

11 July 2023

Dear

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) AMENDMENT BILL 2023

CMPA is the premier representative body for the Victorian extractive resources industry. It represents a broad spectrum of those involved in construction material processing businesses and has a membership base consisting of over 200 quarries across the industry. Together, these members employ approximately 2000 Victorians which underpins the construction industry of almost 240,000 employees (<https://liveinmelbourne.vic.gov.au/connect/victorian-industries/transport-defence-and-construction>).

CMPA members are typically small to medium sized family and private businesses, local government, and utility providers. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2021/22, the sector supplied approximately 70 million tonnes of construction materials (25% of total freight movement in Victoria) to the market, at a value of approximately \$1.2 billion directly supporting Victoria's \$80 billion Big Build (<https://bigbuild.vic.gov.au/about>) and the estimated 1.6 million new homes required by 2050 (<https://earthresources.vic.gov.au/geology-exploration/industry-investment/joint-ministerial-statement-on-extractive-resources>). Small to medium quarries account for approximately half of this production and is submitted to be a vital industry supporting the ongoing economic prosperity of Victorians.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia including the protection of resources that enable extraction of construction materials that is cost efficient to market and to the Victorian taxpayer who is ultimately the end consumer and beneficiary of that resource.

The CMPA does not support the proposed Mineral Resources (Sustainable Development) Amendment Bill (Bill) as outlined next.

Work plan current situation

The replenishment of supply of extractive resources is not occurring. This will lead to increasing costs for construction materials. Costs will continue to increase, as demand eventually outstrips supply especially where competing demand for that resource is being consumed by Major projects. The cause of this is due to the:

- failure of Earth Resources Regulation (despite 5 reviews in the last 10 years) to manage the statutory endorsed work plan process through risk adverse decision making, high staff turnover and inexperience;
- a regulator that is unwilling or unable to articulate the difference between mines and quarries including in the legislation.
- obtaining a planning permit from a local government authority (LGA) which increasingly demonstrates decision making with local interests and ideological views, and unchecked budgets.

Statutory endorsement was introduced in 2012 to bolster the strength of the endorsement process previously carried out as an administrative function. The second reading speeches for the introduction of statutory endorsement all talk to this being a streamlining of the referral process and a necessary change to reduce the workload on the LGAs without watering down their powers. That is to say, the use of the government's experts to inform the proponent before the application reaches LGA and community. In turn, this should provide the LGA and community with confidence of the technical abilities of an application or variation.

Being a statutory process under the MRSDA means it is not merely a "placeholder" but a necessary stage of approval, without which an applicant would have a right of review to the VCAT. Conditions may be imposed upon endorsement and approval, and they may be subject to review, EXCEPT where they are substantially the same as any planning permit condition. Further support for the statutorily endorsed work plan has been noted by the representative of a quarry planning permit application closing submission to a Planning Panel (2022);

"Only the Minister for Resources can approve a Work Plan. The statutory endorsement is formal and requires extensive consultation. Properly categorised, planning for the protection of the rock resource is well advanced as a formal approval required under the Mineral Resources Act has been granted. This should be given weight in considering the agent of change principle and growth area planning policy objectives"

Additionally, in a recent VCAT Senior Member decision (June 2023):

"In this instance a draft work plan has been statutorily endorsed. This signifies that many matters such as potential impacts to biodiversity values of the subject land and its surrounds, potential amenity impacts from noise, dust and vibration, and quarry operations have been assessed and found to be acceptable by the relevant authorities under the MRSD Act regime."

Replace statutory endorsed work plan with other legislative approvals e.g., Planning or EES

Concern is held that:

- Still keeping the contentious requirement for a planning permit from a LGA does not in any way remove the approvals process from this highly political and adversarial step.
- Eventually due to the above dot point all quarry applications will require an Environment Effects Statement which is unattainable for small and medium quarry business owners who hold 93% of Work Authorities.
- Whilst the strength of the proposal appears to be not having to apply for a work plan variation and all that entails; there would still be a requirement for a change to the existing planning permit or new planning permit from the relevant LGA.
- Support is also given by the legal firm Minter Ellison (7 July 2023) <https://www.lexology.com>: *“In our experience, while the statutory endorsement process was well-intentioned and in fact designed to streamline assessment and approval processes for exploration, mining and quarrying activity, its implementation has at times had quite the opposite effect in practice, leading to a lengthy and somewhat circular process.”*
- Cement, Concrete and Aggregates Australia may be predicting that Earth Resources Regulation may no longer be required while the proposed reforms (no statutory endorsed work plan and applying firstly for a planning permit to Local Government Authorities) may not yield the desired outcomes of increased supply but could be “fixed” in a second tranche of MRSDA reform.

