

***INQUIRY INTO GREENFIELDS MINERAL
EXPLORATION AND PROJECT DEVELOPMENT IN
VICTORIA***

Submission to the
Economic Development and Infrastructure
Committee (EDIC): Parliament of Victoria

By the

Construction Material Processors Association
(CMPA) –

In search of ‘balanced regulation’

24 August 2011

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Contents

1 Executive Summary	1
2 Summation of the essential points and solutions.....	4
3 The Construction Material Processors Association (CMPA)	8
4 Victoria's mineral endowment	10
4.1 The anti-development nature of native vegetation legislation	10
4.1.1 The Native Vegetation Framework	10
4.1.2 Issues for the Industry with native vegetation	10
4.2 The unpredictable and costly nature of the cultural heritage legislation	13
4.2.1 The new legislative environment.....	13
4.2.2 Issues for the industry with cultural heritage.....	13
4.3 Solutions.....	15
5 The regulatory environment	17
5.1 The unnecessarily burdensome, complex and duplicative Work Authority process	17
5.2 Time and cost of the Work Authority approvals process	19
5.2.1 Timeframes associated with the approvals process.....	19
5.2.2 Costs of the approvals process	19
5.2.3 Costs of appeals to VCAT	20
5.2.4 Overlapping and duplication in the Work Authority approval process.....	21
5.2.5 Duplication of roles of DPI and local councils.....	21
5.3 Anti-competitive nature of MR(SD) Act	23
5.3.1 Issues for the industry.....	23
5.4 The anti-competitive nature of the Work Authority process	24
5.5 Solutions.....	27
6 Fees, charges and royalties	29
6.1 The unjustified and costly rehabilitation bond system.....	30
6.1.1 Costs and charges	30
6.1.2 Unreasonable response to good performance.....	31
6.1.3 Issues for the industry.....	34
6.2 Solutions.....	38
7 Success and failure of projects in Victoria's mining development pipeline	39
7.1 Regulatory imposts = no growth, no development and no new jobs.....	39
7.2 Regional development policy – ignored by regional regulators.....	41
7.3 Solutions.....	42
Appendix 1 – Update of Case studied in An Unsustainable Future	44
Appendix 2 – Rehabilitation Bonds	47

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1 Executive Summary

The early 21st century has seen a significant worldwide shortfall in available replacement earth resources. This is a consequence of a failure by public and private capital to undertake meaningful greenfields mineral exploration. While this shortfall may not have reached critical proportions, should demand remain firm at prevailing levels, the fundamentals of supply and demand will continue to change towards diminished supply, which will inevitably go into significant deficit in the medium to long term.

Global insecurity and economic instability threaten to exacerbate this problem, as otherwise attractive exploration terranes are excluded for non-geological reasons. The risk-averse strategy of eking out mineralisation from brownfield sites is unsustainable. It is crucial therefore that greenfield sites are opened for development to meet these rising demands. But how open are they in Victoria?

The houses and gardens owned by Victorians are built from, and utilise material produced by, the extractive industry in the State. The extractive industry has grown to meet the demands of population growth and associated development. *The value of extractive production delivered to construction now exceeds the value of coal delivered into power production in Victoria.*

However, spiralling regulatory demands involving the insidious sterilisation of land from extractive and other productive operations together with attendant costs are destroying the industry as we know it. The costs of the houses and gardens of Victorians will increase substantially as required extractive material will have to be imported from farther afield, nearby States or even overseas. Unquestionably, these impacts will involve significant employment losses with their associated economic and social costs.

The Committee's Inquiry provides the opportunity to highlight to the Parliament the very simple point that without energetic people who are prepared to risk their own capital in wealth creating markets in the search for earth resources from greenfield sites, development will stall and supply will dry up. This submission presents the case that restrictive regulation dissuades investors and unreasonable regulators slam the door on development. Important as they might be, regulators do not add to the value of productive goods and services. They do not risk their capital nor meet increasing demands for earth resources. The demonstration of ever increasing regulatory burden attests to their lack of understanding of this basic fact. The CMPA acknowledges the recent efforts by the DPI in recognising the dilapidated state of the regulatory apparatus under its administration. It is only reasonable to expect that the outcome of their efforts will be more efficient and *balanced regulation*.

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The plea by the Association is for *balanced regulation*. Balance in the quest of increasing social and environmental needs with the need of industry to be able to confidently risk its capital and ingenuity in the pursuit of profit-making ventures in a fiercely competitive environment. Balanced regulation will provide benefits for consumers of earth resource products. They will have more choices of product, more choices in terms of access to product and more choices in the optimum mix of prices of products reflecting vibrant competition and a low cost regulatory environment. Balanced regulation will also allow small business enterprises including family businesses to flourish within their own operating market segments without the costs of unnecessarily complex regulation that makes their businesses vulnerable to anti-competitive pricing and ultimate poaching by multi-national operators.

The Inquiry's Terms of Reference are very broad. The CMPA believes there are no new solutions. It has all been said before.

The Government has regulatory gate-keeping arrangements in place although they must be improved. ***Regulatory balance is the key and is the answer.*** This is not complex science but demands grit and determination in the face of newly created regulatory demands from eminent, articulate and often convincing people, generally funded from the public's purse. It is too easy for legislators to go with the populist tide of emotive and plausible arguments presented by these good-willed people. Legislators must resist these challenges in the knowledge that *balanced regulation* including low cost access to greenfield development sites will provide long term sustainability for all the State's communities.

This submission responds to the Inquiry's Terms of Reference by referencing data provided in the Association's earlier comprehensive report, *An Unsustainable Future - The Prohibitive Costs of Securing Access to Construction Material Resources in Victoria*. Through the use of detailed case studies that report set out the prohibitive costs of entry to the industry and the overall regulatory environment in which the industry struggles to operate. ***Most alarming of these regulatory controls is the choking off of extractive industry development in Victoria through the sterilisation of available land.***

In addition to a detailed response to the regulatory environment this submission gives an update on the nine case studies used in the *An Unsustainable Future* report and provides an analysis of the impact of the spiralling levels of rehabilitation bonds on the industry. Rehabilitation bonds are relevant to the fees, charges and royalties element of the Terms of Reference.

The recent increased levels of bonds have been the cause of collapse of some extractive operations already and the cessation of several major new extractive developments – all of which have economic and regional impacts. These impacts, as terrible as they are in themselves, are even more devastating when they are the result of a bond system that is unwarranted and should be completely overhauled anyway.

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Finally, the submission considers the success and failure of projects in the sector. Examples are provided where due to the unreasonable and inflexible demands of regulators proposed multi-million dollar extractive operations are halted along with the prospect of associated increased employment and economic activity in the local areas. These failed projects truly highlight the anti-development nature of many regulators who have no understanding of how their actions serve their State so poorly.

The submission presents a range of solutions to the problems that beset the industry that if adopted, would provide opportunities to increase the benefits from the State's earth resource sector. Primarily these opportunities lie in streamlining and simplifying native vegetation and cultural heritage legislation so that greater access to land for extractive operations can be provided. Also, there is an urgent need to reduce the costs and delays endemic in the administration of *Mineral Resources (Sustainable Development) Act 2101*. Above all, ***there is a fundamental need for a more strategic approach to be taken to the planning and development system so that the demands of increasing population on earth resources can be met efficiently and effectively from within the State.***

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2 Summation of the essential points and solutions

Victoria's mineral endowment

Essential points

- The practice of 'offsetting' in native vegetation regulation is increasingly being applied by regulators requiring Work Authority holders and proponents to purchase land to mitigate against perceived but not actual impacts. This practice sterilises land from extractive operations.
- Sterilisation of land from extractive operations has multiple negative impacts.
- The initial costs of developing a cultural heritage management plan (CHMP) were estimated by the DPI to be \$4-8,000 for a desktop study. Two years later in 2009 the average desktop study was \$25,000 although these costs are increasing. The average cost of a complex study was \$120,000. In 2011 a desktop study costs \$40,000 while a complex study costs between \$200,000 and \$270,000! These are unsustainable and unjustified costs that serve as a complete disincentive to investment in the State. Examples exist in the industry of a CHMP and associated investigations now costing in excess of \$3 million.
- The unpredictable and inexact nature of the assessment process for a CHMP makes the purchase (or lease) of land for extractive operations a black hole for a proponent's risk capital that can quickly exhaust investment interest.

Solutions

- The value of the underground resource must be taken into account when considering the value of native vegetation. This will bring about some balance in regulating native vegetation and offset some of the spiralling costs.
- The regulatory demands of the native vegetation legislation impose risks for landowners. Victoria's land tenure legislation must transparently acknowledge this share of rights. The corresponding devaluation of land will have ramifications for the whole community, not least of which will be for the Government. Once devaluation occurs, any costs associated with native vegetation including access to the land, should be compensable by the landowner from the beneficiary of the legislation. Compensation should be set at the highest value use of the land.
- Due to its miniscule environmental footprint when compared to other sectors, there is a strong case for the extractive industry to again be exempted from native vegetation controls.
- Costs associated with cultural heritage legislation should be compensable.

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The regulatory environment

Essential points

- The legislative entry process to the industry, the Work Authority approval process, is beset with duplication and complexity.
- A 'standard' Work Authority application takes just over 2 years to be approved, more contentious proposals involving VCAT appeals, almost 4 years, while a proposal that requires an EES can take 5^{3/4} years.
- The costs of the approval process range from \$10,000 to \$1.15 million including for a planning permit approval, with higher costs ranging from \$1.9 to \$5.1million where an EES approval is required. These costs are expended with no guarantee the application will be successful!
- A 1992 Victorian Parliamentary Committee report estimated the cost of developing a Work Authority at about \$100,000 (2011 \$'s). Over 19 years these costs have increased by a factor of three!
- Costs of the appeal process range up to \$558,000.
- Over the 11 years to 2010 proposals for new (greenfield) extractive operations declined by 42% and applications declined by 73 per cent, despite increasing levels of demand.
- Of the 303 new Work Authorities granted between 2000 and 2011, only 19 (6%) were for significant operations (those with rehabilitation bond greater than \$50,000). Over the last four years since the new legislative arrangements have been in place twenty eight (28) Work Authorities have been granted but significantly, only one (1) Work Authority has been approved for a major greenfield site.
- The extended time, costs and uncertainty associated with the application process (the sovereign risk) and the unknown additional costs of regulatory compliance make investment in the industry highly questionable.
- The lack of development will lead to a decrease in supply and competition in the market place. This will cause an increase in the cost of construction materials, leading to an increase in building and infrastructure costs and a subsequent decrease in housing affordability. A future material supply shortage could give rise to price increases of 35% and above.
- Increasing regulatory burdens and associated costs when not applied retrospectively assign advantages to existing industry participants over new potentially greenfield operations.
- Where mobile crushing plants involve similar risks to small extractive operations they should bear the same regulatory burdens.
- Where councils have their own quarry and receive an application for a new extractive operation in their area, the council should refer the application to an independent body for assessment because of the conflict of interest.

