

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE
Inquiry into greenfields mineral exploration and project development in Victoria

Melbourne — 14 December 2011

Members

Mr N. Burgess
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Witnesses

Mr T. Blake, Chief Environmental Assessment Officer, Department of Planning and Community Development, Victorian Government

Mr I. Hamm, Executive Director, and

Mr J. Moon, Senior Heritage Policy Officer, Aboriginal Affairs Victoria.

The CHAIR — This Committee is an all-party parliamentary committee and is hearing evidence today on the Inquiry into greenfields mineral exploration and project development in Victoria, so welcome to the hearing. All evidence taken at this hearing is protected by parliamentary privilege and the comments you make outside this hearing won't have the same sort of protection. Eventually these proceedings will become evidence and a public record. Would you like to state your name, address, and whether you're representing an organisation.

Mr BLAKE — Trevor Blake, I'm the Chief Environmental Assessment Officer at the Department of Planning and Community Development and we are located at 1 Spring Street.

Mr HAMM — Ian Hamm, Executive Director, Aboriginal Affairs Victoria, 1 Spring Street.

Mr MOON — Jamin Moon, Senior Heritage Policy Officer at Aboriginal Affairs, 1 Spring Street.

The CHAIR — Thank you. Gentlemen, would you like to open the bowling?

Mr BLAKE — Thank you, Mr Chairman, and members. You've asked for a presentation about the Department's role in relation to the Planning and Environment Act, the Environment Effects Act and the Aboriginal Heritage Act, which we're prepared to do in a presentation, with links to some other relevant legislation which fall within our area of responsibility. We will be presenting it in two parts. I'll be speaking to the environmental impact assessment processes and their relationship to approval processes and then Mr Hamm and Mr Moon will speak to the regulation of impacts on Aboriginal heritage.

Just by way of an overview of different legislation which is relevant in relation to these matters, obviously the Minerals Resources (Sustainable Development) Act has explicit links to the Planning and Environment Act and the Environment Effects Act. We also have a role in relation to accredited processes under the Commonwealth's Environment Protection and Biodiversity Conservation Act, in terms of its interfaces with Victorian legislation. I've also listed the new *Mines (Aluminium Agreement) Amendment Act 2011* and then the Aboriginal Heritage Act. In addition, the Department administers the *Heritage Act 1995*, but that's not frequently applied in cases of mining projects.

In terms of impact assessment in relation to mineral exploration and mining in Victoria, there's a suite of provisions which may apply. Impact assessment for exploration may be required under s41A of the Mineral Resources (Sustainable Development) Act. If a planning permit is needed under the Planning and Environment Act, there may be a need for assessment of relevant environmental, social and economic effects. If there's a potential for significant environmental effects, there may be a need for a referral under the Environment Effects Act to determine whether further assessment is needed and that would involve more intensive investigation of potential effects.

In the case that there's an approved work plan for a mining proposal under the MRSD Act — the acronym for the Mineral Resources (Sustainable Development) Act — and there's a proposed variation to that work plan, there's a particular provision under s42A for considering the potential for further significant impacts. The Commonwealth EPBC Act comes into play if there's a potential for significant impacts on matters of national environmental significance, which are specified under the Environment Protection and Biodiversity Conservation Act.

I'll just mention the Mines (Aluminium Agreement) Amendment Act. In terms of planning permits, there's a general exemption in the case of mineral exploration, specifically where there's an approved work plan. However, a planning permit may sometimes be needed for mining, but in arrangements and in circumstances there is often an exemption established under the MRSD Act, which I'll speak to further. Where a planning permit is required, local government is usually the responsible authority under the Planning Environment Act with respect to that permit, which would enable a review of decisions by the responsible authority by VCAT.

There's a significant interaction between the MRSD Act and the planning permit process. Importantly, under s42(6) of the MRSD Act, planning schemes cannot prohibit mining, so it's a permissible use. One of the important links between the MRSD Act and the Environment Effects Act is under s42(7), which provides that if an EES assessment has been made and is then considered by the head of the Department of Primary Industries, a planning permit is not required: so there's an alternative pathway via an EES to that of requiring a planning permit. There's a related coupling under s42A, if there has been an EES previously for a project and then there's a proposed change to that project which might ordinarily require a planning permit, a permit may not be then

still be required if one of two things happens: either there's confirmation that there's not a potential for significant additional environmental impacts under s42A(2); or alternatively, if it's determined that there is a potential for significant additional environmental impacts beyond those considered as part of the previous EES process and then there's a specific process required under s42A(3), which is worthwhile just quickly looking at.

The proponent submits a request to the Minister for Energy and Resources in relation to amending a work plan variation. The Minister then consults the Minister for Planning, who will advise whether he/she thinks there is or is not a potential for significant additional environmental effects. If there's a confirmation that there is not a potential for significant additional impacts, then the Secretary of DPI may then approve a work plan variation. Alternatively, if there is the potential for significant additional impacts then the Minister for Planning will require an environmental report to be prepared. That's exhibited for 28 calendar days for public comment. The Minister for Planning then provides an assessment of the environmental effects to the Minister for Energy and Resources. If the Secretary for the Department of Primary Industry then approves a work plan which substantially complies with the Minister for Planning's assessment, then a planning permit is not needed. That's quite a common pathway because work plan variations are quite a frequent occurrence, one of two of those pathways. There are close collaborations between DPI and DPCD in addressing these issues.