Duty to eliminate or minimise risk of harm

Concern is held that:

- CMPA did not advocate for a general duty due to the length of time for their implementation and understanding by WorkSafe officers (~10 years) of terms in the Occupational Health and Safety Act 2004, for example, As Far As Reasonably Practicable leading to lengthy and convoluted interpretations <https://www.worksafe.vic.gov.au/resources/how-worksafe-applies-law-relation-reasonably-practicable>.
- Additionally, the Environment Protection Act 2017 introduced the general environmental duty (commenced 1 July 2021). This led to a nonsensical classification of waste potentially requiring Financial Assurances for \$millions in bank guarantees for Construction and Demolition Waste Recycling. Fortunately, after the intervention of CMPA common sense prevailed but it took over 12 months (and much intervening angst of the industry) to resolve.
- There will be increased costs with the proposal stating that there will be “greater transition costs”: the current work authority approval process is already high cost and mostly unattainable. The Duty model will exacerbate the demise of small to medium quarries and further reduce quarry applications throughout Victoria.
- The statement that *“Improved operational management will allow operators to respond more quickly to emerging risks”* is not necessarily accurate. For example, it can be argued that the industry is already responsive to emerging risks such as the reduction in Workplace Exposure Standard for respirable crystalline silica dust (2022).

- It is assumed ERR is going to set the standards (geotechnical/ some elements of blasting) giving clarity or is each individual Work Authority holder responsible for determining them. Essentially this reform is unattainable as with the new EPA Environmental Reference Standards and General Environmental Duty which are fundamentally subjective where attempts to comply in good faith may be subject to challenge with the duty holder never confident that they have ever fully complied.
- The prediction by Earth Resources Policy and Programs (ERPP) that the reform will “*deliver greater ongoing efficiencies long term*” is disputed. The last major reform, the introduction of the risk based work plan (December 2015), was also said to increase costs for a work plan application but would be subsequently reduced for a work plan variation which did not eventuate in practice: new work plan applications dramatically decreased and the cost of a variation to a work plan increased substantially.
- No proof of increased community confidence apart from introducing a legislative instrument/approval process that is essentially unattainable which will ensure that the community will have no new quarries, hence, the increased confidence.
- Concern for the introduction for the duty model is also held by the legal firm Minter Ellison (7 July 2023) <https://www.lexology.com>: “*However, in our view the potential for regulatory overlap and dual regulation (for example with the General Environmental Duty) and other statutory duties in the Environment Protection Act 2017 (Vic), and the general duties in the Occupational Health and Safety Act 2004 (Vic)) remains a key area of concern under the new framework.*”

CMPA Summary

1. Extractive industry is for the benefit of the State and not for LGAs with local interests and ideological views, and unchecked budgets.
2. Once the extractive area has been identified by the proponent the Local Government Authority (LGA) must protect the area from incompatible strategic or statutory development from the first day of becoming aware of the proposal. This would need to be limited by time, during which the applicant would need to prove the geological resource. A longer period would be appropriate to seek and finalise approvals to work.
3. There must be documentary evidence of what the LGA may actually direct and manage. It would be difficult to accept that it would be within the LGA's responsibility and that they would be appropriately resourced to manage all activities which could potentially impact amenity should the existing regulations be breached – for instance, business operations such as blasting, noise and dust.
4. Where an LGA resolves to not make a decision or rejects a planning permit application the application must immediately go to the Major Case List at VCAT, all advertising ceases by all parties and the LGA must not:
 - a. Request the Minister for Planning to call in the application
 - b. Continue funding any campaign against the application
 - c. Take the applicant to the Supreme Court
 - d. Promulgate strategic planning changes 'responding' to 'these' types of cases
5. The timing sequence for a decision by the LGA should be shortened from 12 months.
6. If ERR becomes a determining authority, then their assessment of the application without a Work Plan will be problematic.
7. Clear and concise benefits have not been clearly articulated by the Resources Department.

The CMPA **does not support** the MRSD Amendment Bill 2023 in its current form, for example, removing one legislative approval process (work plan statutory endorsement) and replacing with two statutory approval processes (risk tier determination and rehabilitation plan approval and review) will not result in timely decision making. Additionally, seeking planning permission as a first step to the approvals process will not result in shorter approval timeframes (this was the reason for introducing statutorily endorsed work plans in 2012).