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Solutions

- The Work Authority/Work Plan approval process should be improved and refined.
- The DPI should centrally manage the Work Authority/Work Plan approval process.
- The costs of regulatory administration should be reduced.
- The administration of the VCAT system in relation to extractive operations should be streamlined and improved.

Fees, charges and royalties

Essential points

- Extractive operations incur higher council rates to encourage rehabilitation and must also pay for rehabilitation through the Work Authority process and rehabilitation bonds. This shows Work Authority holders are paying twice for rehabilitation.
- The rehabilitation bond system requires a bank guarantee. Because a bank guarantee is regarded by a bank as a debt of the business it reduces the Work Authority holder's future access to credit. With recent spiralling bond levels it may bring about the early failure of the business.
- Relinquishment of a Work Authority without completion of full rehabilitation is rare and over the last 20 years only 5 operations had their bond 'called in'.
- In calling in these bonds, the Government spent \$18,000 of bond funds in rehabilitating the five sites. However, in only the last 11 years there has been in aggregate \$515.8 million tied up in bonds or on average \$46.9 million pa.
- Despite outstanding performance in rehabilitating extractive sites, over the 11 years to 2010 the value of rehabilitation bonds in the extractive industry increased by 217% while the overall inflation rate was 47%. The average bond debt for every operating Work Authority has increased by 67% after being adjusted for inflation.
- Five bond reviews conducted around 2010 have seen increases from \$12,000 to \$235,000 (1,858%), \$95,000 to \$1,200,000 (1,162%), \$80,000 to \$380,000 (375%), \$140,000 to \$810,000 (479%) and \$480,000 to \$2,900,000 (504%).
- There appears no justification for the presently used bond system. The industry is being severely punished with this high-cost instrument despite having achieved an extraordinarily good rehabilitation record and leaving a very small environmental footprint.
- More targeted inspections would minimise any 'risk' to Government of un-rehabilitated sites.
- The payment of a bond should be payable when evidence of a risk is shown and this can only occur when the Work Authority commences productive operation.

Solutions

- The whole bond system needs to be improved urgently.
- A commitment to a rigorous assessment of the actual need for a bond system is required.

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Success and failure of projects in Victoria's mining development pipeline

Essential points

- Uncertain regulatory obligations lead investors to look to alternate locations interstate to set up business ventures.
- An attitude of anti-business development is patently evident among many State and local government regulatory agencies.
- Councils appear to be unsure of their role in the Work Authority process and because of this uncertainty take an overly conservative approach.

Solutions

- There is a need for a strategic and balanced approach to the regulation of the extractive industry.
- Legislators and regulators need to recognize each land user's role.
- The role of the existing Earth Resources Development Division should be expanded.

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3 The Construction Material Processors Association (CMPA)

The CMPA is an industry association representing a broad spectrum of those involved in construction material processing businesses engaged in the extracting, processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling; industry consultants, industry suppliers and any industry worker. The Association was formed more than 10 years ago in response to burgeoning Government demands on the industry and a need to provide a single coherent voice to stand up to unjustified imposts.

The CMPA's membership is primarily small to medium sized businesses.

Extractive industries provide the raw materials for building and construction, vital to the State's development. The industry operates quarries that produce a range of hard rock, clay, sand and gravel products.

According to the statistics compiled by the Department of Primary Industries (DPI) as at 30 June 2010 there were 869 work authorities granted under the *Mineral Resources (Sustainable Development) Act 2009* (MRD Act) in Victoria. Total production from these work authorities was approximately 46 million tonnes in that year (2009-10). The extraction is divided into hard rock and soft rock (70% sand and gravel). For the year ended 30 June 2010, 33 million tonnes (61% of the total extraction) of hard rock had been sold with 20 million tonnes of soft rock being sold (38% of the total). This mix of extraction type has remained relatively static over the last 10 years.

This submission is in response to the *Inquiry into Greenfields Mineral Exploration and Project Development in Victoria* being conducted by the Economic Development and Infrastructure Committee of the Parliament of Victoria. The submission draws on the case studies, findings and recommendations of the Association's report, *An Unsustainable Future (AUF)* which was submitted to the Parliament's Environment and Natural Resources Committee for its Inquiry into the Environmental Effects Statement Process in Victoria in May 2010¹.

The nine case studies were either of applications to work in greenfield sites (new Work Authority) or to expand an existing brownfield site. Some of the case studies were in progress while others had been finalised. An update of each of the case studies that involved incomplete applications is contained in Appendix 1.

¹ The dollar values used in the USF report are in 2009 \$'s and have been retailed unless specifically updated. In these cases an indication is provided.

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This submission is framed around the Committee's terms of reference which seek consideration of:

- a) Victoria's mineral endowment (often referred to as 'prospectivity') across a portfolio of commodities (including energy earth resources and extractives products);
- b) the regulatory environment;
- c) fees, charges and royalties;
- d) national and international perceptions of Victoria's prospectivity and regulatory environment;
- e) the success and failure of projects in Victoria's mining development pipeline;
- f) different approaches and programs applied in other Australian and international jurisdictions to foster increased investment in greenfields exploration for, and development of, minerals and energy earth resources;
- g) the different roles of government (this may include, but is not limited to, targeted industry engagement, facilitation and generation of geological survey information);
- h) opportunities to increase the net benefits from Victoria's minerals and energy earth resources, and to potentially provide for self sufficiency in low cost energy and extractive materials, consistent with the principle of economic efficiency; and
- i) consideration of the costs and benefits of greenfields mineral exploration (economic, social and environmental), and whether there are opportunities to improve the management of potential conflicts between exploration and other land uses

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4 Victoria's mineral endowment

It is ironic that on the one hand the Victorian Government promotes the State's mineral endowment and calls for mineral investment in the State² while on the other hand it actively sterilises much of the land from greenfield exploration and development by ushering in 'politically correct', inflexible and anti-development legislative measures. This submission discusses two of the most problematic of these for the extractive industry: native vegetation and cultural heritage legislation.

4.1 The anti-development nature of native vegetation legislation

4.1.1 The Native Vegetation Framework

Victoria's *Native Vegetation Management – A Framework for Action* (the Framework) 'establishes the strategic direction for the protection, enhancement and revegetation of native vegetation across the State'. Under Planning Scheme Amendment 52.17, the extractive industry was initially exempted from the application of the Framework due, it is expected, to its low level of impact; however, following establishment of a Memorandum of Understanding (MOU) in 2007 between the Department of Primary Industries (DPI) and Department of Sustainability and Environment (DSE) (but notably, not the industry) compliance with it became part of the Work Authority and Work Plan approvals process under the MR(SD) Act.

4.1.2 Issues for the Industry with native vegetation

Offsets

Notwithstanding that Victoria is a small State with an increasing population, the Framework adopts a principle that there should be a net gain in the extent/quality of native vegetation throughout the State, whereby there is:

*A reversal, across the whole landscape, of the long-term decline in the extent and quality of native vegetation, leading to a Net Gain*³

One of the measures adopted to ameliorate negative effects on the environment and ecology is the concept of offsetting.

The experience of the extractive industry is that offsetting is increasingly being applied by regulators requiring Work Authority holders and proponents to purchase land (referred to as an offset site) to mitigate against perceived but not actual impacts. An offset site cannot be used for development or works. Therefore, for the extractive industry this practice sterilises land from future extractive development and operations.

² Refer to http://new.dpi.vic.gov.au/_data/assets/pdf_file/0016/37501/Mineral-sands-fact-sheet.pdf, published July 2010.

³ <http://www.dse.vic.gov.au/DSE/nrenlwm.nsf/LinkView/99ADB544789FE7D4CA2571270014671E49A37B2E66E4FD5E4A256DEA00250A3B>

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Potential offset sites require a habitat hectare assessment to determine if they can generate the required parcels of land. The potential gains allocated to areas of retained native vegetation can be calculated using the DSE gain calculator. As a rule of thumb for compensating like with like, for every one hectare of native vegetation removed 5 hectares of land must be provided and secured in perpetuity. As part of the Work Authority process where an applicant wishes to develop a greenfield site, the applicant must purchase sufficient land around the extractive operation to act as a buffer against noise or dust that may affect neighbours.

In its report on environmental regulation⁴ VCEC estimated the average cost of purchasing 'habitat hectares' is up to \$100,000 per habitat hectare. This cost applies irrespective of the land value. VCEC recommended⁵ the Government increase flexibility in the rules for determining offsets and simplify the rules *by*:

- enabling offsets to be provided in any bio-region
- limiting the capacity for councils to impose additional conditions on offsets when the Department of Sustainability and Environment has already specified the offsets to be provided
- increasing flexibility for landholders by permitting offsets on public land, subject to appropriate transparency arrangements
- clarifying the offset rules relating to the rehabilitation of mines and quarries.

The Government gave only partial support to this recommendation⁶. It seeks to obtain experience from establishing the Western Grassland Reserve to provide a supply of offsets for native vegetation removal associated with development in these areas. That is, it intends to provide a source of purchasable land for offsets by dedicating further tracts of land as a 'reserve' (and presumably sterilising them from extractive operations). This goes nowhere to dealing with the fundamental problem but merely seeks to apply a band-aid on an insidious disease.

⁴ Victorian Competition and Efficiency Commission, *A Sustainable Future for Victoria, Getting Environmental Regulation Right, Final Report*, July 2009, pages 88.

[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/ASustainableFutureforVictoria-GettingEnvironmentalRegulationRight/\\$File/A%20Sustainable%20Future%20for%20Victoria%20-%20Getting%20Environmental%20Regulation%20Right.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/ASustainableFutureforVictoria-GettingEnvironmentalRegulationRight/$File/A%20Sustainable%20Future%20for%20Victoria%20-%20Getting%20Environmental%20Regulation%20Right.pdf) FullReportVer2/\$File/Environment%20Inquiry%20Draft%20Report%20-%20Full%20Report%20Ver2.pdf

⁵ Draft report, VCEC 2009a (pp 165)

⁶ *Victorian Government Response to Victorian Competition and Efficiency Commission's Final Report: A Sustainable Future for Victoria: Getting Environmental Regulation Right*, January 2010, page 13:

[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/220110InquiryintoenvironmentalregulationVictorianGovernmentresponse/\\$File/220110%20Inquiry%20into%20environmental%20regulation%20Victorian%20Government%20response.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/220110InquiryintoenvironmentalregulationVictorianGovernmentresponse/$File/220110%20Inquiry%20into%20environmental%20regulation%20Victorian%20Government%20response.pdf)

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Offset requirements embedded in native vegetation and other regulatory instruments sterilise land from extractive operations because:

- *They restrict the opening up greenfield sites which limits expansion of production levels to meet increasing demands;*
- *They accelerate business closure as brownfield sites exhaust their productive lives;*
- *With regulatory costs acting as a disincentive to entry, there is no replenishment of businesses following closure, leading to existing Work Authority holders being required to meet the demand;*
- *They increase transport costs and associated greenhouse emissions by restricting access to local supplies; and*
- *They incur downstream impacts for manufacturing processes (discussed below).*

Downstream impacts

Sterilisation of land from extractive operations also flows on to the users of quarry product. For example, the CMPA is aware that at least three small to medium sized manufacturing operations cannot purchase sufficient material for use in cement production. Some have elected to purchase quarries to secure a reasonable supply but even this is highly problematic for the reasons articulated in this submission. It is known that some products that were previously manufactured from local extractive material are now being supplied from overseas due to the drying up of supplies of extractive material. This has negative impacts on local businesses, employment and terms of trade. There can be no clearer illustration of the negative effects of unreasonable and inefficient regulation – the fracture of local societies and their economies.

