

31 March 2006

OHS Inquiry  
Mr N Pope  
GPO Box 4440  
**MELBOURNE VIC 3001**

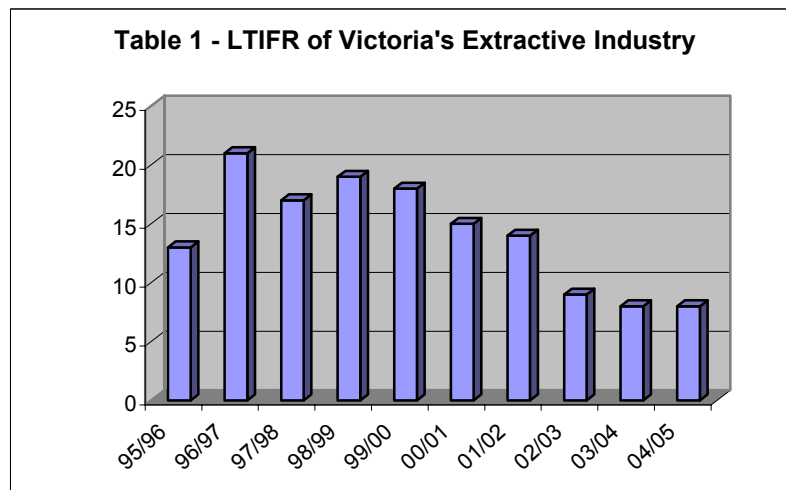
Dear Mr Pope

## RE: INQUIRY TO POINT THE WAY TOWARDS A SAFER RESOURCES INDUSTRY

On behalf of the Construction Material Processors Association's members it gives me pleasure to present the attached submission.

This is a profoundly significant issue and directly affects our member's employee's health and safety. The CMPA understands that safety compliance requires the diligent participation of the regulator, owner and employees.

The Association's members in the most (excluding a few who are frustrated by the DPI's tough stance) feel that the Department's evolutionary approach to managing safety proactively over the last five years has been justified. Changing the present system is an adventure that the majority of our members are unwilling to return to or partake in. (see Table 1 below)



Please do not hesitate in contacting me should you wish to discuss this submission further or meet with the Association's members. Email [enquiries@cmpavic.asn.au](mailto:enquiries@cmpavic.asn.au) or call on 03 5781 0655.

Yours sincerely

Ron Kerr  
CMPA Honorary CEO

**SUBMISSION TO THE**

**INQUIRY TO POINT THE WAY TOWARDS A  
SAFER RESOURCES INDUSTRY**

**BY THE**

**CONSTRUCTION MATERIAL PROCESSORS  
ASSOCIATION**

MARCH 2006

## INTRODUCTION

By its nature, legislation governing an industry reflects the state of that 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. This has seen the management of health and safety in the earth resources industry, and more particularly the processed construction materials sector change from the *Extractive Industries Act 1966* and its predecessors to the current legislative regime where safety is managed under the *Occupational Health and Safety Act 2004* and its subordinate regulation.

Throughout this time of change<sup>1</sup>, the construction materials sector has enjoyed the relatively stable regulatory management system of the Department of Primary Industries (DPI). The obligations which the Department is obliged to meet under the *Extractive Industries Development Act* results in a holistic approach to the issue of safety in that it forms one part of the total package of the responsibilities they are charged with managing.

The CMPA has supported this holistic approach to management of the sector and has worked in partnership on matters pertaining to the prevention of accidents since its inception.

With respect to this inquiry, the first question the CMPA asked itself was "Is there a case for change?".

It is assumed that the intent of any change is to benefit the industry and the general community, not just cut costs. It would be deeply concerning if in five years from any change to the status quo there was a marked deterioration of safety and environmental outcomes of our sector.

Key points of information supplied for your consideration are:

1. The construction materials sector in Victoria and the CMPA
2. Comparison of safety outcomes
3. Vocational training
4. Level playing field for financing OHS outcomes
5. Deterioration of the regulating of our sector
6. industry acceptance of its safety responsibilities

A brief discussion of each of these issues is following. These issues are presented on the basis that they are representative of our member's experiences and opinions.