In terms of the Environment Effects Act, which is quite commonly triggered for greenfields mineral projects — not exploration but mineral project development — the Minister for Planning has three options in response to a referral by a proponent or a decision-maker. One is to require an EES; another is not to require and EES subject to conditions; and a third is simply not to require an EES. Both of the pathways of requiring an EES, or not requiring an EES subject to conditions, have been applied to mining projects in recent years.

Just looking at that central pathway, if the decision is conditional the proponent needs to address those conditions and confirm that they've been complied with, otherwise the normal EES processes could apply. In fact it can be quite a tailored process for a particular issue and may require a requirement for consultation. What normally happens if an EES is required is that the Minister for Planning will release draft scoping requirements for what needs to be assessed for public comment, and then confirms the final scope that needs to be addressed. The proponent prepares that EES, with the assistance and advice from an agency-based technical reference group. This has representatives from the State Government, local government, the Commonwealth, and other bodies with statutory responsibilities that may be involved to provide technical advice with respect to the EES as well as in relation to related approval processes, to assist the coordination and streamline the relationship those between requirements. Once prepared, the EES and relevant approvals documentation is exhibited together for public comment and normally an inquiry panel will be appointed by the Minister for Planning to consider the EES and public submissions and provide a report to the Minister.

The final key step is that the Minister for Planning provides an assessment to decision-makers, which will advise whether the environmental effects of the project are acceptable or not, and on what basis the project might be delivered including with modifications or particular requirements. The relevant decision-makers under Victorian law are obliged to consider that assessment before they make a decision under those rules.

In terms of the coupling or relationship between that final assessment and the approval decisions, this diagram illustrates what may occur, though not all of these acts may apply. The key ones include the second from the left, in terms of informing the decision under the Minerals Resources (Sustainable Development) Act in relation to the work plan decision within the mining licence area. That will normally remove the need for a planning approval. However, planning approval may be needed for, let's say, works outside the mining licence area, and there may be a need for approval for works on waterways under the Water Act, and there may sometimes be a need for a works approval under the Environment Protection Act, if there's a discharge from mining activity or related activity. There may be a need for a Cultural Heritage Management Plan under the Aboriginal Heritage Act, which we will speak to later, and there may also be an accreditation of the Victorian EES process under the Commonwealth EPBC Act so all of these decisions, and potentially more, might be informed by the assessment outcomes, which will support the alignment of those different decisions. I've just noted two particular horizontal linkages here; one is between the third from the left, the Native Vegetation Management Framework. Within the mining licence area that framework will be addressed through the work plan decision, but outside the work plan it will be addressed as part of the planning approval. Also to note the link between the approval of a Cultural Heritage Management Plan and other relevant approvals, which Ian and Jamin will be able to speak to further, including, for example, the need for a Cultural Heritage Management Plan prior to the work plan approval.

Just to give a further illustration of integration that occurs between the EES process and other approval processes, this is an example of what we refer to as draft evaluation objectives from the EES scoping requirements. You will see that this is a list of 10 high level matters which provide a framework for assessing particular impacts in relation to a project, in terms of the implications under an array of heads of power under different acts. You will see in the right-hand column the various acts to which those matters relate. These objectives are in effect a synthesis of the considerations arising from the set of relevant legislation to provide a structured framework for addressing those relevant matters.

In terms of the linking with the EPBC Act, here is the EES process on the left and the EPBC Act process on the right. If the project is determined to be controlled action under the EPBC Act and an EES is required, we simply notify the Commonwealth of the use of the accredited EES process, they confirm that and await the outcome, except that we do get Commonwealth officers' input along the way on matters that are relevant to them. Then as with the Victorian decisions at the end of the process, the Commonwealth Minister will consider the Victorian Minister for Planning's assessment prior to making his or her decision under the EPBC Act.

Mrs PEULICH — EPBC stands for Environment Protection and Biodiversity Conservation?

Mr BLAKE — Yes. Given these various heads of power, there are a range of scenarios for what processes might apply to both new mines and variations to existing mine work plans. Just to explain what those scenarios are, there might be a planning permit or it might be an EES and hence no planning permit. If it is a planning permit and not an EES, it may also involve conditions rather than an EES. And in each of those three options the Commonwealth process may or may not apply and there may or may not be an ability to apply an accredited process. Similarly, in terms of a variation to an existing mine work plan, it could be a new EES, that has happened with a major variation, or it could be a planning permit, that's common too, or a process under s42A(2) — and that should be 42A(3) in the last line there. So if there is some potential for significant additional impacts and maybe both s42A(3) process, plus potentially also if not an EES then no EES conditions might apply, so we can have the potential for a dual process to occur.