Essential points

The practice of ‘offsetting’ in native vegetation regulation is increasingly being applied by regulators requiring Work Authority holders and proponents to purchase land to mitigate against perceived but not actual impacts. This practice sterilises land from extractive operations.

Sterilisation of land from extractive operations has multiple negative impacts.

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4.2 The unpredictable and costly nature of the cultural heritage legislation

4.2.1 The new legislative environment

Another area where regulatory creep has developed is in cultural heritage. Although regulatory controls have existed for many years additional, more stringent State legislation, the *Aboriginal Heritage Act 2006* (AH Act) came into effect on 28 May 2007.

The AH Act changed requirements for permits or consents, and management of Aboriginal cultural heritage. Under the Act, the State has sole responsibility for its Aboriginal cultural heritage, whereas previously it was a combination of State and Federal legislation. The ultimate responsibility for issuing permission to disturb Aboriginal archaeological sites is the Minister for Aboriginal Affairs. Controls are no longer based on a Memorandum of Understanding and/or an archaeological report, but now through a 'Cultural Heritage Management Plan' (CHMP) required by the AH Act.

4.2.2 Issues for the industry with cultural heritage

Costs of compliance

The new requirements under the AH Act are far more demanding, time-consuming to obtain, and the results more difficult to predict. Case studies in the *AUF* report illustrated that the new requirements add considerable costs for land use proponents where costs of compliance for the same site altered from \$5,600 under the former legislation to \$40,000 under the AH Act within only two years! The initial costs of Aboriginal Affairs Victoria (AAV) investigations were estimated by the DPI in 2007 to be \$4-8,000 for a desktop study. At the time of the *UAF* study in 2009, an average desktop study cost \$25,000 although one study involving a sand deposit had cost \$88,000 and was unfinished. The average cost of a complex study was \$120,000!

With no regard to the impacts for industry or the economy generally, these costs have continued to balloon at a breathtaking rate to the extent where a typical desktop study in 2011 is now \$40,000, that is, ten times DPI's estimate only four years ago! A complex study now involves expenditure by a potential greenfield extractive developer of \$200,000- \$270,000! The demands have involved costs rising by more than 100% in 2 years!

As an almost equally important concern is the length of time the process takes. While the AH Act requires a registered Aboriginal party to respond to an application for a permit with 30 days (s39) there are no timeframes around which applicants can expect a resolution of their request. The Act is equally deficient with respect to CHMPs. The upshot is that applicants now must wait 1.5 to 2 years for these matters to be finalised!

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These unjustified and unreasonable costs clearly cannot be sustained and only serve as a complete disincentive to investment in the State.

It cannot be known how these regulatory controls will develop in the near future. Already there are some examples where the conditions being imposed in order to accept a CHMP are ludicrously unrealistic involving associated investigations costing in excess of \$3 million. Did the impact assessment for the new legislation anticipate these massive costs impositions and associated dis-incentive to development activity? The Association is unaware of any published assessment of anticipated costs. What does this say about the consultative approach adopted at the time? Perhaps more importantly, it emphasises the populist approach to legislative enactments being adopted by governments and the complete lack of accountability to the economic ramifications.

Unpredictability

Another primary issue of concern for the industry in administration of the cultural heritage legislation is the complete lack of predictability. Assessment of cultural heritage is not scientifically based and can be simply based on the 'feelings' of members of the local aboriginal community.

This unpredictability and inexact nature of the assessment process makes the purchase (or lease) of land for extractive operations a black hole for a proponents risk capital that can quickly exhaust investment interest.

Essential points

The initial costs of AAV investigations were estimated by the DPI to be \$4-8,000 for a desktop study. At the time of the UAF study in 2009 an average desktop study cost \$25,000 although a study involving a sand deposit had cost \$88,000 and was unfinished. The average cost of a complex study was \$120,000. In 2011 a desktop study costs \$40,000 while a complex study costs between \$200,000 and \$270,000! These are unsustainable and unjustified costs that act as a disincentive to investment in the State.

Examples exist in the industry of a CHMP and associated investigations now costing in excess of \$3 million.

The unpredictable and inexact nature of the assessment process makes the purchase (or lease) of land for extractive operations a black hole for a proponents risk capital that can quickly exhaust investment interest.

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4.3 Solutions

Apply an 'environmental' value to extractive material:

The value of the underground resource must be taken into account when considering the value of native vegetation. This will bring about some balance in regulating native vegetation and offset some of the spiralling costs. This is not a novel idea - there are precedents for extractive resources having a value already, such as the regulated \$0.85/tonne royalty for Crown land set in the Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010. Also, VicRoads compensates an extractive operator when it acquires the operator's land for road purposes.

Cost associated with native vegetation legislation should be compensable:

The regulatory demands of the native vegetation legislation impose risks for landowners. Ownership no longer assigns rights to the landowner but shares these rights with potential claimants under the native vegetation legislation. This can only diminish the value of the land. Victoria's land tenure legislation must transparently acknowledge this 'share of rights'.

The corresponding devaluation of land will have ramifications for the whole community, not least of which will be for the Government. Once devaluation occurs, any costs associated with native vegetation including access to the land, should be compensable by the landowner from the beneficiary of the legislation. Compensation should be set at the highest value use of the land.

Extractive industries should be exempted from the more restrictive elements of native vegetation controls:

The carbon footprint of the industry is very small – for example, over the last five years there have been 36 new Work Authorities approved for a combined area of 1,274 hectares including buffer zones or 0.01% of Victoria's land mass. Assuming 30% of this area is buffer zones, the total footprint is approximately 890 hectares or 0.004% of State land mass! It is for this reason the industry was initially excluded from the native vegetation controls.

There is a strong case for extractive industries therefore to again be exempted from the more restrictive elements of native vegetation controls

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Costs associated with cultural heritage legislation should be compensable:

The cultural heritage legislation applies similar infringements on land ownership as native vegetation discussed earlier. That is, the regulatory demands of the cultural heritage legislation impose significant risks for landowners and ownership no longer assigns rights to the landowner but shares these rights with potential claimants under the legislation.

The Association infers no disrespect to the recognition of the country's heritage, and in particular aboriginal heritage. A balanced regulatory approach to regulation of this important aspect of the State's culture will see respect for all parties: the heritage of the country's forebears, current landowners and most importantly, future generations. It is not a sustainable argument that bestowing respect for earlier generations at the expense of future generations is a balanced regulatory approach.

In view of the impact of the cultural heritage requirements it is proposed that compensation clauses be inserted in the legislation so that a landowner can be compensated for monies spent in complying with the legislation merely to be able to conduct business for which the land was purchased. In these cases compensation should be set at the highest value use of the land.

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5 The regulatory environment

Much has been said about the modernisation of Victoria's mining laws to ensure that regional Victoria can benefit from more jobs and extra investment. However, the passing of the *Mineral Resources (Sustainable Development) Amendment Act 2010* [MR(SD) Act] made essentially incremental rather than fundamental changes. The extractive industry remains beset with a complicated, unsustainably costly approval process that hinders development and makes the Victorian industry un-competitive with other States that have streamlined these regulatory processes. The Association is aware that the DPI is working to address these processes.

This section details the unnecessarily complex Work Authority process and translates these administrative and regulatory hurdles into a time and cost burden.

5.1 The unnecessarily burdensome, complex and duplicative Work Authority process

The MR(SD) Act requires that a person cannot undertake extractive operations without an approved Work Authority (Work Authority). The Work Authority contains a Work Plan endorsed by the DPI, rehabilitation plan and payment of a rehabilitation bond. However, a Work Authority can only be approved once associated planning requirements are complied with. Planning requirements consist of a Planning Permit and, where required, an Environmental Effects Statement (EES). Applying for a Work Authority is a three phase sequential process:

- a) **Pre-application process:** This is an information gathering, data collection and analysis stage. At the successful completion of this stage the application will be endorsed by the DPI. This involves 5 separate steps including the preparation of a draft Work Plan, including a rehabilitation plan.
- b) **Planning process:** This involves making application under the *Planning and Environment Act 1987* (P&E Act) for a Planning Permit to the relevant council. This has 6 separate steps including a compulsory consultation process.
- c) **Final application process:** This is the culmination of the first two stages and involves final application to DPI of the Work Plan and rehabilitation plan. This involves only 2 steps and is usually completed relatively quickly.

The MR(SD) Act allows a Work Authority holder to vary an approved Work Plan and Work Authority. Figure 1 graphically illustrates the duplication and complexity in the process.