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<sup>1</sup> Sun-setting of the EIDR and blanket application safety regulations

## 1. THE CONSTRUCTION MATERIALS SECTOR IN VICTORIA & THE CMPA

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 also has other uses in engineering and manufacturing.

While Victoria has an abundance of good quality construction materials, unlike metallic minerals and ores stone resources are low in value and therefore to be viable extraction needs to occur close to market sources. The industry is characterised by relatively few large operators (3) and many medium to small operations. Many small-scale quarry operations have developed in rural and regional areas to satisfy a local demand.

The members of the CMPA are characterised by engaging on average 11 persons (although range between 1 and 150), hold an average of 2 Work Authorities and are, in the most part, second or third generation quarry operators. Their operations are evenly distributed throughout the state and the businesses are privately owned. They suffer from the tyranny of distance and are often isolated from the proper support of Government services. That said, they are all fiercely independent and as owners of their own businesses, very critical of change without clear, documented benefits.

Since the inception of the CMPA in late 1999, the Association has dealt with numerous issues to assist the sector moving forward. This has included activities in the following areas:

- Vocational education and training of industry participants under the Extractive Industries Training Package
- Defining industry best practice
- Assisting in making compliance simpler
- Representing and protecting 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.

Figure 1 – Early Construction Material Processing

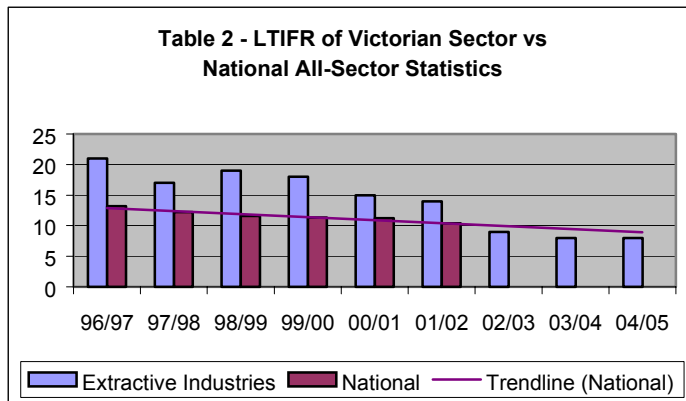
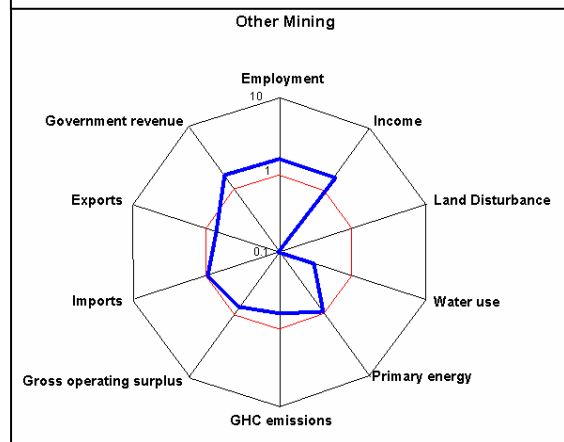


## 2. COMPARISON OF SAFETY OUTCOMES

Clearly from the fact that there has been an inquiry initiated, there must be some who believe our state or the DPI is not performing to minimum sector standards. From the evidence that we have been able to collect on this matter over the last five years, and the state and federal reviews we have partaken in, there has never been data indicating anything less than recognition that Victoria has an exceptional record when it comes to our sector.

An example of this is the sustainability of the sector Australia wide demonstrated in Figure 2<sup>2</sup>. This is a reasonable triple bottom line account, save for three outliers of employment generation, income and Government revenue. Part of this is due to the large and physically efficient machinery used for mass material movement within the sector, which requires relatively few operators.