Finally, just in closing my contribution today, DPCD has established memoranda of understanding with the Department of Primary Industries, the Department of Sustainability and Environment, the Environment Protection Authority and the Department of Transport and transport agencies to coordinate our respective roles and responsibilities for assessment, approval and delivery of major projects that might require impact assessment processes under one of those three acts listed there. These agreements are about obtaining a timely alignment of processes and engagement, from the pre-referral or project planning stage, through the statutory assessment and approvals processes, and then through the implementation process with facilitation support, particularly at the front end project planning stage and the back end delivery stage. The MoUs have a common text to underpin a consistent, integrated approach and there is an array of schedules to underpin aligned business processes. I have a copy of one of the MoU schedules with me. It essentially provides a road map of processes under the different heads of power under legislation and how they link. Not all these processes might apply but some subset might apply, so depending on which applicable laws there are, this is a road map that can be tailored to a particular case.

Mr FOLEY — From your department's perspective?

Mr BLAKE — No, across the array.

Mrs PEULICH — Is there a manual that actually sets out all of that, including the performance standards?

Mr BLAKE — Not all of that, no, but DPI — —

Mr FOLEY — DPI has provided us with what they see as a road map of all the combinations, it would be interesting to see your department's to see whether they are aligned.

Mr BLAKE — They have been a party to be preparing this — —

Mr FOLEY — That's for a specific case?

Mr BLAKE — Yes.

Mr FOLEY — For mining projects. I'm reluctant to stop you midstream.

Mr BLAKE — If an EES is required, which is common for a greenfield project, then some variation to this scenario is likely to apply.

The CHAIR — The MoUs, are they based on development of a lead agency?

Mr BLAKE — It's a dual agency relationship. On the one hand DPCD will lead the co-ordination of the assessment process, which we manage, with relevant approval processes in terms of primary approval decisions, and there will ordinarily also be a need for a facilitation agency that has particular responsibility to help shepherd whole-of-government issues such that there might be, so you see there that we have formal agency agreements to coordinate these processes. One of the priorities there is to establish seamless agency contact arrangements.

The CHAIR — That's the lead agency element of it, is it?

Mr BLAKE — It's that's part of it.

The CHAIR — Just adds a slightly different flavour from the other departments. If the MoUs were already signed, I'm surprised we're getting two different flavours of the same story.

Mr BLAKE — The DPI lead agency proposal is in the context of the proposed new set of amendments to the MRSD Act which is in the broader context of their responsibilities. I have been speaking in the specific context of impact assessment of greenfields mining which is distinct from the particular context of DPI's responsibilities. So in terms of broader exploration or low impact, these are scenarios we wouldn't usually have a lead role in. For mining projects, an agreed project definition is quite crucial to establish what's in and what's out of a project to line up with approval processes and align our agency schedules with the proponent's schedule and, very importantly, to enable timely issue identification and resolution, if that's possible, which is happening with some current projects.

The CHAIR — Do you have an example of that?

Mr BLAKE — The Stockman project is a project which has some key matters needing attention. That leads to the next point, clarifying applicable policies and in some circumstances the relationship to strategic planning and, finally, as a general shift in emphasis where it is relevant and useful to apply a more risk and outcome based approach to assessment and decision-making. That's all from me.

Mr HAMM — Compared to that presentation, mine is probably at the shallow end of the pool, to be honest.

The CHAIR — Come on in.

Mrs PEULICH — He's used up most of your time.

MR NOONAN — We're at the shallow end of the day.

Mr HAMM — Aboriginal Affairs Victoria is responsible for administering the Aboriginal Heritage Act, and its primary purpose is to protect Aboriginal heritage but also give balance to other land use in Victoria as well. Not to put too fine a point on it, Aboriginal anything is not what you would call a major issue so we have to do what we can in the area and focus on the important bits, recognising that for other Victorians, particularly in the area of land, there are a lot of other uses so we seek to find that balance.

The principal method we do it is using the Aboriginal Heritage Act and the Cultural Heritage Management Plan, so the primary source of our managing the landscape of Aboriginal heritage. The CHMPs themselves they provide for land users a way of managing heritage and also ensuring that what available land use can proceed so it's very rarely a question of something not proceeding, it's usually a question of how something proceeds.

Mrs PEULICH — Is there an example of where something has not proceeded?

Mr HAMM — No, not since this act came into effect. Under the Act there are three elements when a Cultural Heritage Management Plan is required: if the Minister directs that there's one, which rarely happens; if one's required under an EES, which we've had a few of those; but the usual method of it happening is under the

Aboriginal Heritage Regulations which has a series of triggers in it which says that the Aboriginal management plan has to be developed.

If a CHMP is required, then it must be approved before any other licence, and in this case an exploratory licence or work plan approval can be obtained and works begin. The reason for that is that under the old regime, before this act came into effect, Aboriginal heritage was usually only dealt with when it was discovered halfway through works, whatever those works might be — mining, housing developments. Freeways, for example, would cause stoppages, enormous delays, very costly, or the Aboriginal heritage wasn't reported in which case it was destroyed but nobody was any the wiser. This way, before work starts, people know where it is and what they need to do in their project management to accommodate the Aboriginal heritage and also get their works done as well.

As you can see, exploration rarely triggers an Aboriginal heritage management plan, and probably the third dot point is the most relevant one: of the 1,191 CHMPs to date since the Act commenced that relate to exploration, 3 have been for exploration. Five were triggered and two were discontinued and all three were approved, so it really has a minimal impact on the Heritage Act, the Heritage Act has a minimal impact on mining exploration.

The CHAIR — What about cost and time?

