

18 May 2007

Emma Williams  
Business Support Officer  
Aboriginal Affairs Victoria  
emma.williams@dvc.vic.gov.au

Dear Ms Williams

## **RE: DRAFT ABORIGINAL HERITAGE REGULATIONS 2007**

The extractive industries, and more particularly our members, are concerned in the extracting and processing or otherwise working in, hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling.

These sites are managed by a number of acts and regulation, all with the intent of minimising the impact an extractive site has upon its environment. The Aboriginal Heritage Act and its Regulations is one such regulatory tool with this industry being specifically identified as a high risk activity.

The Aboriginal Heritage Regulations, as presented, clarify a number of gaps apparent in earlier documents. That said, it still has not addressed the issue of how the regulatory burden is balanced. This is essential as this legislation does not appear to reduce the regulatory burden upon our member's businesses.

Issues the CMPA has in relation to the Regulations and the associated RIS are as follows:

### **Issues to be addressed by Guidelines**

- A State map showing all areas of cultural heritage sensitivity needs to be developed as a matter of urgency. This could be incorporated within the DPI Minerals and Petroleum Division's web mapping application GeoVic. Without this, the regulations appear only to be another item of legislation released without appropriate studies.
- A sample, or 'off the shelf', Cultural Heritage Management Plan must be developed either by AAV or if required by the CMPA in consultation with AAV and RAPs. This would ensure an appropriate standard, expediate the process for smaller sites (and in turn reduce the cost), and provide a good starting point from which site-specific terms can be developed.
- As noted in our previous submissions, it is essential that guidance is developed as to what are appropriate qualifications when considering cultural heritage advisors.

### **Issues specific to the Regulations**

- The definition of significant ground disturbance must be further qualified to allow applicants to more quickly identify if they are in an area of significant ground disturbance (i.e. When is cultivation significant ground disturbance? What depth of land needs to be disturbed? Within what timeframe?)
- Why does r52 specify a particular earth resource authorisation when they are grouped under r50?
- Although we understand the ability of sand and sandstone to hold cultural heritage, why are the exemptions for r51 included when they would be captured elsewhere?
- The wording for r59 concerning the standard assessment needs to be further qualified – i.e. if an application is outside all culturally sensitive areas and this has been cross checked in the desktop audit, that should constitute due consideration

- Will RAPs be accountable for the fees they receive and will this be reported on an annual basis to the wider community?
- What will limit the number of RAPs? If there is nothing in force limiting the number of RAPs, the costs of having an application considered has the potential to spiral out of control, and as such needs to be further reduced when multiple parties are considered.
- Under the transition process, will sites that vary their Statutory Authorisation (i.e. the extractive industries) be required to develop a CHMP as although the statutory authorisation has already been given, there may not have been significant ground disturbance? If so, there will need to be a review of the RIS as the impact upon the extractive industry will be excessive

### **Issues in relation to the RIS**

- In relation to the RIS, it is noted that small businesses will not be affected. This would not appear the case when extractive sites operating in sand that do not presently require any approvals as they are below the threshold are now required to undertake a CHMP. This will be an additional burden to these sites. As they are presently exempt from the extractive regulations, it is not possible to make an accurate estimation of how many sites this will effect

### **General Issues of Concern**

- Although not directly relevant to the Regulations, our members have reported to us that it is essential any decision made by VCAT is accompanied with a finite timeframe for decisions. This is particularly important as we are receiving reports of sites which have received decisions on heritage matters that did not have a finite timeline. This has resulted in considerable delays.

I look forward to your response. Please do not hesitate to contact me.

Yours sincerely



Sarah Andrew  
CMPA Project Manager

cc - Jennifer Wilcott & John Mitas - Department of Primary Industries