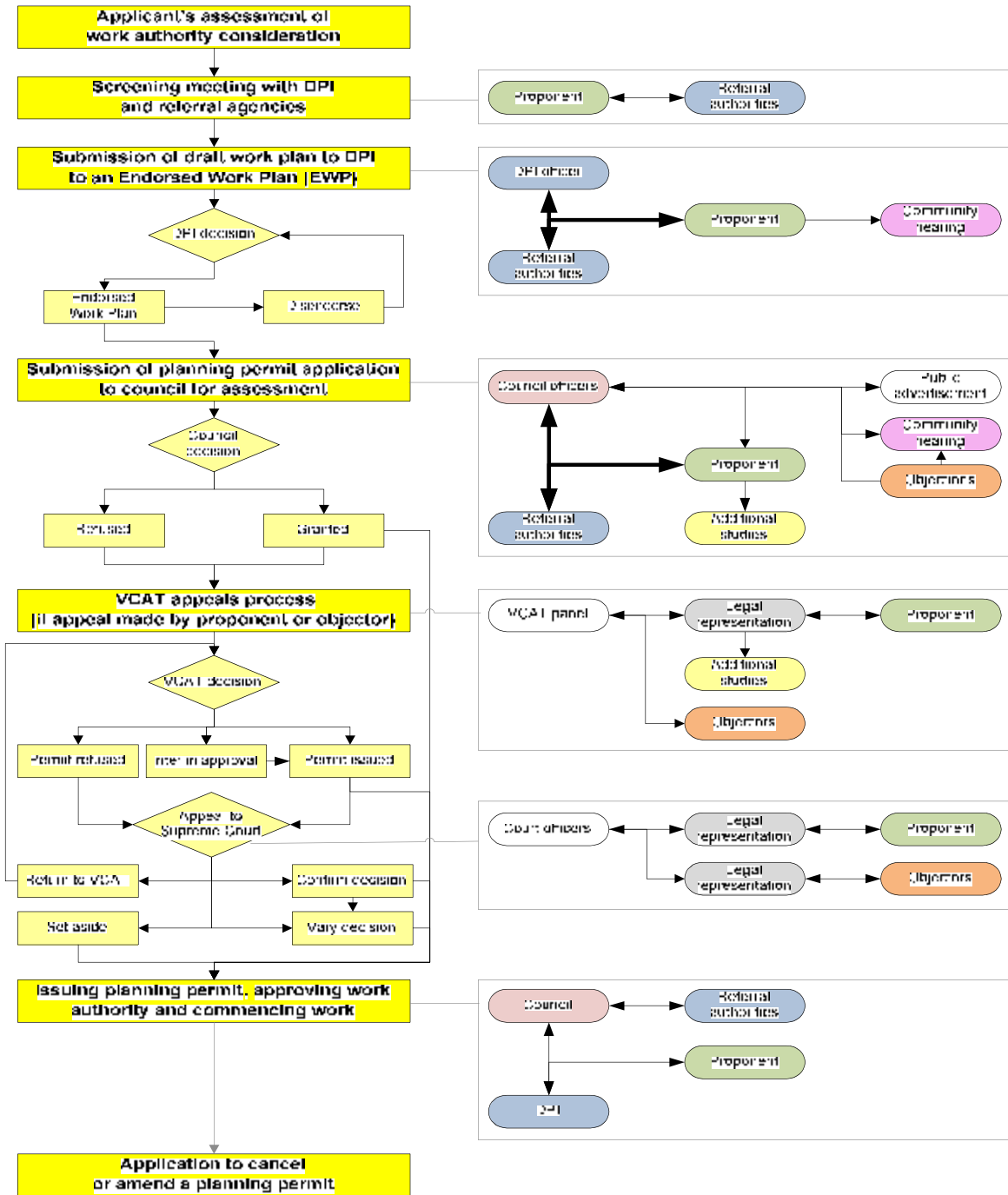
There can be as many as 117 people involved in one application for approval to work! This section discusses the specific problems associated with this highly complex process.

Essential points

The Work Authority approvals process is beset with duplication and complexity.

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Figure 1 Work Authority Application Possible Referrals



See Appendix 4 for further details

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5.2 Time and cost of the Work Authority approvals process

5.2.1 Timeframes associated with the approvals process

The analysis in the *An Unsustainable Future (AUF)* report revealed that the time involved in obtaining approval for a Work Authority or to have it refused is as follows:

- For 'standard' proposals, an average of just over 2 years (25 months) from the initial screening (on site) meeting to the granting of a W A.
- For more contentious proposals involving VCAT appeals, an average of almost 4 years (46 months) is involved.
- A proposal that requires an Environmental Effects Statement (EES) can be expected to take on average 5^{3/4} years.

Typically, set up, establishment and bringing an extractive operation to a position where it commences to make a reasonable return takes at least 5 years. This means that in view of the lengthy delays in obtaining an approval to proceed an investor cannot expect to commence achieving any return on **investment before 7 -10 years** depending on the complexity of the operation. The lengthy delays represent lost earnings for the proponent and lost economic development benefits for the community. Moreover, compounding this already high risk position all the costs associated with the application and appeal process are expended without **any assurance** of the application being approved.

5.2.2 Costs of the approvals process

Table 1 shows application costs for each of the nine case studies used in the *AUF* report, the estimated tonnage in the first five years of proposed or actual production and the total costs of the application process. From this a financial impact cost is derived as a cost rate per tonne for compliance and this is shown as a percentage of the unit rate for the material.

From the Table the costs of the approval process range from \$10,000 to \$1.15 million including for a planning permit approval, with higher costs ranging from \$1.9 to \$5.1 million where an EES approval is required. Additional costs are incurred by the applicant in the form of provision of a *rehabilitation bond* as well. This will be discussed in detail later in this submission.

These costs spread over the first 5 years of production vary within a band \$0.38-\$1.79 per tonne or 3-12% of the unit rate for hard rock extraction and \$0.20-\$0.62 per tonne or 2-5% of the unit rate for sand and sand/soil extraction. This data in fact underestimates the current situation under the amalgamated MRSDA Act and the exponential costs associated with cultural heritage and native vegetation legislation.

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Again, and of particular concern is that these costs are expended with no guarantee the application will be successful! All the costs may be completely lost if the application is rejected at the last hurdle, say by council or VCAT.

In contrast to these current day costs a 1992 Victorian Parliamentary Committee report estimated the cost of developing a Work Authority at about \$100,000 (2011 \$’s). **This suggests the costs of regulatory compliance over 19 years have increased by a factor of three!**

Table 1 ***Tonnage and costs of Work Authority process***

Case Study	Material	First 5 Year Tonnage	Total Application Costs (2009 \$’s)	Financial Impact (\$/t)	As a % of Unit Rate
1	Hard rock	5,000,000	\$5,137,033	\$1.03	7%
2*	Hard rock	700,000	\$1,251,337	\$1.79	12%
3	Sand	1,500,000	\$669,895	\$0.45	4%
4*	Hard rock	6,000,000	\$1,876,134	\$0.31	2%
5	Hard rock	450,000	\$445,550	\$0.99	7%
6	Hard rock	900,000	\$871,800	\$0.97	7%
7	Sand/soil	50,000	\$10,200	\$0.20	2%
8	Hard rock	1,000,000	\$1,118,325	\$1.12	8%
9*	Sand	150,000	\$93,296	\$0.62	5%

* Ongoing project, Work Authority yet to be granted, so costs and time are minimum values

5.2.3 Costs of appeals to VCAT

The *Planning and Environment Act 1987* provides that an applicant for a planning permit to a local council that is refused may appeal to VCAT. Usually a hearing date of an appeal for review under the Act will be set three to four months after the appeal is lodged. Extractive industry proposals are generally inspected by the Tribunal.

At an appeal an applicant can typically be legally represented and call as many as seven witnesses. Depending on the nature of the matter often hearings are conducted over several days and the expert witnesses are required for each sitting.

From a review of the transcripts of the hearings of four case studies used in the *AUF* study that were subject to the VCAT system each was represented by two legal counsel and 7-8 expert witnesses! **Associated costs of the appeal process for these case studies range up to \$558,000.**

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5.2.4 Overlapping and duplication in the Work Authority approval process

The area most often cited as a cause of additional regulatory costs to the industry is the duplication involved in satisfying the requirements of the referral authorities. Referral authorities include Aboriginal Affairs Victoria (AAV), Department of Sustainability and Environment (DSE), and local councils. Duplication occurs when the referral agency seeks information that is, strictly only a variation of existing information provided. However, this often involves re-working and re-badging the information.

The impact of this duplication adds considerable costs, including the costs of lost time and additional studies and surveys. Moreover, to worsen this already unreasonable situation sometimes a referral authority escalates its information requirement each time it is consulted. This can even occur within one organisation. The DPI is a case in point where a local DPI inspector provides advice to a prospective or existing Work Authority holder about information requirements. This advice is acted upon by the proponent only to be changed later when the draft Work Plan is submitted.

Overlap and duplication occurs often with the requirements of the DPI through the Work Authority process and local councils through the planning process. For example, councils often refer a Work Plan submitted as part of the planning permit process to referral bodies that have already been consulted as part of DPI's process. Surprisingly, a referral body may require additional information on the same proposal when their advice is sought by the council. This frustrates the process and unreasonably adds to the costs of compliance.

The process would be substantially improved if referral bodies were not slavishly consulted where it is apparent that they had previously endorsed the proposal. This should occur where the referral body has seen and endorsed the proposal within a period, say 12 months and there had been no material change in the proposal. The DPI should be the coordinator of the applications up to endorsement of the work plan.

5.2.5 Duplication of roles of DPI and local councils

Some regional councils may receive an application for a planning permit for extractive operations spasmodically, for some, one application in ten years. There is therefore no corporate knowledge or processes in place that can be brought to bear. Because of this councils appear to be unsure of their role in the Work Authority process and due to this uncertainty they often take an overly conservative approach. This is often evidenced when councils refer work plans back to the referral authorities in order to comply with the Planning & Environment Act. This is inconsistent with the Act (s 45) which states –

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A responsible authority must give a copy of an application to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the applicant satisfies the responsible authority that the referral authority has –

- a) Considered the proposal for which the application is made within the past three months; and*
- b) Stated in writing that it does not object to the granting of the permit for the proposal.*

One case study shows that a council, when approving a planning permit attached the same conditions that were applied by the council for the last planning permit associated with a Work Authority it had considered. This was for a completely different site (at Mt Buller ski resort) which involved a more complex application involving significantly greater social and environmental implications. This showed a complete lack of understanding of the subject matter and no conception of the unreasonable impacts associated with the conditions.

Proposals contained in this submission, if implemented, will substantially improve and streamline the Work Authority process and assist councils in fulfilling their responsibilities.

Essential points

A 'standard' Work Authority application takes just over 2 years to be approved, more contentious proposals involving VCAT appeals, take an average almost 4 years, while a proposal that requires an EES can be expected to take on average $5^{3/4}$ years.

Costs of the approval process range from \$10,000 to \$1.15 million including for a planning permit approval, with higher costs ranging from \$1.9 to \$5.1 million where an EES approval is required.

These costs are expended with no guarantee the application will be successful! All the costs may be completely lost if the application is rejected at the last hurdle by council or VCAT.

A 1992 Victorian Parliamentary Committee report estimated the cost of developing a Work Authority at about \$100,000 (2011 \$'s). This suggests the costs of regulatory compliance over 19 years have increased by a factor of three!

Costs of the appeal process for the case studies used in the AUF study range up to \$558,000.

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5.3 Anti-competitive nature of MR(SD) Act

5.3.1 Issues for the industry

Existing Work Authority operations are not so affected by the recent increased regulation and attendant costs because the new legislation was not retrospective. As has been discussed the additional costs in complying with the new legislative controls add directly to the unit cost of production. This makes new Work Authority holders and those who have had their Work Authorities varied uncompetitive in unit price compared to existing Work Authority holders. That is, the legislation acts as a disincentive to new, greenfield developments. This is a concern particularly for the extractive industry because the operations are typically long lasting, some as long as 50 years. As the Work Authority ages, the comparative advantage it has over new operations increases.