Mr HAMM — In terms of the requirement for a plan, that's usually done by the proponents in the preparation of them actually developing their project and the regulations give great clarity — or what we think is great clarity, obviously we would — around when a plan is required so there's usually that level of assessment by the project proponents as to whether a plan is required or not. If a plan is required — and this is an issue which we are looking at in terms of the review of the Aboriginal Heritage Act — we built in a trigger to do a review within five years.

One of the issues that has come up, and it's not just for those three plans but across the board, is the time it takes to develop the plan and the cost, which we're being advised of through the review process, through submissions of plans, so we are looking at that. I don't think there is a single issue here, I think it's, as with anything, a complex mix of timeliness of plans of how far works go. Of the different types of expectations of people, or the different types of expectation that people have around the development of plans, there's a mix in there that we are looking at in terms of the whole preparation of plans. Do we need to refine the standards for plans more? Do we need to shift it to lower the detail required in plans? Is there an issue around inconsistent pricing throughout the whole heritage assessment industry, particularly given that the registered Aboriginal parties have a regulatory function as a statutory authority, and do we need to look at their pricing in that as well? So there's a whole range of different things that we need to look at but the fundamental question you've asked is there a time and a cost issue? Yes, there is and we need to look at that in the review.

The CHAIR — Do you have any anecdotal information about time and cost?

Mr HAMM — The average time of a notification to Aboriginal Affairs of the intent to do a Cultural Heritage Management Plan to completion of a plan, that is when it's lodged with us, is nine months. That's the date of the lodgement when it's handed to us. The actual preparation time is, on average, considerably less. But there may be those ones where because it's an area of high Aboriginal heritage value and the nature of the works proposed, there is quite a long time spent on the assessment of Aboriginal heritage in the field and that can add time and expense to the preparation of a plan.

The CHAIR — So what you try and do is have this triggered at the same time as the EES, do you?

Mr HAMM — Yes.

Mr MOON — It runs concurrently.

The CHAIR — How often does that happen?

Mr MOON — Cultural Heritage Management Plans for exploration have only happened three times since the Act has come into play. Where it does happen, the proponent is able to run all of their heritage, natural environment or whatever else they need to get done at the same time.

Mrs PEULICH — Just from memory and without reviewing the evidence, I think we've had some submissions being made to suggest that some of the difficulties arose from having to undertake the consultation and not being able to trace the specific traditional owners that they should be consulting with and there being some disagreement. Are you able to comment on that?

Mr HAMM — I am indeed able to comment on that. Under the Aboriginal Heritage Act, and now in Victoria with the associated Traditional Owner Settlement Act, there are parts of the State where there is quite clearly a single specific group that we deal with for Aboriginal heritage, so that much is resolved. That covers 56 per cent of the State. The other 44 per cent of the State hasn't been resolved in who the traditional owners are, where there are competing groups, and that's exactly the issue you raise, where it's unclear who should be consulted with.

Our policy is generally to say where there is an expressed interest in Aboriginal heritage you really should engage with those who have a clear and expressed interest. We acknowledge that complicates the consultation process but, as a policy approach of locking people out, and also a practical approach that if we don't engage with them there are other options for them to pursue, under the Native Title Act or under the Commonwealth Aboriginal Heritage Protection Act, which is a 1980s Act, which has a whole range of its own issues and problems with it; the Commonwealth is looking to rectify under a review of that Act.

While the consultation process under our Act may involve engagement of more than one party or take a while for that process, it is in fact preferable to what the alternatives might be. In a very real sense, choosing the lesser of two evils is where we're at. Where we ultimately want to get to is under the work we're doing with the Aboriginal Heritage Council and the Traditional Owners Settlement Act is have all of Victoria covered by traditional owners with a single interface for each area of land in Victoria so that mining licence proponents, housing developers, whoever it may be, has one entity to deal with for whatever land they're in, and then that entity takes care of who should be consulted with. One of the ways we're doing that is helping the Aboriginal community resolve those competing claims, trying to find areas of commonality.

Mrs PEULICH — How are you doing that?

Mr HAMM — That would be the case of another brief entirely, but I will say we have a project called the Right People for Country project. It is about trying to find a way of bringing competing claims together, trying to get competing groups together, in a very real sense sort through the disestablishment of Aboriginal society over the past 150 years, give it a 21st century face so we can have a way forward. It's a very short snapshot and a whole different hour I could spend with you on working through all of that, but essentially that's what we're trying to do.

A real challenge with that is putting responsibility or leadership for resolving that with the Aboriginal parties themselves as opposed to a third party making the decision about who is in and who is out so it wouldn't be the Federal Court — certainly no Minister for Aboriginal Affairs of Victoria wants to do it, and even the Aboriginal Heritage Council feels that if we are to empower people then we have to put it back on them to resolve their differences and the State, through the Right People for Country project, will support them through that, through a range of things that we're doing.

Mrs PEULICH — How far off is all of that?

Mr HAMM — Hopefully we'll have our first ones done under this before the end of 2012. We will, I hope, have some boundary issues around the Dja Dja Wurrung Native Title and Traditional Owners Settlement Agreement before June of this year.

Mrs PEULICH — June of next year?

