essential and desirable. The requirements for a quarry manager will depend on the type and size of the quarry to be managed and the risks associated with running the quarry. The work authority holder is the most appropriate person to assess these requirements.

To comply with the Victorian legislation, if each work authority holder can demonstrate that the requirements of the OHS Act, EPA and the rehabilitation requirements of the Extractive Industries Development (EID) Act are being complied with, this should, as a package, demonstrate that the objectives of the 'competence' provisions of the new EID Act are being achieved.

In other words instead of devoting energies and funds to the development of new mechanisms to 'certify' quarry managers, the industry would focus on compliance with existing laws and this be used to demonstrate compliance with the 'competency' provisions of the Act.

But is this workable and what are the impacts for the industry?

The positive impacts of this option are that it is a simple way to demonstrate compliance, providing of course, the DPI accepts this approach. It involves no additional costs and, in fact, reduces the costs associated with certification of quarry managers.

It also means that individual assessments of competence by work authority holders will not be subject to judgement for compliance by the regulator through the certification process or by the IQA under its proposed system. Such judgements may necessarily be ambiguous and lead to claims of unequal treatment. This may not be such a problem were the IQA proposal to proceed but being a national scheme, other problems arise, such as, a lack of detailed understanding of local conditions and needs and a lack of depth of qualified people willing to provide this advice.

It will be important, however, that the developing use of educational initiatives to up-skill industry members is not lost. This is an important issue that the industry must address at a strategic level. Maybe this is where the IQA can play a role in helping, with other state-based associations, to ensure that educational and training courses:

- Adequately prepare students for the required tasks;
- Are directly relevant to the industry;
- Are at the forefront of knowledge (ie best practice);
- Are affordable.

Responsibilities under the OHS law

This option becomes more viable following the passing of the new Victorian OH&S Act in 2004. The new Act broadens the scope of the Act by bestowing on managers and others who control workplaces, responsibilities in work safety. This wide scope clearly includes the role and function of a quarry manager.

It can be well argued that the OHS Act provides the necessary regulation of quarry managers and that additional alternative ‘certification’ mechanisms may be unnecessary. Combined with the ‘package of compliance’ approach discussed earlier, this should satisfy the requirements of competency of quarry managers in the EID Act in Victoria.

Finally, it must be remembered that the concept the certifying quarry managers is not the objective. Operating a safe and efficient business that complies with all the relevant laws including Occupational Health and Safety and Environmental, is the outcome that all owners of extractive industry operations should strive for.

3. WILL THE IQA PROPOSAL HAVE ANTI-COMPETITIVE IMPLICATIONS?

In its December 2004 Paper, the IQA proposes a national system to recognise the professional status of quarry managers and supervisors. As indicated earlier the Paper states that the proposed system ‘is not designed to replace statutory competence certification’. The IQA considers the proposed system is a means of encouraging a national approach to, and maintenance of, standards of competency and ethics and behaviour, and a recognition of members’ commitment to standards.

How is the proposed system of certification through the CP Board different from the former mandatory system in Victoria or other statutory certification schemes?

The National Competition Policy review of the Victorian EID Act which established the quarry manager’s certification scheme identified the following as restrictions on competition relating to quarry manager certification:

- requiring the holder of a work authority to appoint a quarry manager or a person to manage the extractive industry operation who possesses a quarry manager’s certificate or is approved by the Departmental Head as having the appropriate qualifications, experience or training to manage the quarry;
- setting entry qualifications and experience for appointment as a quarry manager including payment of the prescribed fee, appropriate qualifications and experience in extractive industry operations, knowledge of the Act and Regulations, first-aid and the use of explosives;

It was argued that these criteria, along with others, restrict competition by affecting the ability of a person or business to enter the market and increasing the costs of production by incurring compliance costs.

Appointment of Quarry Manager

In terms of appointment of a quarry manager the Review made the following pertinent points.

The historical rationale for the legislated appointment of a quarry manager appears to be that the industry, being aligned to the mining industry, is considered high risk in terms of accidents and injury and as a result, day-to-day managers of these risks need to be appropriately skilled and competent.

The regulation of this position also presumes that the industry and the owner (as the work authority holder) of an extractive industry operation in particular, cannot adequately assure appropriate management of health and safety risks on the site without the statutory intervention.

The Review argued and as has been pointed out earlier in this Paper, that the OHS Act clearly places the responsibility for safety in a work site on the employer, not an employee of the employer, and provides strong penalties where breaches of the Act and Regulations are found.

Clearly it is the owner of the business who must take the final responsibility for safety as it only the owner who can allocate necessary funds to purchase required safety equipment, pay for safety training and instil safety awareness in the worksite. If these ingredients are absent, it will not matter how well-intentioned or trained the quarry manager may be, the safety of the site cannot be assured.

The lesson here is that mandatory controls prescribing certification of quarry managers were considered unnecessarily restrictive of competition and the OH&S Act clearly places safety responsibilities with the owner/manager of the business. The proposed IQA certification system continues this seemingly outdated focus on an employee rather than the owner/manager.

Setting entry qualifications and experience for appointment as quarry manager

The Review found that an applicant for certification was required to sit an examination to test the applicant's knowledge and experience of a range of topics concerned with quarry operations but also included general management, accounting and budget control topics.

While these skills and knowledge are necessary for a good manager the Review found that they did not relate to the Act's safety objectives. The point here is that the objectives of the IQA system must be clearly identified to ensure that only relevant matters are assessed.

Exclusivity

One of the principal issues for consideration when examining a market and its relative competitive health is to identify whether there are legislated or otherwise exclusive dealings or practices. This was not a particular finding of the competition policy review of the Victorian extractive industries legislation as the anti-competitive restrictions were identified as applying across-the-board and were not exclusive in nature. Exclusivity in the provision of a service or good is a failure in the market as, by keeping out certain service providers, it favours only existing market participants and therefore has the potential for manipulation of supply and

price. Such arrangements are actionable under the Federal *Trade Practices Act, 1974*.

Is the IQA's certification system anti-competitive due to exclusivity? That is, have non-members of the IQA an unencumbered opportunity to participate in the system. If not, this would appear to be exclusive dealing.

If, as the Paper states, the system is aimed at providing a service for the whole quarry industry the logical extension would be that access to the system was made available on a non-membership basis as well as for members. Other means to address any claim of exclusivity are also available. For example, a template/model of the certification process could be made available (at a cost) to other quarry industry bodies in the country. Also, there could be some form of sharing of information from the database. These matters need careful consideration in an open forum of all quarry industry representative organisations.

4. WHERE TO NOW?

As a result of this submission, is it appropriate to have the issues of exclusivity, liability and cost put to an independent third party or parties?

On a footnote, one must stay focused on the main goals :

1. Operating a safe and efficient business that complies with all the relevant laws, including Occupational Health and Safety and Environmental.
2. Focus on compliance with existing laws and this be used to demonstrate compliance with the 'competency' provisions of the Act.