A second concern in relation to competition is with mobile processing plants that provide crushing services. Because it is not a primary activity for the site these operations are not captured by the scope of the MR(SD) Act. The work of these mobile plants however represents approximately 15% of total production for the industry. As these plants do not bear the compliance costs of 'other' extractive operations their unit rate of production is lower and therefore far more competitive.

Finally, in some instances, Councils consider applications for a planning permit for an extractive operation when the council itself has a quarry in the area. That is, the proposed extractive operation would be in direct competition with the Council's quarry. In these cases where there is a clear conflict of interest for the regulating authority the council should refer the application to an independent body for assessment.

Essential points

Increasing regulatory burdens and associated costs when not applied retrospectively assign competitive advantages to existing industry participants over new potentially greenfield operations.

Where mobile crushing plants involve similar risks to small extractive operations they should bear the same regulatory burdens.

Where councils have their own quarry and receive an application for a new extractive operation in their area, the council should refer the application to an independent body for assessment because of the conflict of interest.

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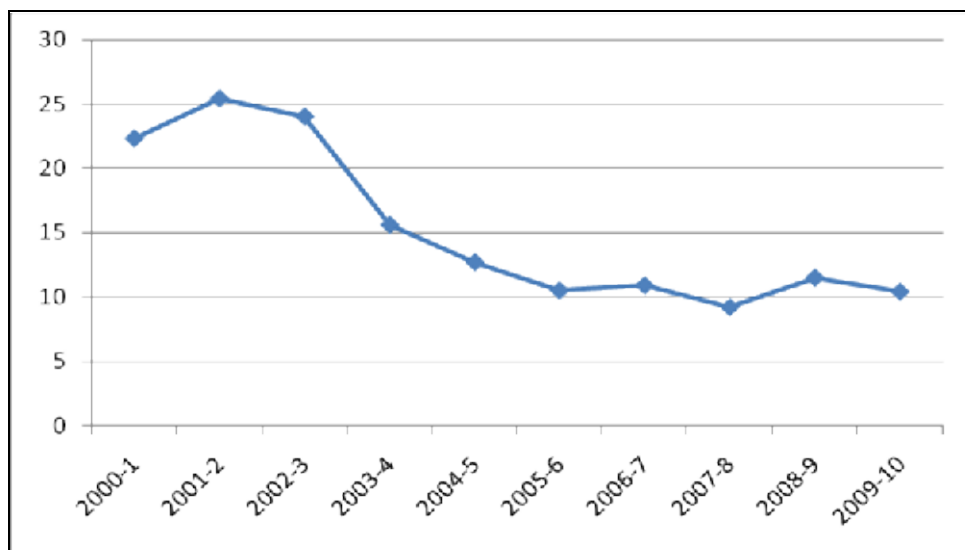
5.4 The anti-competitive nature of the Work Authority process

The extended time in making a financial return, the costs and risks associated with the application process and the unknown additional costs of regulatory compliance make investment in the industry highly questionable. This is supported by data contained in *AUF* which analysed Work Authority activity⁷ data for the period 2000-1 to 2009-10⁸. This revealed that:

- Proposals had declined by 42 per cent but had remained relatively stable since 2002-3;
- Applications had declined steadily over the period and by 73 per cent overall;
- The number of Work Authorities increased by 23 per cent but most of this increase occurred in a single year (2001-2 to 2002-3) when shallow extraction was included in the approval process;
- Total Work Authority activity increased by 2 per cent;
- Applications as a proportion of proposals for each of the report years showed a decline in the number of proposals that reach the application stage from 2000-01 when it was 22 per cent to 10 per cent in 2009-10. This occurred despite increasing levels of demand as illustrated by increasing production levels.

Figure 2 shows the percentage of proposals that reach the application stage. That is, it shows the drop off of interest once potential investors become aware of the full level of regulatory hurdles.

Figure 2 *Percentage of proposals that reach application stage 2000-1 to 2009-10*



⁷ 'Activity' refers to the summation of all proposals, applications and Work Authorities that have been granted.

⁸ Data in *UAF* was to 2007-8. These have been updated for this report to 2009-10.

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This deterioration of investment interest occurred despite demand rising. There can be little doubt that the decreasing level of proposals that go on to the application stage is illustrative of a growing falling off of interest in investing in the industry **once the sovereign risk is understood**. Figure 3 shows the number of applications for a Work Authority relative to total production for the period 2001-2010.

**Figure 3 Applications relative to total production (millions)
2000-1 to 2009-10**

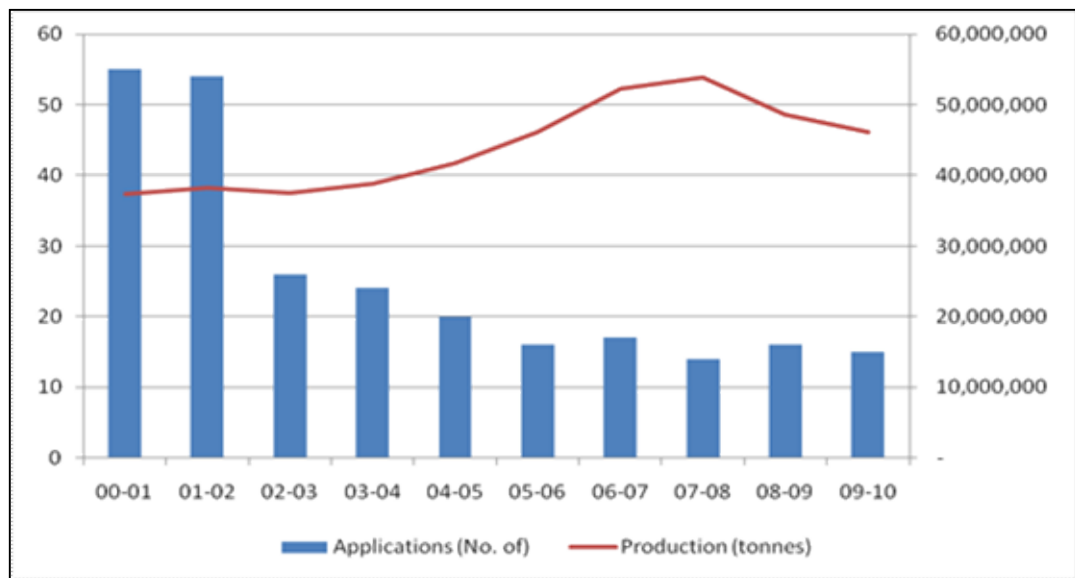


Figure 3 demonstrates that at a time of increasing demand when new extractive operations would be expected to be developed, applications for a Work Authority had in fact dramatically declined and very few significant operations were in fact approved.

Of the 303 new Work Authorities granted between 2000-01 and 2010-11, only 19 (6%) were for significant operations (those with rehabilitation bond greater than \$50,000). Over the last 4 years since the new legislative arrangements have been in place twenty eight (28) Work Authorities have been granted but significantly, only one (1) Work Authority has been approved for a major greenfield site! This is a telling statistic for the Greenfields Inquiry as it highlights the '*closed for business development*' nature of the Victorian Government to the earth resources sector.

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Impact of entry constrictions

The lack of new extractive operations being developed or existing operations expanding, combined with the increasing sterilisation of land will lead to greater distances between customer and source material and less choice of material for customers. Overall, this will lead to a decrease in supply and competition in the market place. In turn this will cause an increase in the cost of construction materials, leading to an increase in building and infrastructure costs and a subsequent decrease in housing affordability. With 10 tonne/person/year of construction material used within Victoria, a future material supply shortage could be expected to give rise to price increases of 35% and above. Such a price rise is a reasonable estimate given that there are existing examples of quarries without nearby competition that have ex-bin prices in excess of 30% above the industry average.

A 35% increase is equivalent to an additional \$4.55/person/year (ex gate) or an extra \$240 million/year cost for Victoria. Such a significant price increase has never occurred in the industry.

These increasing price rises are fuelled by unreasonable regulatory costs not as a result of an inefficient industry, but a high-cost, low performing regulatory environment.

Essential points

Over the 11 years to 2010 proposals for new extractive operations declined by 42% and applications declined by 73 per cent, despite increasing levels of demand.

Of the 303 new Work Authorities granted between 2000 and 2011, only 19 (6%) were for significant operations (those with rehabilitation bond greater than \$50,000). Over the last four years since the new legislative arrangements have been in place twenty eight (28) Work Authorities have been granted but significantly, only one (1) Work Authority has been approved for a major greenfield site.

The extended time, costs and uncertainty associated with the application process (the **sovereign risk**) and the unknown additional costs of regulatory compliance make investment in the industry highly questionable.

The lack of development will lead to a decrease in supply and competition in the market place. This will cause an increase in the cost of construction materials, leading to an increase in building and infrastructure costs and a subsequent decrease in housing affordability. A future material supply shortage could give rise to price increases of 35% and above.

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5.5 Solutions

The Association recognises the work currently being undertaken by DPI in considering how the Work Authority process can be improved. A range of matters are being contemplated but no decisions have been made as yet. The CMPA considers the Work Authority approvals process must be simplified and more targeted. This can be achieved without eroding regulatory objectives. The following recommendations for change contained in the *AUF* report should be implemented. The proposed changes are:

Refine the Work Authority/Work Plan approval process:

The process should be refined and include the following component parts:

- a) A Code of Practice that is applicable to all quarries (A Code of Practice has been issued for small quarries);
- b) Simplified or no work plans;
- c) A Work Authority containing generic conditions, simplified rehabilitation bond system reflective of the risks, a code of practice and work plan provided to council with planning permit application;
- d) Planning Permit applications automatically submitted to council when the DPI holds its required consultative meeting (i.e. when it assigns a Work Authority number);
- e) Planning Permit conditions refer to only offsite impacts, that is, outside of the Work Authority boundary.

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Centrally manage the process:

The Work Authority/Work Plan approval process should be centrally managed by the DPI. There is an MOU between DPI and Department of Planning and Community Development, but it is not recognised in legislation and is not supported by publicly available guidelines as to the services provided and in what circumstances. This is in contrast with some other states where the role of the lead agency is more clearly identified and defined. For example, Western Australia has a *Lead Agency Framework* which sets out the lead agencies for various industry sectors and the level of services those agencies will provide for different classes of project⁹. The DPI should be empowered to manage planning referral obligations to referral agencies to achieve an endorsed Work Plan, eliminating duplication of referrals. Council approval processes should focus on offsite impacts with these aspects subsequently incorporated into the Work Plan.

Lower the costs of regulatory administration:

The administration of the MR(SD) Act should aim at achieving performance-based outcomes that lower the costs and reduce the time or approvals for proponents.

Improve the VCAT system:

The VCAT system should be streamlined and modernised. For example, objectors in the VCAT process should provide substantiation of their claims and VCAT’s decisions should be based on relevant public information. VCAT should provide a low cost mechanism for all parties and should take account of all the material already provided by proponents and relevant pre-existing studies rather than requiring consultants to present at the hearing. An appeal mechanism for proponents should be introduced in the EES process.