Mr HAMM — June of next year. One of the big contentious areas, which doesn't relate to mining, the southeast of Melbourne down on the peninsula into Gippsland, the Bun-Warung and the Bunurong, two groups who to any independent and casual observer would seem to have claims of equal weight, had issues between them. They have said that they want to find a way forward together on this, and this is very tentative at this stage but they've agreed to try the Right People for Country process. If we can assist that those two groups come to a workable situation around that land management in that part of the State that will have huge implications, and positive implications, for any use of land in the south-east development areas of Melbourne.

But you're talking about long-standing relationship issues that need to be resolved. If this was only just about stones and bones, as we say in the heritage sector, that would be easy but this is about people and it's about their identity and all of those things.

The mineral exploration, the reason we do require heritage of Aboriginal assessment is where a management plan is triggered is because the type of exploration that actually will involve disruption to the landscape on a scale that could disturb Aboriginal heritage if it's there. So if it's just drilling off the back of a truck — which you're all familiar with, I imagine through this inquiry — that is not a trigger. At the moment if they have to put down drilling pads we require a plan to be done, but we are actually talking to DPI and other departments around having that removed so in fact where there's large scale earth removal that would be where you would have a Cultural Heritage Management Plan done. So we're looking at that balance between what's practical and what's necessary, how do we get best value for protecting Aboriginal heritage and how do we ensure that Victoria's land mass is used for all Victorians.

The CHAIR — On that matter before, we dealt with the time but not the cost. Have you got anything that you can share with us on that basis?

Mr MANN — The costs, as I said before, I would have to say that we're getting some concerning figures to me around what we estimated the cost would be when we developed the legislation to what we're being advised some of the costs are when that's done. We've got three case studies in the mining area, probably not enough in itself to concern me, but it seems to be not uncommon with other submissions we're getting. In effect, it's looking that at the development of Cultural Heritage Management Plans, particularly complex ones which involve the fieldwork, and are proving more expensive than we envisaged so we want to pick apart that to see what the causes of that are. I don't think there's a single cause, as I said before I think it's a complex set of things interweaving together. We want to pick that apart and find out what actually it's leading to what could be regarded as ostensibly high costs for this and see if we can find a way forward through the regulations in the Act.

The CHAIR — Can you give us two extremes?

Mr MOON — I did see one submission involving wind farms where the company that supplied the submission said that they'd paid \$750,000 for a Cultural Heritage Management Plan. I'm interested in finding more, particularly about that one, because I was quite shocked when I read it to see if somebody has paid that for a Cultural Heritage Management Plan it must be over a really big area — —

The CHAIR — You've got privilege here.

Mr MOON — I want to find out what's going on there, rather than speculate, but that figure did concern me. At the other end of the scale, you do get ones where they're comparatively quite small for a plan to be done because the work required is quite small.

Mrs PEULICH — What amounts are we talking about?

Mr MOON — About \$20,000, \$30,000. Complex plans generally range from about \$30,000 to about \$120,000, that's what we're finding. \$750,000, well, yeah, I'd probably walk out of my job and go and work for them if they were charging that much. I'm very dubious about that.

Mr HAMM — Yeah, a number of us did say we're in the wrong business.

Mrs PEULICH — We're definitely in the wrong business.

Mr HAMM — That type of one concerns me but there's been an overall, I guess, comment in submissions about the cost so we certainly want to unpick that further. Is it a perception thing? Is it a real thing? What is the different pressures causing that?

Mrs PEULICH — And components of it.

Mr HAMM — The components of it, yes. As I said, in terms of costs you've got those extremes. Most of it is in the middle but then sometimes your viewpoint on what's experience for one development might be quite cheap for another so we've just got to unpick that more.

Mrs PEULICH — So as a proportion of the total cost of the project, say, what does it track at?

Mr MOON — \$120,000 in the scope of a 50 year mining project, I don't think that would be much and if that was going to affect their bottom line then I'd suggest they were probably in the wrong business. Yeah, I don't think it's that much. Having said that, exploration and mining will be at the higher end of expense because of the area that they covered and the number of sensitive cultural heritage landscapes that they'll be affecting and the nature of activity, it's total destruction, so it will require a lot of investigation.

Mrs PEULICH — But you've obviously said that very few are triggered at the exploration level?

Mr MOON — So far 3 out of about 1,200.

Mr HAMM — The native title requirements in the Native Title Act, we're keen to ensure that there is alignment between the various impacts of different acts on heritage management. Quite clearly that we're looking at is the Native Title Act, ensuring there's alignment with that; the Traditional Owners Settlement Act — the Victorian Act refers to the Aboriginal Heritage Act as being the standard for heritage management under the Traditional Owners Settlement Act. Even under Commonwealth law, the Aboriginal Heritage Act is of such good quality and is recognised as the benchmark for the rest of Australia, but if do you a plan under the Victorian Act then that's sufficient for any other act. We are really trying in an overall sense to steer people away from the Federal Native Title Act to the Victorian Traditional Owners Settlement Act which would catch this anyway so there is a single heritage management process for Aboriginal heritage.