**Figure 2 - Sustainability of the Construction Materials Sector in Australia**

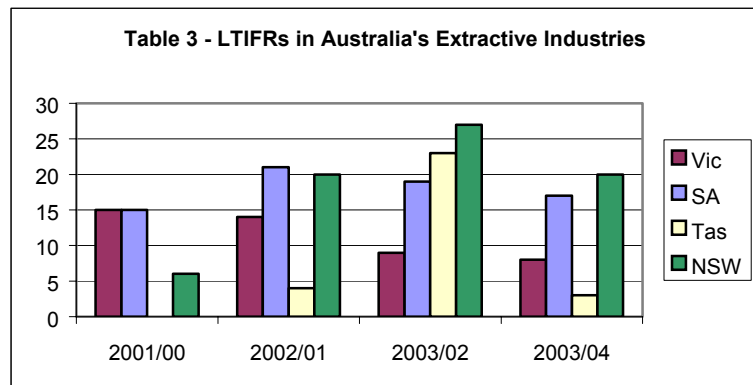


Historically though, the construction materials sector has been a relatively poor performer in relation to OHS outcomes. This can be seen in Table 2<sup>3</sup>.

That said, it is important to recognise that since 2000 there has been a noticeable, continual reduction in the lost time injury frequency rate in the construction materials sector, with more recent statistics falling well below the national trendline.

This, we feel, is due to the DPI's evolutionary approach to managing safety and the diligent participation of the regulator, owner, and employee in the system. Since this time, industry and the regulator have taken on a program of education of industry, presentation of informative and accessible information and the provision of assistance to industry.

Victoria's construction materials sector is presently in an exceptional light, comparable as with interstate data seen in Table 3<sup>4</sup>. Clearly there is a protocol in place that is producing the goods and we need to be exceptionally careful if this were to change. Any change requires evidence proving the benefits that will lead to the continual reduction of the lost time injury frequency rate and other safety outcomes.



<sup>2</sup> For further information see [www.cse.csiro.au/research/balancingact](http://www.cse.csiro.au/research/balancingact)

<sup>3</sup> Data drawn from DPI Annual Reports (Victorian extractive and mining data) and [The compendium of workers' compensation statistics Australia 2002-03](#) (National mining and average data)

<sup>4</sup> Data supplied by Department of Primary Industries

**Table 4 – Worldwide Incidence Occurrences in Resources Sector**

Area	industry	Production (million tonnes)	2003	2002	2001	2000
Victoria	Extractive Industries	38	24	28	31	36
New Zealand	All Mines & Quarries	42	22	19	21	13
Ireland	Quarries	100	38	50	86	78
UK	Extractive and Utility Supply	250	450	475	500	500
USA	All mines, mills & shops - Stone, sand & gravel	1,600	4671	5204	5355	5801

Table 4 shows a summary of incident data from around the world. It is very difficult to compare Victoria's construction materials sector with that of other countries due to differences in reporting requirements and calculation methods. There needs to be an easily accessible means for such comparisons to be undertaken.

**Recommendation**

- That internationally consistent reporting and calculating standards on safety performance data is utilised to be used in a benchmarking protocol. From our investigations there appears to be little linkage or consistency in presentation or correlation of such data and we are beginning to understand why some see the need for the establishment of this inquiry in the first place, as there is no clear point where comparisons can be made.

**Conclusion**

The lost time injury frequency rate, as recorded in our equivalent sector in South Australia of 17 as at 30/6/04 (regulated by SA Work Cover) or in NSW of 20 as at 30/6/04 (regulated by the NSW DPI) exceed our figures and draws us to question why we would wish to change the status quo.



### 3. VOCATIONAL TRAINING

Vocational training and continual self-improvement within the workforce of the CMPA members has been identified as a principle ingredient in improving profitability and safety outcomes. To bring about this outcome there are five key areas that the Association has been fostering and developing, being:

- a. That industry, including managers and employees, desires to participate;
- b. That a committed regulator offering training venues, inspectors and technical support is present;
- c. That the sector has a strong training and assessment structure (presently via Box Hill Institute of TAFE);
- d. That an independent review process of Registered Training Organisations is in place to ensure industry's minimum standards are being maintained; and
- e. That all participants are fully aware of what support and career pathways are available.

The CMPA has struggled to get the desired support to bring such successful outcomes, and if it were not for the commitment of our regulator, far less than what we have achieved to date would have occurred.

During the initial establishment of the CMPA, the Association approached Work Cover and an industry union on the matter of bringing about significant change through introducing a vocational training path (Work Safely resource material) at an operator level. The CMPA found neither party was cooperative, as can be proven by the CMPA's paper trail, and after a significant period of time moved on without their support.