⁹ <http://new.dpi.vic.gov.au/earth-resources/whats-new/review-of-the-mineral-resources-sustainable-development-act-1990/discussion-paper-no-1-lead-agency-approach>

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6 Fees, charges and royalties

The State Government owns, on behalf of the community, all mineral resources in the State and therefore has a role in regulating the access to and development of these resources.

Compensation in the form of royalty is paid to the state for the extraction and sale of its earth resources assets.

Victoria has a range of royalty regimes applying to earth resources. The basic royalty that applies to most earth resources is an ad valorem (based on the value of the product) royalty of 2.75% of net market value. For quarry products royalties are levied on a weight or volume basis. All quarry products attract the same royalty rate, expressed either in dollars per tonne (\$0.87/t) or dollars per cubic metre (\$1.43/m³), except marble and dimension stone which, being higher value products, have a higher rate.

Similar to Victoria, other States levy royalties on quarry products on a weight basis. Victoria is the only State that gives an option of calculating royalty on a volume basis. Most of the other States have a number of different rates applying to different quarry products and some industrial earth resources. The rate for basic construction materials (crushed rock, sand and gravel) is higher in Victoria (\$0.87/t) than in other States (range \$0.35-\$0.60/t). Some States have higher rates for clay and limestone (up to \$1.20/t).

In 2009-10, royalties on quarry products from Crown land amounted to \$4.4 million.

In terms of fees according to the DPI¹⁰ the current level of fees does not fully recover the costs of the services provided. A review of these matters is being conducted and it can be expected that full cost recovery will be introduced. The Association acknowledges this policy but any costs being recovered must be assessed for their efficiency. That is, only efficient costs should be recovered. As a part of the review the DPI should not assume that existing costs need to be recovered automatically. The review should examine the efficiency of the services being provided and whether there are better, more cost effective ways to achieve the objective. The industry would welcome the opportunity to be involved in this review.

For the review to be comprehensive it will be necessary to consider revenues collected by all parties from Work Authority holders. For example, councils typically levy rates for extractive operations (although not mining) at a much higher level than other land users. For example, the differential rate for an extractive industry set by the Shire of Melton is \$0.0093618 of the Capital Improved Value, or the City of Kingston where the extractive industries rate is 167% of the general rate to 'encourage owners of such land to proactively respond to Council's desire to rehabilitate these areas of Kingston as quickly as possible'.¹¹

¹⁰ Source:<http://new.dpi.vic.gov.au/earth-resources/whats-new/consequential-amendments-to-earth-resources-regulations/discussion-paper>, section 8.7, February 2011.

¹¹ <http://www.melton.vic.gov.au/page/Download.asp?name=2012CALC2.xls&size=820736&link=../Files/2012CALC2.xls> and http://www.kingston.vic.gov.au/page/page.asp?page_Id=84

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This clearly shows ***Work Authority holders are paying twice for rehabilitation***– the Work Authority holder is required to rehabilitate the extractive operation's land and pay the requisite costs including a rehabilitation bond and pays again in council rates for rehabilitation! Either councils should cease to charge additional rates with the justification of accelerating rehabilitation without recognising the requirement under the MR(SD) Act to rehabilitate, or they should transfer the funds collected to the DPI to be put towards the cost of regulatory administration.

In addition, this is a financial impost placed upon Work Authority holders above and beyond that applied to mobile operators functioning with similar plant and equipment, but not defined as an extractive industry. Again, either councils should cease charging such additional rates or apply the rates to all sites that carry out the processing or otherwise of extractive materials, including recycling.

Notwithstanding the above, any additional rates set by councils should reflect the tangible economic benefits to the local community arising from the extractive operations including employment, associated business activities and potentials for growth. DPI is the industry regulator and its efforts will accrue to the local community and council.

However, while fees and royalties are very important for the industry by far the most unfair and anti-development aspect of the Work Authority process is the rehabilitation bond system, which ties up huge amounts of, what would otherwise be working capital. This section discusses this sinister impediment to business development.

6.1 The unjustified and costly rehabilitation bond system

6.1.1 Costs and charges

Rehabilitation bonds are payable as part of the Work Authority approval process. The bond provides an assessed level of funds to carry out any incomplete rehabilitation of the site when a Work Authority holder relinquishes responsibility for the site. That is, the bond system theoretically acts as insurance for the Government against the costs of rehabilitating failed sites.

The DPI requires that the rehabilitation bond be in the form of a bank guarantee. Bank guarantees provide surety to the Government so that should an authority holder fail to meet the rehabilitation obligations, funds will be available for the Government to undertake the rehabilitation required for that particular site. A bank typically requires security for a bank guarantee from either cash or property. For most small extractive operations this requires the family home to be offered as security and/or the holder or applicant to enter into a loan arrangement with the bank (often a term deposit) to cover the amount of the required security.

Where land is offered as security, typically the bank will only provide surety for approximately 70% of the land value. That is, for a bond of \$100,000 the land value will need to be \$140,000.

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For holders who operate on leased land a mortgage over the lease can provide security, however this requires the landlord's agreement. In addition the bank will charge an annual service fee of between 2-6% depending on the level of exposure involved.

A bank guarantee is referred to by banks as a 'contingent liability' and the level of the bond is regarded as a debt of the business. This reduces the holder's future access to credit and can be a catalyst for business failure. Ironically, the bank guarantee along with the annual costs of servicing it might have the effect of restricting funds of the business being devoted to fulfilling the rehabilitation plan and may bring about the early demise of the business.

Appendix 2 provides details about the bond system.

6.1.2 Unreasonable response to good performance

Over the last ten years 110 Work Authorities have completed operations and the full bond has been returned to the holder. Relinquishment of a Work Authority without completion of full rehabilitation is rare and over the last 20 years only 5 operations were completed that involved calling on the bond. Over this period only \$18,000 was called on for rehabilitation purposes.

Notwithstanding this outstanding industry performance there has been a completely unjustified recent surge in the level of bonds following review and these are discussed here.

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Industry-wide bond adjustment effects

Table 2 shows the dollar value of rehabilitation bonds for the extractive industry in Victoria over the last 11 years (2000-2010). The raw data was accessed from the DPI website. The data shows over the period the value of rehabilitation bonds debt in the extractive industry has increased by 217%. The overall inflation rate for this period was 47%. The Table also aggregates the value of bonds over the period and shows interest that would have been earned on the bond amounts. The Table shows the number of operating Work Authority's. This has been adapted from data provided by DPI of the number of Work Authorities that have provided returns of production.

In 2000 the average bond per Work Authority was \$55,882. Ten years later the average bond had leapt to \$119,504 an increase of 67% when adjusted for inflation!

Table 2 ***Rehabilitation bonds in extractive industries***
(2000-2010) (\$ millions)

Year	No. of operating Work Authority's	Total bond \$	Change (%) from previous year	Aggregated total of bonds (\$)	Interest forgone \$m*	Average bond per Work Authority
Jun-00	408**	22.8		22.8	1.8	55,882
Jun-01	446**	31.4	27.4	54.2	2.5	70,403
Jun-02	468**	34.5	9.0	65.9	2.8	73,728
Jun-03	520**	37.5	8.0	103.4	3.0	72,115
Jun-04	536	39.2	4.3	142.6	3.1	73,134
Jun-05	515	47.5	17.5	190.1	3.8	92,233
Jun-06	545	49.4	3.8	239.5	3.9	90,642
Jun-07	580	57.5	14.1	297.0	4.6	99,138
Jun-08	580	58.8	2.2	355.8	4.7	101,379
Jun-09	579	64.9	9.4	420.7	5.2	112,090
Jun - 10	605	72.3	11.4	493.0	5.8	119,504
Total		\$515.8			\$41.2	

*Interest rate of 8% used.

** These data are adapted from the data supplied by DPI using the same ratio of all Work Authority's and those providing returns for the year 2003-04.

The MR(SD) Act (s 83) allows the Minister to rehabilitate land that has been left in an un-rehabilitated state. It does not bestow an obligation on the Minister to rehabilitate land. Therefore, as at June 2010 a total of \$515.8 million had been locked up over the previous 11 years in case the Minister decided the Government should require some rehabilitation to be undertaken! Moreover, interest forgone by Work Authority holders on bank guaranteed bond money totalled \$41.2 million over the period when only \$18,000 was spent in rehabilitation! This is a completely unjustifiable waste of financial resources that benefits no one except the banking system.

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The question to be asked is: How does the increase in the overall bond level reflect the Government's increased liability over this period when over this period less than \$18,000 has been called up for rehabilitation purposes? How was this change in risk determined?

Individual bond adjustments

Re-assessment of a bond level is undertaken by a DPI Mines Inspector and the italicised text in Box 1 repeats verbatim a letter recently received by a Work Authority holder. The letter gives advice of a proposed change in bond level from \$480,000 to \$2,411,000!

The effect on the Work Authority holder can only be imagined! It means the holder will need to obtain an additional bank guarantee of \$1.92 million above the existing bond level! The operator would have arranged his/her financial position around existing commitments and debt levels.

The impact of this re-assessed bond level is likely to be catastrophic for this small business. If the bank would give a further guarantee, and there are additional costs and charges associated with a re-calculated bank guarantee, it is unlikely that it would allow any increased debt level because the bond level is considered by the bank to be a debt owed by the business. This severely limits the credit ability of the business and is likely to therefore curtail any plans for further development of the site and may even limit funding of the rehabilitation plan. It is, however, far more likely that the bank would not give the guarantee in this particular case and this would bring about the demise of the business.

Box 1 – Letter from a Mines Inspector to a Work Authority holder, August 2010

I am writing to advise you of a proposed change to the bond for the above operation.

The current bond is \$480,000 and an increase of \$2,411,000 is proposed. The total revised bond would be \$2,900,000.

This assessment results from a review of the operation. In accordance with section 80 of the Mineral Resources (Sustainable Development) Act 1990, before serving notice of a requirement for a further rehabilitation bond the Department must consult with the holder of the Work Authority.

Should you wish to comment on the bond assessment or discuss the matter further please contact me within 28 days of the date of this letter.

Signed by the Mines Inspector

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The above illustration is not an isolated case. A survey conducted by the CMPA of eighteen (18) Work Authority holders in 2010 shows massive increases for several of the holders. Notable cases include increases of bonds from \$12,000 to \$235,000, \$95,000 to \$1,200,000, \$80,000 to \$380,000, \$140,000 to \$810,000 and \$480,000 to \$2,900,000. That is, the level of bonds for these five cases has risen by 1,858%, 1,162%, 375%, 479% and 504% respectively. *Some of these will have a devastating impact for the business!*

6.1.3 Issues for the industry

Rationale for bonds

Box 2 provides a discussion of the rationale for bonds. It shows there is very little risk for the Government in extractive operations being left un-rehabilitated.