Fundamentally, the CHMP process is efficient and effective; it provides certainty once approved and it's lining up hopefully all the other pieces of legislation that revolve around Aboriginal heritage and landscape management. We are looking, as I said, reducing the triggers with DPI and other areas as well to ensure that we give balance to landscape use and protection of Aboriginal heritage. We've already relaxed regulations around the drilling and the area works plans and the review of the Act, as I said before, hopefully will lead to a lowering of costs and so forth around the CHMP's process. And that's it.

The CHAIR — Thank you. Any other questions?

Mr FOLEY — If I could. Of the first part of your presentation, there may be one in the second, we've heard as recently as today from DPI about the review of the Minerals Development Act, which is the main instrument recognising that there are possibly up to 15 other acts and different departments that we run into in terms of our review. Does your department have a view on the idea as explained to us that has been signed up to by agencies of what a lead agency in the exploration a greenfields minerals exploration would be, and what is it and who is it? Who is the lead agency?

Mr BLAKE — During the exploration phase in which the key normal instrument which is indeed the MRSD Act, and the Environment Effects Act and the Planning and Environment Act would not normally apply, it is entirely appropriate that DPI is the lead agency at that stage. If we're anticipating that a major project might require impact assessment under the acts we are responsible for, we will engage with DPI to begin to identify issues that might flow through. As I mentioned the MoUs might involve identifying a lead facilitation agency at the pre-referral stage and then later at the back end of implementation, with DPCD leading the statutory process in the middle. So differentiating those two general roles, statutory coordination of the impact assessment and approvals stage from facilitation during the exploration stage.

Mr FOLEY — You lost me a bit there. So in regards to lead from a humble weekend prospector to a global multinational exploration or hopefully development company, I come to Victoria and I want to look for a rare mineral sand in the west of Victoria, under what we have been explained there will be a legislative framework next year, which has been suggested, I will go to which agency or will that be the only agency that I need to do deal with in terms of my interface with them, they might go off and explore all sorts of other solutions with any number of other agencies, including yours, is that your understanding?

Mr BLAKE — DPI would be the facilitation agency that would be a point of contact, but I wouldn't see them as being the sole point of contact, they're the entry point, if you like. But if it's plain that other statutory processes are going to be triggered then all the more — —

Mr FOLEY — Such as EES.

Mr BLAKE — Yes. DPI couldn't be representing that process, they need to say: 'Look, maybe you're looking at an EES, so DPCD should be involved in this'.

Mr FOLEY — It couldn't be under existing legislation [inaudible] changes as a consequence of that?

Mr BLAKE — I'm not sure what your question is there. There's no problem administratively. My understanding is basically what they're looking to establish is the principle of a lead facilitation role without a further changes in terms of statutory processes — so a recognition of DPI's front end engagement role and, as you're aware, developing detailed road maps and helping people to be able to forward navigate whatever those applicable processes might be.

Mr FOLEY — Fair enough. And in terms of the Aboriginal cultural heritage provisions we heard from the Stockman project as an example in terms of difficulty in identifying the appropriate Indigenous partners to be working with. Given the extent of disposition in Victoria as well as the remoteness of those difficulties going to all those issues in those relatively remote parts of Victoria such as that particular project, how realistic is the resolution of the processes that is discussed?

Mr HAMM — In my view, it is realistic for a resolution of them so that we do have not only, for instance, a single interface in a corporate sense to deal with, that's actually the easy bit. The hard bit is helping the Aboriginal community through the formative stages of realigning how traditional identity matches up in Victoria. Just to give you a view, there is no standard, if you like, no lore — and I use lore on this — in the Aboriginal community about how you define yourself as a traditional owner. There are those in the camp of you have one identity and that's it. There are those in the camp of any identity or relationship that you have with relations in different parts so they're all your identities, there's no standard on this, so you have different individuals across the State having different ways of defining themselves.

I, for example, define myself as a Yorta Yorta man and that's all I am, that's for a number of reasons. One, it's the only heritage I have, nobody knew who my father was and my mother was Yorta Yorta. There are others who say my mother is Yorta Yorta, my father is Gunditjmarra, my grandmother was Bunurong, my grandfather was Wamba Wamba, so on and so forth, and they claim all that, so between those two extremes there's no consistency. We have to help the Aboriginal community navigate its way through that. Perhaps not in an individual personal sense for every person but at least in a collective sense so we can have a relationship between the Aboriginal community, the traditional Aboriginal community, the wider Aboriginal community of Victoria, Indigenous community, because we have many people who moved interstate, people who don't live on country. I live in Melbourne, not in my country in the north of the State, and obviously the rest of Victoria as well.

It's not easy, it will be difficult, but I think if we are to, first of all, just really reduce change to place of Aboriginal people in Victoria from our own perspective as a people, from the wider perspective of Victoria and close those gaps on disadvantage, the platform is working out who we are. It will be difficult, it will be hard, it will require time and effort but I don't think it's one that we can turn away from. If we do — God forbid my son Jasper would ever be Executive Director of Aboriginal Affairs after he sees what his father goes through — but he's 10. If we don't do this, he will be sitting here doing exactly this in 37 years' time.

Mrs PEULICH — And you know what, we're likely to do that, unfortunately. Just look at Gaza, look at Bosnia, look at the Macedonians.

The CHAIR — The only relief is it won't be with us.