That said, to the credit of the DPI, Office of the Chief Electrical Inspector, the training provider, and federal Government (by way of WELL funding support) in excess of 800 industry participants have been trained and assessed in either the mandatory Certificate II unit of 'Work Safely' or one of several elective units<sup>5</sup> since 2001.

The CMPA is presently working on the development of additional employee resource materials for three service and handover units with the Caterpillar Institute and has commissioned its second significant tender for the development of eight resource manuals relating to crushing and screening to assist employees within the sector partaking in training. The latter project alone will cost in excess of \$60,000 of the industry's own funds.

In more recent times, the CMPA has worked tirelessly with our regulator to assist industry in adopting 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, particularly in the area of OHS.



<sup>5</sup> Units including 'Conduct Local Risk Control', 'Communicate in the Workplace', 'Perform Basic Cutting and Welding'

***Recommendation***

- We need to see Government form partnerships with individual industry sectors and clearly commit to educational outcomes which integrate all of the resources available and ensure that all people are given equal access, knowledge and support.
- It must be noted that as yet our sector does not even have a recognised set of vocational training goals including:
  1. Training must relate to the learners current and future job requirements
  2. Training must expand the learners employment opportunities and add value to the business
  3. Training must comply with legislative and regulatory requirements

***Conclusion***

An ongoing commitment to our vocational education and self-improvement objectives with support from others but without control by others is needed, as both the employee and employer need to feel they have control of their destiny in this area.



#### **4. DETERIORATION OF THE REGULATING OF OUR SECTOR**

The CMPA has always supported change that removes interference and duplication with open arms, as long as it is not envisaged that such change could endanger its workforces, the public or the environment.

In an ideal world, a singular management body for managing safety is without a doubt always desirable. Even so, our sector was one identified early in history Australia wide as requiring specific legislation to protect the interests of those working in the sector and the general public.

If the responsibility of managing safety was to be withdrawn from the DPI and transferred to Work Cover, the CMPA would have several concerns that need to be carefully considered and resolved, including:

- a. That the construction materials sector would be lost within the myriad of industries regulated by Work Cover and possibly result in a deterioration of outcomes
- b. That regular contact of the DPI, which provides a preventative approach to managing safety, would be lost to a reactive outcome-based approach with contact limited to increasing accident rates or complaints
- c. That the sector would lose the knowledge and skill levels of those regulating sites, as their ability to share and work as a specialised team would be lost
- d. That the holistic approach to regulatory management provided by the DPI would deteriorate if they were to lose the linkage that is in place between inspectors regulating safety and the DPI granting approval and variations to Work Plans (all of which is considering the on and off site impact of activities to employees and the community)
- e. That the beneficial effect of the regulator's personal interaction and close contact with industry that has provided the present safety outcomes would be lost
- f. That prompt direction and support on safety matters will be affected by the loss of a clear management structure to refer to for support (i.e. regional inspectors)
- g. That accurate, sector specific data would be absorbed into a general pool and it would be more difficult to continue the process of improving safety outcomes in our sector
- h. That there are other providers of processed construction materials that are not regulated by the DPI and are on a different playing field when it comes to OHS compliance at present. (It is very disappointing to a member when they drive past such operations with columns of dust discharging from their sites.)

#### ***Recommendation***

- Irrespective of the final outcome, all businesses within the processed construction materials sector must be managed by the same regulator and the level and type of service to the sector must not be lowered

#### ***Conclusion***

The DPI is an integral part of the construction materials sector's landscape that has overseen the transition of safety compliance outcomes being managed through a prescriptive culture to a preventative, outcome-based approach over the last five years.

## 5. LEVEL PLAYING FIELD FOR FINANCING OHS OUTCOMES

### Market Forces

An aggressive market that places pressure upon capital expenditure burdens our sector<sup>6</sup>. The lower volume processing sites neither have the depth of labour nor financial backing to fully comply with the OHS obligations without the Association's and regulator's support and guidance. It is interesting to note in Maxwell's inquiry that the view is held that there should be equal safety outcomes for all parties, irrespective of the businesses wealth<sup>7</sup>. It is difficult for this concept to apply to the construction materials sector as it would result in the removal of all participants who do not have either high volume sales or ownership of vertically integrated markets, as the industry is capital intensive by its nature and constrained in many areas including:

- Resource location;
- Resource quality;
- Resource type (i.e. is it silica based?);
- If the resource is accessible through overburden removal obligations;
- Plant design capacity;
- Proximity to neighbours;
- Market size;
- Market inconsistencies;
- Tyranny of distance;
- The lack of a relationship of tonnage to a number of employees<sup>8</sup>;
- The processing requirements to satisfy the market's needs;
- The small size of our sector's workforce (there is clear evidence that this is affecting the interest of providers in education and training); and
- The attitude the general community holds towards the essential service work that this industry has responsibilities to deliver outcomes for.

As such, the Government has to realise that the primary concern of a business when it is struggling to survive is to meet its processing outcomes (just supporting direct expenditure); it is a secondary goal to bring about a culture of safety management systems in that business. This issue must be addressed. Community has to realise that it needs to be paying a realistic price per tonne for the end product to ensure reasonable capital and acceptable safety management systems are in place. This is a primary reason why the CMPA was established in 1999, as at that time there was no recognition of regional operations, no centralisation or distribution of safety information and little support and guidance for the construction materials sector<sup>9</sup>.

Three examples of this inequity can be given to best explain what we have just said. Example 1 shows graphically the change in our sector's unit rate over the last 10 years. Example 2 is a comparison between an owner who chooses to place a non-compliant capital item into the workplace and another who selects a compliant item of plant. It clearly identifies the advantages that the first picks up in the market when it comes to selling their products. Example 3 demonstrates the costs upon an operator with a commitment to ongoing safety management and compliances competing with another who chooses not to invest in this area.

Example 2 and 3 only occur when the owner and regulator are not doing their jobs correctly, but the impact upon the survival of the complying operator is profoundly compromised.

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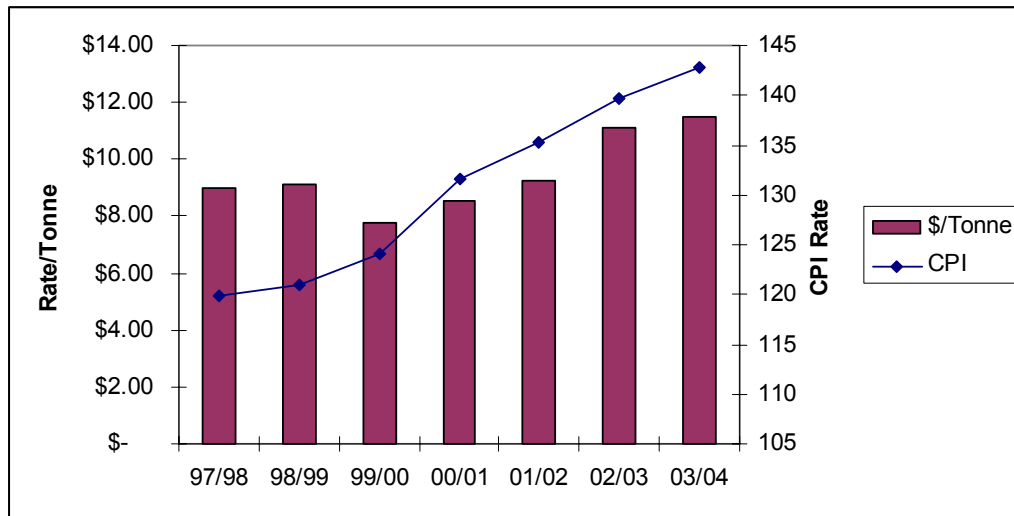
<sup>6</sup> See Example 3 for a detailed history

<sup>7</sup> Maxwell, C, Occupational health and safety act review, 2004, p8

<sup>8</sup> A site that processes 700,000 tonnes may only employ 4 more persons than a site that processes 220,000 tonnes.

<sup>9</sup> See Appendix 1 – CMPA Statement of Purpose for more information

**Example 1 – Average Unit Rate<sup>10</sup>**



**Example 2 – Capital Expenditure**

Owner A	Owner B
<i>Processing 60,000 tonnes/year</i>	
<i>Desiring to purchase a second hand sales loader of a similar size, 5 year life</i>	
Non-ROPS capital purchase	More current ROPS/FOPS approved unit
\$28,000	\$170,000
<b>Capital Cost of Equipment</b>	
9.3 cents/tonne	57 cents/tonne

As can be seen, Owner B will have a far higher cost, and therefore lower return. Other issues to be considered when purchasing such an item of plant include dust suppression, signage, access and guarding.