The Government spent \$18,000 of bond funds in rehabilitating five sites over the last 20 years. However, from Table 1 in only the last 11 years there has been in aggregate \$515.8 million tied up in bonds or on average \$46.9 million pa.

Unpredictability and inequity

Notwithstanding the methodology and the Bond Calculator, the level of a bond following a review is unable to be predicted. It is like a lottery. It depends on the inspector involved.

Because of this unpredictability, some Work Authority holders challenge a bond assessment. While this costs money in consultant's/legal fees it can be successful.

Information from DPI's database shows that one operation that extracts 1.5-2m tonnes pa pays a \$2.4m bond while a smaller operation of 0.4m tonnes pa pays \$2.9m. While it is recognised that the bond system is based on the level of risk not production, surely a small operation will have proportionately lower levels of risks than a larger producing operation? It again points to an inequitable system.

More targeted inspections

The MR(SD) Act gives inspectors wide-ranging powers over the industry to ensure compliance with Work Authority conditions including the rehabilitation plan. An inspector has power of entry, power to inspect and examine documents, require or seize documents, take a photograph, take samples, issue a search warrant (authorised by a magistrate), require name and address and can give a direction.

As the DPI encourages 'progressive rehabilitation' it is incumbent on the inspector to inspect ongoing compliance by the operator with the approved rehabilitation plan. The Act (s95D) requires the inspector to provide a report of any inspection of a site to the occupier. However, these reports do not cover progressive rehabilitation and assessment of the 'terminal face'.

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The escalation in the level of bonds therefore reflects on:

- The inadequate supervision by DPI of 'progressive rehabilitation'; and
- A complete lack of understanding of the adequacy of the bond levels relative to the risk.

Were the reporting requirements on the inspector to include a detailed assessment of progressive rehabilitation including the level of expenditure incurred on rehabilitation over the period since the previous inspection (this shows the commitment by the holder), a better assessment of rehabilitation liability and therefore overall bond level could be made.

Payment of bonds

Payment of the bond is required as part of the approvals process. Until the site is working and therefore presumably incurring some change to the land, why is it necessary to pay the bond and commence paying the associated bank charges? Many Work Authorities are created before production is required, some do not start working for 5 years. This is done for a variety of reasons including planning for future demands and waiting for existing supplies to be exhausted. Given its unpredictability, proceeding through the Work Authority and planning approvals processes is a sound business practice. The payment of the bond however, should be left to when evidence of a risk is shown and this can only occur when the Work Authority commences productive operation.

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Box 2

Rationale for the bond system – No Government risk but massive burdens for industry

Punishment without a crime

Requiring a Work Authority (Work Authority) holder to pay a rehabilitation bond provides an insurance cover for the Government in case the extractive industry site, which is the subject of a Work Authority, is left un-rehabilitated. This occurs extremely rarely but might occur where the Work Authority holder has quit the property because either the site is no longer viable, has been exhausted or the material being extracted is no longer in demand. About half Work Authority's are on leased land (either Crown or private land) and a Work Authority holder may quit because the lease has not been renewed or there may be some dispute with the lessor.

Irrespective of the reason for the site being abandoned, where the land is being leased it can be expected that any rehabilitation responsibility would pass to the owner of the land. After all, the landowner has agreed to the activity; has been rewarded for the arrangement by being paid rent and royalty payments; and understands the regulatory requirements for rehabilitation. That is, the landowner understands the risks.

The DPI therefore would have cause to pursue the landowner to rehabilitate the land. The local council may also have powers to pursue the landowner to rehabilitate the land under its own jurisdictional powers. These matters may be escalated to litigation where a Court may issue a direction.

If the Government considers immediate action is required, it could have the site rehabilitated at its own expense and pursue the landowner for the costs. The value of the land if sold may indemnify against these costs. **What then is the risk for the Government?**

In the case where the abandoned land is owned by the Work Authority holder, it can be expected that the only risk for the Government would occur where the site has been exhausted of its extractive material. That is, when there would be no interest to operate the site by another party. Given the very limited number of new Work Authority's being issued in recent years and the continuing 'sterilisation' of available land as discussed earlier, it can be confidently anticipated that all vacated extractive sites would be closely examined for potential continued operation by other extractive operators or like activities.

Also, in the metropolitan area there is a high demand for 'air space'. Demand for solid inert space is valued at \$7-\$8/cu metre while for household waste it is approximately \$10/cu metre. That is, an un-rehabilitated extractive site of 1million cu metres can be expected to have value of between \$7-10 million.

Notwithstanding this, theoretically where a site is exhausted of its material and is abandoned without being rehabilitated the DPI would have cause to pursue the landowner for any rehabilitation. As before, the local council may also have cause to pursue and these matters may be finalised in a Court.

While Court action is not a preferred regulatory response, in the circumstances where there are negligible instances where sites are left in an un-rehabilitated state (5 in 20 years!) the value of the bond system is very questionable. The level of many bonds and their attendant debilitating costs for the operator is clearly unreasonable given the miniscule risks for the Government.

In addition, the Work Authority holder has an obligation for ongoing rehabilitation of the site as indicated and the DPI inspector should check for this progress. This process itself provides insurance for the Government.

Conclusion

There appears no justification for the presently used bond system. The industry is being severely punished with this high-cost instrument despite having achieved an extraordinarily good rehabilitation record and leaving a very small environmental footprint.

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Essential points

Extractive operations incur higher council rates to encourage rehabilitation and must also pay for rehabilitation through the Work Authority process and rehabilitation bonds. This shows Work Authority holders are paying twice for rehabilitation.

A bank guarantee is referred to by banks as a 'contingent liability' and the level of the bond is regarded as a debt by the business. This reduces the holder's future access to credit.

Relinquishment of a Work Authority without completion of full rehabilitation is rare and over the last 20 years only 5 operations had their bond 'called in'.

Over the 11 years (2000-2010) the value of rehabilitation bonds debt in the extractive industry has increased by 217% while the overall inflation rate was 47%. The average bond debt for every operating Work Authority has increased by 67% after being adjusted for inflation.

Five bond reviews conducted in around 2010 have seen increases from \$12,000 to \$235,000 (1858%), \$95,000 to \$1,200,000 (1,162%), \$80,000 to \$380,000 (375%), \$140,000 to \$810,000 (479%) and \$480,000 to \$2,900,000 (504%).

The Government spent \$18,000 of bond funds in rehabilitating five sites over the last 20 years. However, in only the last 11 years there has been in aggregate \$515.8 million tied up in bonds or on average \$46.9 million pa. There is no benefit to the State in tying up these funds.

There appears no justification for the presently used bond system. The industry is being severely punished with this high-cost instrument despite having achieved an extraordinarily good rehabilitation record and leaving a very small environmental footprint.

More targeted inspections would minimise any 'risk' to Government of un-rehabilitated sites.

The payment of a bond should be left to when evidence of a risk is shown and this can only occur when the Work Authority commences productive operation.

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6.2 Solutions

On the basis of the evidence produced in this submission and earlier in the *USF* report it is clear that:

- There is no justification for the rehabilitation bond system as it operates at present;
- There is no justification for the level of bond increases sustained recently;
- There is a complete lack of faith in the formula used in setting bonds including the Bond Calculator; and
- There is a need to make landowners accountable for any necessary rehabilitation of the land.

On this basis the Association urgently calls for the whole bond system to be improved. The DPI has recently released a discussion paper on rehabilitation bonds¹². Various options for the future are canvassed but the details contained in this submission are not covered. For example, there is no justification for recent increases nor is there any discussion about the level of overall contributions compared with the need for the Government to take action to rehabilitate after a failure of a Work Authority. As these are fundamental questions, the CMPA is concerned that the review may merely make cosmetic changes to the flawed system. *A commitment to a rigorous assessment of the actual need for a bond system is required.*

¹² <http://new.dpi.vic.gov.au/earth-resources/whats-new/review-of-the-mineral-resources-sustainable-development-act-1990/discussion-paper-no-5-rehabilitation-bonds>

In search of 'balanced regulation'

7 Success and failure of projects in Victoria's mining development pipeline

The Case Studies used in the *AUF* report illustrate the costs and length of the application for expansion process. However, they provide only a tip of the iceberg of the problems that beset greenfield applications for work authorities. This section identifies in stark reality the failure of the bureaucracies in supporting people who are prepared to invest their private capital in the State. The examples, and Failure 1 and Failure 2 following, perfectly illustrate the systemic problems with Victoria's on-the-ground regulatory approach: An approach that is diametrically opposite to the Government's policies and rhetoric on economic development.

7.1 Regulatory imposts = no growth, no development and no new jobs

Failure 1, *Regulatory imposts = no growth, no development and no new jobs* highlights the uncertain constriction on land use contained in the cultural heritage legislation for rural development. The submission has described the broad effects of this legislation but this failed project emphasises the dilemma. Whereas the legislation in Victoria is all encompassing and allows no room for reasonable flexibility, Western Australia has a policy that no investigation of cultural heritage is required where findings are 'scattered'. The difference between the two approaches is material and self-evident.

Essential points

Uncertain regulatory obligations lead investors to abandon development in Victoria and look to alternate locations interstate or overseas to set up business ventures.

An attitude of anti-business development is patently evident amongst some State and local government regulators.

Councils appear to be unsure of their role in the Work Authority process and because of this uncertainty take an overly conservative approach.

In search of 'balanced regulation'

Failure 1

Regulatory imposts = no growth, no development and no new jobs

This involved an established company that wanted to extend its existing Work Authority operations in rural Victoria to another site. Product from the proposed site was planned to provide extractive material. The site has a long-term productive life and offers material largely unavailable elsewhere in Victoria.

Development of the site has the potential for significant economic benefits for the State including in regional employment, State domestic product, and in allied industries. Moreover, replacement of existing imports would involve environmental benefits in terms of a reduction in existing costs in transportation and in associated environmental emissions. Clearly, development of the site would provide a tangible contribution to the State's *regional development plan*.

Despite investing substantial funds in development and shoring up the proposal (the sovereign risk) the firm has now decided to abandon the project due to the continuing frustrations and blow-out costs of complying with regulatory demands and in particular cultural heritage requirements and the preparation of a cultural heritage management plan (CHMP).

The CHMP requires an initial 'walk-over' survey of the site to assess potential aboriginal relics. The results of the survey of the proposed site were unclear causing escalation of the compliance regime to involve a complete dig over a large area of the site (scraped to 50cm in depth), requisite in-fill, and a mapping and planning process. This was conducted by various consulting and other contractors for the proponent at a cost in excess of \$150,000. The additional work resulted in a find of some flintstones. It is understood these were from the manufacture of an axe. That is, the flintstones were waste material from the axe-making process not the axe itself. An axe would normally be regarded as a cultural 'relic' or artefact. Flintstones of this sort are often very small and can be transported vast distances from their initial place by water run-off or even transported by living creatures.