Further concern which supports CMPA's position has been raised by the legal firm Minter Ellison (7 July 2023) on the Bill "*We expect that the burden the new framework places on responsible authorities, coupled with a lack of administrative resources and experience in mining and extractive industries from local councils, may create some challenges in realising the objective of this reform to remove a significant source of unnecessary cost and delay.*" <https://www.lexology.com>.

This Bill does not appear to be in the spirit of the second reading speech by the Minister for Energy and Resources "*simpler and more flexible*" and "*streamlining processes*". Please see alternate proposals on the next page.

CMPA Proposals

- A review urgently needs to be undertaken into work plan (extractive industries) statutory endorsement: where it has worked and where it has not worked together with the reasons. Data on how many times statutory endorsement has been used since 2012, is needed and where these applications are at (i.e. approved, endorsed and within planning, refused and over-ruled by VCAT, refused and supported by VCAT, withdrawn).
- The Minister for Planning should be encouraged to be the responsible authority for Extractive Industry land use in the same way that Renewable Energy Facilities are. This will centralise decision-making and better reflect the State-significance of these projects in facilitating key construction and infrastructure projects which are essential to the Victorian economy.

Any recommended change to the responsible authority for Extractive Industry land use must be accompanied by comprehensive guidance material for all applicants, developed in conjunction with key State government bodies such as Secretaries to the Departments of Jobs, Precincts and Regions, and Treasury and Finance, as well as key industry bodies. This will ensure a fair, transparent, and consistent assessment framework which ensures the correct balance is applied to planning decisions.

Further to this, the following referral and notice provisions are sought:

- Section 52 notice – relevant municipal Council.
 - Section 52 notice - Secretary to the Department of Treasury and Finance.
 - Section 55(4)(a) determining referral – Secretary to the Department of Jobs, Precincts and Regions.
- The adequacy of the *Planning & Environment Act 1987* and the Victorian planning provisions, including related guidance material, in providing an appropriate assessment mechanism having regard to existing processes under the *Mineral Resources (Sustainable Development) Act 1990* and the role of the Department of Jobs, Precincts and Regions in administering this Act. This should particularly examine opportunities to remove duplication and provide streamlining between MRSDA and P&EA matters.
 - That ERR publish statistics on tonnages approved by type of construction material from new work authorities and existing work plan variations (excluding quarries located on and solely for wind farms).
 - That the requirement for the annual resource calculation for the Work Authority be amended to the more meaningful work plan extraction limit area.
 - The introduction of the Primary Duty model be put on hold until the critical issue of a stalled approvals process has been resolved.
 - A separate Act (from mines) for the extractive industry needs to be developed.

I would be pleased to discuss these matters with you. Please contact me on 0434 692 618 or via email at elizabeth.gibson@cmpavic.asn.au in respect of any matter.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The letters are cursive and fluid.

Dr Elizabeth Gibson
General Manager

About the CMPA

The CMPA Rules contain the following purposes of the Association which are to:

- (i) conduct its affairs with honesty and integrity;
- (ii) demonstrate its commitment to the:
 - viability of the Industry;
 - protection of the environment;
 - community in which it exists;
- (iii) vigorously pursue with government and others issues of widespread concern to members;
- (iv) demonstrate leadership and a sense of direction for the Industry;
- (v) act as a resource and provide support to its members through the delivery of cost savings and assistance in complying with legal obligations;
- (vi) foster unity and cooperation between members and others;
- (vii) promote continuous improvement through education, training and other activities.

As per purpose (vii) through the development of Guidelines, Checklists and Reference Manuals such as:

Guidelines	Checklists	Reference Manuals	Community publications and video clips
Workplace and Environmental Noise Management	Excavator	Work Safely	Quarries Building Communities https://cmpavic.asn.au/community/
Dust Management including separate Respirable Crystalline Silica Dust Management	Front End Loader	Conduct Laboratory-based tests	
Blast Management	Mobile Plant	Conduct Screening	
Bushfire Response	On Road Tip Truck	Service & Maintain Crushers	
Slimes Management	Watercart	Conduct Crushing	
Traffic Management	Haul Truck	Collect Routine Site Samples	
Working Safely with Geotechnical Risk in Quarries	Pick up and delivery	Combined Crushing & Screening	

The Guidelines are made available **free to the community** on <https://cmpavic.asn.au/publications/support-sheets/>