**Example 3 – Cost of Compliance**

*Following is a small summary of areas where attention is required. If an operator is not well monitored, some of these will not be taken up.*

Dust suppression (fixed & mobile)	\$20,000
Annual cost of OHS specialist:	\$8,000
Auditing (fixed and mobile)	\$3,700
Traffic movement and haul road management	\$3,000
Quality systems (PPE & clothing)	\$2,300
Access	\$2,000
Guarding	\$2,000
Preparation of area for maintenance	\$1,500
Training	\$1,500
Support for document development:	\$1,500
Workstation compliance	\$1,000
Signage	\$1,000
<b>TOTAL COST</b>	<b>\$47,500</b>
Business annual turnover:	100,000 tonnes
Cost of OHS per tonne:	\$0.47
Average unit rate of material sold 2003/04:	\$11.50

<sup>10</sup> Data drawn from DPI Annual Reports ([www.dpi.vic.gov.au](http://www.dpi.vic.gov.au)) and Australian Bureau of Statistics ([www.abs.gov.au](http://www.abs.gov.au))

### **Capital Selection & Acquisition**

It is clearly identified by the industry and the regulator that the selection and replacement of capital is a significant area where future incidents can be eliminated through joint manufacturer, regulator and industry input. In response to this, over the last five years the DPI has spoken directly to many industry suppliers on this matter. It is this detailed approach to managing safety at the source that the CMPA believes is having a positive impact upon the safety outcomes.

Industry has been working tirelessly towards addressing capital acquisition and selection, however too often the compliance responsibilities picked up during an acquisition fall unnecessarily onto the owner. Many an incident would have been better prevented by more carefully considering the safety issues at the design stage (e.g. daily/regular access points, vision, stability).

### **DPIs Financing of OHS Management Compliance**

As an observer, the CMPA is concerned about the workload being placed upon existing DPI inspectors who are managing OHS obligations as defined under the MOU with Work Cover, in addition to other responsibilities. The DPI is at a profound disadvantage as it is expected to produce results well in excess of the state's minimum safety standards. This creates a dark cloud over the DPI in that the MOU can be withdrawn at any time if poor compliance is evident.

The CMPA feels that the DPI's high commitment to safety standards and its endeavours to meet its safety obligations under the MOU have stretched its limited resources to the detriment of other duties expected of the Department.

The CMPA has advised the Minister on numerous occasions that there is a need to increase the number of inspectors regulating the sector and source additional funding to this end. It is difficult for the CMPA to understand why the occupational health and safety component of the DPI's operational expenses is not provided by through Work Cover premiums paid by our members. Further improvements are likely to result from increased funding.

It has also been noted that with the exceptional efforts being put towards managing their safety obligations, the DPI has struggled to meet some of the CMPA member's other requests in a satisfactory time frame. This is evidenced by the inappropriate time taken for approving Work Plan variations and releasing approved Work Plan applications.

### **Recommendation**

- More effort needs to be expended in understanding the difficulties faced by small worksites to manage safety on a level playing field with larger sites. These issues need to be identified and outcomes developed for the regulator and industry to work towards further improvement of safety outcomes in the sector
- Additional funding needs be allocated to assist the Department to better manage the obligations that the state has placed upon it

### **Conclusion**

Our industry is a primary resource based activity, and its resource and market are changing on a daily basis. As such a reduction in the safety management protocol could result in very immediate changes to the safety records. It is not acceptable to work on the theory that when the incident occurs and an operator prosecuted, all of industry will comply as a result.

## **6. INDUSTRY ACCEPTANCE OF SAFETY OBLIGATIONS**

One must recognise and accept that up until 2000 the construction material sector had its own regulations specific to safety and since 2000 its regulator, owners, managers and employees have had to more closely address and comply to the *Occupational Health and Safety Act 1985* and now the *Occupational Health and Safety Act 2004* and their subordinate regulations.