Mr HAMM — That, for me, is really something because it is difficult we shouldn't turn away from it. The easy thing to do would be to say: blow this, we'll just tell the Minister that they've legislatively got to pick winners and losers. And it would be the same and there wouldn't be any change.

Mr MOON — To put that into a bit of perspective, in 18 years of native title we've had three positive determinations in Victoria. Since the Aboriginal Heritage Act came into place less than five years ago, we've had nine positive determinations under that legislation.

Mr HAMM — And it is about healing but even the Heritage Council itself, even in that process there has been winners and losers even though the Council has put real emphasis on —

Mrs PEULICH — There's always a political overlay, isn't there?

Mr HAMM — Inclusiveness. The Right People for Country project is a proactive project that really is about building up people's capacity to be able to negotiate for themselves because we haven't had to do that before as a people, what we've been good at is advocating to a third party to make a decision about us; we haven't actually had to make the decision for ourselves generally. This, I hope, will skill up my people to be able to do that so they can arrive at a decision of here's what formulates our particular group and it's embracing as many people as possible. You'll always have unhappy punters, that's just the way it goes, but if we can set up a system of including people so that we do have a community that's confident about itself, able to advocate for itself, able to decide things for itself, stuff like managing Aboriginal heritage will actually see it quite simple and quite small on the greater scale of things. Long answer, complicated question.

Mrs PEULICH — Can I just ask one follow-up — and I think it reflects my naivety — when an Aboriginal heritage management plan is triggered and the experts come out and identify artifacts, what happens to them and are decisions made that either preserve them in situ, what does it usually entail?

Mr HAMM — There's a range of different options: it depend on the site they're looking at, it depends on perhaps what is going to happen with the project. But a typical one, for example, looks at what are the really important heritage places within this area of activity that really need to be left in situ? How can the development accommodate that? It may in some instances require the salvage of material for relocation; in other instances it may require amendment to the development project to accommodate leaving the stuff in situ.

What we've found is generally proponents are quite prepared to do that, because dealing with heritage is upfront very early in the planning process they quite often don't have a defined detailed plan, rather they've got a notion of ideas. We want to build [inaudible] heights out here on the northern areas of Melbourne in honour of our great MP, for example, so we're going to build this great big thing and we want to have houses here — —

Mrs PEULICH — Fantasy castle.

Mr HAMM — We're going to have a shopping centre here and we're going to have an industrial park somewhere in this, but they haven't narrowed it down exactly so by having the Aboriginal heritage understood very early on they can say: we can leave this land here as public open space. So that leaves the important Aboriginal heritage as part of the open landscape plan and we can put the industry park over here and we can do the housing there where there is no Aboriginal heritage, so on and so forth, so that's generally how it works.

Mrs PEULICH — Is there then a register of all of those sensitive sites?

Mr HAMM — Yes, there is. There is a register that's got something like 36,000 sites in Victoria. As part of managing Aboriginal heritage we built over the past four years what's known as the Aboriginal Cultural Heritage Register information system. It's actually acknowledged as the best geospatial system in Australia in terms of managing the landscape; in fact won a couple of awards — it won an Asia Pacific Geospatial Technical Award, which my technical people got very excited about and when I saw Asia Pacific I got excited too. That's actually a really useful tool in terms of understanding what's in the landscape and giving really instant access to what's there. That's part of our effort to bring down costs which is why I'm packing that cost question that was asked before is really important. We've lowered a lot of the business processes transactory costs in terms of developing plans, yet plans seem to have gone up, that's why we want to unpack that but the ACHRIS system itself, best geospatial management system in Australia. We want to see if we can use that as a platform for other parts of Victorian Government to help manage the landscape as well.

Mr SHAW — What artifacts are found?

Mr HAMM — There's such things as artifacts scatters so in a lot of instances — —

Mr SHAW — Stone chips, aren't they?

Mr HAMM — Stone chips, for example, so you can see where people manufactured stone tools. You can also find sites where people camped, for example, particularly along natural waterways, which is why we have those as a trigger for plans. So you might find what are called clay ovens, other evidence of campsites. In other areas of the State, particularly the rural areas as you get more into the northern part of the State, huge amount of

scar trees. Up around Boort, for example, you've got the largest stand of scar trees in the southern hemisphere, that is trees where it's evidenced where humans have carved things out of the bark, so you've got those type of things.

You've got an increasing number of skeletal remains because of the extractive industries wanting to use sand. Sand is easy to bury bodies in when your society doesn't have complex digging tools, you go to the soft spots to bury people — around rivers, around sand. So with extractive industries, for example, we are finding more and more discovery of human remains. One of the key things is can we leave those in place? If not, how can we relocate those in a respectful way that leaves them in the area of where they were found, because that's where people were buried, and how can we still provide some access to the natural resource, in this case sand, for those who want to use that? There are a lot of other more smaller things that come onto the register but generally it's that type of thing.

We are quite committed to preserving it because extractive industries like minerals this is stuff that can't be replaced, you can't remanufacture it, it's like minerals; once it's gone, it's gone. You get one shot at, in our case, protecting it. In the case of minerals you get one shot at using it and really we have to be quite discerning in how we give balance to those two things.

The CHAIR — With the added aspect that it's got a spiritual connection.