It is evident in recent times that many of the owners of businesses represented by the CMPA have begun to take their responsibilities under the *Occupational Health and Safety Act 2004* seriously. This is underpinned by their uptake of training, safety management systems and the engagement of OHS specialists to assist them in moving down the pathway to compliance.

The CMPA has identified that these professionals are more confidentially accepted where the owners have had a partnership with the regulator and CMPA, and have taken ownership and control of their destiny on matters pertaining to the introduction and development of safety systems within their worksites.

One must realise that OHS specialists compliment the role of the inspectorate and further enhance good safety outcomes on specific sites. On the other hand, the inspectorate acts as a regulator and liaison with other regulators and Departments. They are impartial, and it is identified by a myriad of other bodies (i.e. state and federal Government education bodies) that the direction given by them in policy is giving confidence and commitment to any outcomes or results.

An example of this level of interaction includes the fact that the DPI regularly participates in industry workshops aimed at increasing the skills and knowledge concerning OHS issues. This was seen on Tuesday, 21 March 2006 where over 80 industry personnel (ranging from young operators, site managers and foremen, industry suppliers and manufacturers, educators and representatives of the inspectorate) gathered for a full day to discuss the issue of plant guarding in small groups on a representative site. It is through workshops like these that industry personnel are able to talk one-on-one with skilled regulators who have a sound understanding of the industry and its needs.

### ***Recommendation***

- Far more work needs to be done to ensure that all persons in the construction materials sector are addressing their obligations as identified under the *Occupational Health and Safety Act 2004*

### ***Conclusion***

The Department has a role to regulate and liaise with all parties whilst the OHS specialists have a role to enhance the safety outcomes on specific worksites.

## 7. CONCLUSION

The DPI is an integral part of the construction materials sector's landscape that has overseen the transition of safety compliance outcomes being managed through a prescriptive culture to a preventative, outcome-based approach over the last five years.

The lost time injury frequency rate, as recorded in our equivalent sector in South Australia of 17 as at 30/6/04 (regulated by SA Work Cover) or in NSW of 20 as at 30/6/04 (regulated by the NSW DPI) exceed our figures and draws us to question why we would wish to change the status quo.

An ongoing commitment to our vocational education and self-improvement objectives with support from others but without control by others is needed, as both the employee and employer need to feel they have control of their destiny in this area.

Our industry is a primary resource based activity, and its resource and market are changing on a daily basis. As such a reduction in the safety management protocol could result in very immediate changes to the safety records. It is not acceptable to work on the theory that when the incident occurs and an operator prosecuted, all of industry will comply as a result.

The Department has a role to regulate and liaise with all parties whilst the OHS specialists have a role to enhance the safety outcomes on specific worksites.

Finally, it is important that the decision that this Victoria makes is not based primarily on what everyone else is doing. The system that is selected needs to be cost effective, cutting edge and have clear benefit to all industry participants.

### ***Summary of Recommendation***

- That internationally consistent reporting and calculating standards on safety performance data is utilised to be used in a benchmarking protocol. From our investigations there appears to be little linkage or consistency in presentation or correlation of such data and we are beginning to understand why some see the need for the establishment of this inquiry in the first place, as there is no clear point where comparisons can be made.
- We need to see Government form partnerships with individual industry sectors and clearly commit to educational outcomes which integrate all of the resources available and ensure that all people are given equal access, knowledge and support.
- It must be noted that as yet our sector does not even have a recognised set of vocational training goals including:
  1. Training must relate to the learners current and future job requirements
  2. Training must expand the learners employment opportunities and add value to the business
  3. Training must comply with legislative and regulatory requirements
- Irrespective of the final outcome, all businesses within the processed construction materials sector must be managed by the same regulator and the level and type of service to the sector must not be lowered
- More effort needs to be expended in understanding the difficulties faced by small worksites to manage safety on a level playing field with larger sites. These issues need to be identified and outcomes developed for the regulator and industry to work towards further improvement of safety outcomes in the sector
- Additional funding needs be allocated to assist the Department to better manage the obligations that the state has placed upon it.
- Far more work needs to be done to ensure that all persons in the construction materials sector are addressing their obligations as identified under the *Occupational Health and Safety Act 2004*