Mr HAMM — It does, and that's the other part of it, it's not only its physical importance but its importance particularly for Aboriginal people about identity, connection to place, spiritual importance but also part of the shared heritage of all Victorians as well. As we move further down the path of reconciliation, the acknowledgment that Victoria's history doesn't go back 150 years, it goes back — we might be able to confirm this with some scientific evidence in the near future — it goes back to perhaps as long as 50,000. But that's something that all Victorians up to today have a shared ownership of, have a collective part that they all can be proud of, so we have that balance to this human dimension to all this as well.

Mrs PEULICH — And those sites, have they been subsequently denoted in some way?

Mr HAMM — Yes, on the Aboriginal Heritage Register — —

Mrs PEULICH — Apart from the register, like actually on site?

Mr HAMM — It depends where the site is, it depends on the significance of the site. We have sites on the register that are actually only known to a few people because of their significance to the Aboriginal community. They could be ceremonial sites, they might be men's business, for example, or women's business. We put them on the register but we limit access to them unless somebody particularly is enquiring about that landscape and might want to do something then we'll say: 'There is a site there, we can't reveal anything more but it's of such significance, don't even think about asking for disrupting it'. But generally the sites are the artifact scattered type sites, people can access those through the register, and where there is a significant site that might be in a landscaped development, so it's in a public area, you might have signage that says: 'In this area here is a known campsite for Aboriginal people, here is how you read the landscape to be able to see that'. So it depends on the site, depends where it is, the significance and all those kind of things.

Mr NOONAN — I've got the last question. The Mineral Resources Act is the overarching act, and obviously depending on the size of the licence application can determine whether or not acts under your department's administration then come into effect. I understand that you've got a formal agency agreement to help coordinate that process. I'm just wondering whether you can characterise what level of urgency, if any, there is in terms of responses given that much of the evidence that we have received has been negative about the time that it takes and therefore the cost that it takes and when we're talking about the viability of mining in Victoria, these are the reasons given for exploration companies to look elsewhere in other jurisdictions where such circumstances don't exist. You don't have to outline the terms of those agency agreements, but I wonder if you could characterise them for us so that we can get some sense of what level of urgency or efficiency arrangements might be in place between agencies?

Mr BLAKE — We're currently settling business processes between our agencies including times of response around different matters. Something we're proceeding to do across the board with the MoUs is to establish a risk management framework, so there are several milestones through the progress of a project

beginning with the pre-referral stage, at which we will do an interagency scan of the priority of a project and the risks it might raise to establish how important it is in economic and social environmental terms, and therefore what effort should we commit to facilitating that project, especially in terms of committing resources to it. That will be reviewed at a series of points afterwards once the statutory process is in train, in terms of how complex it is appearing, how things are travelling. Whether, for example, there are policy, land tenure in terms of infrastructure or other issues that might be within the purview of the Government that it could address to help move things along, or developing a proposition and then going through the formal review process and later government consideration. I can't generalise about time-frames.

One thing I would note, and picking up a bit of a point from the Minerals Council of Australia's submission as they highlight that projects going through the approvals process are mostly at a preliminary design and feasibility investigation stage, so proponents are reviewing the scale of the project, the technologies that they might apply, a whole range of procurement decisions, a whole range of matters, so it's a work in progress for the proponent. What we often find is that the proponent will push a pause button while they're travelling through a statutory process and part of the external optics is that EES process took x years but in fact the pause button is often pushed along that way so that people perhaps took two or three years, but there's a reason for that, whereas if a proponent has a clearly defined proposition and they've got a well resourced capable team, they're not blinkered about addressing issues that need to be addressed, things can move on in a much shorter time-frame than often they do. So if we've got a willing and able proponent, we've got a priority project and the Government is interested in committing resources to help it move along, then that will all come together, we can agree on schedules and move along.

The MoUs will support the external optics in part by promulgating various levels of the road map and how that applies in terms of business processes to underpin our aligned delivery of the processes that statutory agencies responsible for.

Mr NOONAN — So you're in the process of settling those business processes around time and efficiency?

Mr BLAKE — Yes.

Mr NOONAN — Do they not exit at the moment?

Mr BLAKE — Insofar as they're not established in law, no. They do in a draft form and we're looking to confirm them and because it's a matter of what resourcing departments have — —

Mr NOONAN — So it's not a term within the current MoUs that exist?

Mr BLAKE — The MoUs, which I can leave you a copy of, refer to the need to confirm the schedules to align pathways and expected timeframes for different steps and the rest. In the current days before Christmas looking to settle those, but some will simply specify the need to provide feedback or whatever, while some will involve an agreed timeframe for a particular case.

Mr NOONAN — Thank you.

The CHAIR — Any other questions?

Mr NOONAN — Can I just flag, Chair. We didn't get a lot of notice regarding your appearance today but it has been useful. If we have some more questions arising from your appearance today, are we able to submit those to you on notice and have you return some responses to us as there have been a number of questions and I think if there were a greater period of time we may have got to them?

Mr BLAKE — Certainly.

Mr HAMM — Absolutely.

The CHAIR — Thank you very much for your evidence. You will be sent a transcript of today's proceedings and you are open to make any changes that are grammatically incorrect but no changes to the substance of the document. Thank you again for being here.

Committee adjourned.