The administering body, Aboriginal Affairs Victoria (AAV), has now advised the company to undertake further studies. Even if this is undertaken there is still no assurance that the Plan would be accepted.

During the course of undertaking these required compliance actions that have extended over several years, the company pursued other regulatory requirements associated with extending the Work Authority site with the Department of Primary Industries (DPI), Department of Sustainability and Environment (DSE) and the local council all with associated costs.

The complete lack of any assurance that the CHMP will be accepted or whether it will require a greater level of investment, combined with the uncertainties of the other regulatory processes has bought the company to the decision to now not proceed further with the major investment in Victoria and is exploring alternate options interstate.

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7.2 Regional development policy – ignored by regional regulators

Consistent application of Government policies gives some assurance for industry in a high risk and competitive environment. Failure 2, *Regional development policy – ignored by regional regulators*, demonstrates the intransigence and obstructionism displayed by some regulators. It also illustrates how local regulators (EPA and council) administer the legislation in direct opposition to Government policy, namely regional development. Failure 2 is a **classic example of the anti-business development attitude so evident amongst some State Government and local government regulators.**

Failure 2

Regional development policy – ignored by regional regulators

This involved an established company in regional Victoria and its plans for expansion of its plant. The proposal involved substantial investment and would significantly increase local employment and add considerably to the local economy.

The proposed site is adjacent (140m) to a residential precinct. The company engaged consultants and contractors to ensure that the proposed development would not impact on the adjacent residences and the incumbent's utility or quality of life. Part of this involved sound-proofing the proposed buildings and developing engineering solutions that minimise sound, vibration and odour.

In applying to the EPA for a Works Approval the company was told by the local EPA representative that as EPA policy required a 500m buffer zone between such a facility and any residential development, the best solution was to re-locate the whole facility! That is, shut down the existing manufacturing operation and re-locate to another area that might be accepting of the facility and the proposed expansion.

Development of the proposal to that point had taken 2 years and the company had invested considerable sums in establishing the project.

In addition to pursuing the EPA Works Approval the company also approached the local council as a precursor to submitting an application for a planning permit. The company was told by the Council that it intended to change the zoning of the land from heavy industrial to residential. For this decision the council had consulted (only) the land development industry but not existing land users including the company. This blocking of industrial development by the council is in direct contrast to the State Government's regional development strategy.

Notwithstanding these negative responses, the company is pursuing the preparation of a draft Works Approval application and a planning permit. It hopes that the quality, detail and rigour of the applications and accompanying studies will be sufficiently convincing to obtain a balanced and positive outcome. Development of the site would bring increased employment and economic wealth for the local area and would be consistent with the State's regional development plan.

In search of 'balanced regulation'

7.3 Solutions

The Association has over many years provided Governments with remedies and opportunities to resolve the constrictions in land access and unnecessary regulatory imposts and barriers. The *USF* report captured many of these and they have been articulated in this submission. But more needs to be done – there is a need to ensure adequate coordination of planning for limited land resources that even in the presence of strong competition the costs of materials supply do not escalate to be felt by Victorians in both infrastructure costs and in materials used for housing and places of work.

Need for a strategic and balanced approach: A more strategically balanced approach is required to the regulation of extractive operations. Victoria is a relatively small state in terms of land mass with a high population density relative to other mainland States (3% of Australia's area with 25% of the country's population). The lifestyle has attracted high population growth which has put considerable pressure on infrastructure and in turn, the development process including the release of land for expansion.

However, the extensive new infrastructure projects planned by governments have not considered the requirements for extractive product to supply these projects. Half the quarries in the Urban Growth Initiative (UGI) are nearing the end of their productive lives. There will be little opportunity for them to extend their operations in adjacent areas because of development and other regulatory controls and this will force these operations to close and, where possible, re-locate in outer areas.

The UGI has involved compulsory purchase of land in west Victoria for offsets for residential development in greater Melbourne but this does not apply to extractive operations. Why not?

While housing development can occur virtually anywhere, extractive operations can only occur **where earth resources are available**. It is irrational and short-sighted that the Government plans massive infrastructure projects while sterilising material for the associated construction phases. There is an inherent lack of understanding between those involved in the conceptual phase (and associated public announcements) and the hard-nosed project management phase. A strategically planned approach would have dealt with the constrictions on supply of essential raw material before these infrastructure projects were approved.

Need to recognize each land user's role: Competition for different land uses has been at the core of any differences between the earth resource sector and other land users. Each land user however must recognize the other's important role within the whole economy. Each must share in the overall responsibility to protect the environment in a sustainable way.

For improvements in greenfields earth resource exploration to take place a range of impediments need to be dealt with so that investors can be prepared to risk their capital. Impediments should be addressed in a holistic way and within a broad-ranging reform agenda for the economy, not one specifically developed for the earth resource sector.

In search of 'balanced regulation'

The role of the existing Earth Resources Development Division should be expanded: DPI should be empowered to expedite decisions and ensure time frames in the Work Authority/Work Plan approval process are met. Such a role should be at the request of the proponent.

In search of 'balanced regulation'

Appendix 1 – Update of Case studied in An Unsustainable Future

Case Study 1

This was a variation to an existing Work Authority and the process had commenced in 2001. There has been no progress with this application for a Work Authority. The Planning Minister's decision in 2008 effectively ended the process. There is no right of appeal to his decision to not put the EES on exhibition and therefore the project is effectively on hold.

As a result of the Government decision, and with demand for material increasing, the applicant is bringing stone into the area from other sites. This occurs at an increased cost and is also increasing the volume of heavy vehicles on the road. Interestingly, some of the local residents who opposed the quarry extension have also voiced concern about the additional heavy vehicle traffic and the carbon emissions (despite being told that this would be an outcome if the extension did not proceed).

It is also noteworthy that the concerned shire recently approved an extension to another extractive operation. The applicant considers the basis for the approval was consistent with all the reasons the applicant submitted in its application. However, in that case the shire vehemently opposed the application.

Case Study 2

This involved a new Work Authority for a site that had been quarried earlier until the 1980's. It anticipated extraction of approximately 140,000 tonnes per annum. The Work Authority process commenced in November 2003 and a draft Work Plan was lodged with DPI in August 2004. The DPI endorsed the Plan in July 2005 and an application for a planning permit was lodged with the council the same month. In February 2006 the council refused the application. The applicant subsequently appealed the decision to VCAT in April 2006. VCAT subsequently confirmed the council's decision in its decision on December 2007.

The applicant subsequently took the matter to the Supreme Court which reviewed the case and required VCAT to re-hear the case. Total costs to September 2009 by the applicant were \$1.289 million. DPI approved the Work Authority in July 2011 almost 8 years after the process commenced.

Case Study 3

This was an application for a new Work Authority that had commenced in January 2004. It had founded on concerns expressed by some local residents about, amongst other the matters, the impact of the proposed operations on the local ecology. In 2007 VCAT had rejected an appeal following disallowance of a planning permit. The applicant therefore considered the matter closed having lost approximately \$700,000 in application expenses.

In June 2010 the DPI invited the applicant to attend a meeting concerning issues relating to "Green Wedge Proposals" which had relevance to the proposed Work Authority. The (former) applicant advised the DPI that it had made the decision not to proceed any further with the project as it had no assurance of it ever being accepted and could not afford further likely wasted expenditure.

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Case Study 4

This involved an application to extend (by variation) of an existing basalt quarry. This involved extension of the extractive site from 324ha to a total of 562ha. Initially, the application was for an area of 602ha but following advice from flora and fauna specialist the size of the site was reduced by 40ha as an offset to any flora and fauna concerns. This decision involved a loss of potential production of \$104m.

The Work Plan process commenced in early 2004 and in July that year the Minister for Planning determined that an EES was required. The Federal Minister for Environment and Heritage also became involved. In November 2007 the council refused to put the Planning Scheme Amendment (EES) on public exhibition on environmental grounds. In June 2008 the Minister for Planning and Community Development appointed an inquiry under the EES Act to conduct a hearing into the EES. The report of the Inquiry was required to be handed down eight weeks after its first hearing, that is, in November 2008.

Approval in principle has been given to the proposal following a Panel hearing and the requisite plans are being finalised for approval by DPI. It is anticipated approval will be given in October/November 2011, that is, 7.5 years after the process began.

Case Study 5

This involved a substantial variation to an existing Work Authority bringing total extraction to approximately 450,000 tonnes annually. Preliminary work commenced in June 2005 and a draft Work Plan was submitted to DPI in October of that year and an application for planning permit submitted to the council in February 2006. Following approval subject to stringent conditions an appeal was lodged by an interested party.

VCAT subsequently issued an Order for a permit to be granted in August 2007 and the DPI approved the variation application in the same month. The process took a little over 2 years to be finalised. Total costs for the applicant was \$445,550.

Case Study 6

This involved a re-opening of an old basalt quarry. It was expected the operation would extract 100,000 tonnes in the first year rising to 250,000 tonnes thereafter. The process commenced in June 2005 and a draft Work Plan was submitted in October 2006 followed by a planning permit application to the council in January 2007. Due to concerns raised by the EPA the matter was suspended for a period while a revised Work Plan was prepared. Subsequently, the revised Work Plan was approved in December 2007 and council approved a planning permit subject to a range of conditions in June 2008. Several interested parties appealed the decision to VCAT and in January 2008 made an Order to have the permit application approved subject to further stringent conditions. The Work Authority was finally granted in July 2009, that is, 4 years after the process commenced. Total costs for the applicant were \$871,800.

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Case Study 7

This involved an application for a new Work Authority for a very small sand and soil operation (10,000 tonnes pa). The process commenced in December 2005 and a draft Work Plan was submitted to DPI in July 2006. An application for a planning permit was submitted in November 2006 and approved by council and the DPI in March 2008. That is, a very small sand deposit took 2 ¼ years to be finalised. Total costs for the applicant were \$10,200.

Case Study 8

This involved an application for variation of a Work Authority involving extraction of hard rock of 200,000 tonnes each year. The process commenced in March 2001 but as it involved public land needed a permit for search. This was not approved until May 2005.

The Work Authority process commenced in March 2006 followed by a draft Work Plan being submitted to DPI in November of that year. Following initial endorsement an application for planning permit was submitted to council March 2007. The original application was varied because of the urgent need to gain access to additional land for stockpiling. A further draft Work Plan was required to seek extraction rights. This was submitted in January 2009.

This application now requires substantial studies to be undertaken for native vegetation purposes. A planning permit has now been approved and the requisite Work Plan will be lodged in August 2011.

Total costs for the applicant were in excess of \$1.118 million. The bond for this Work Authority is now \$2.9m having risen from \$480,000. This huge increase in the required bond, together with associated regulatory costs of this application means that the applicant is now reviewing how, if at all, he is to proceed with the application. He is currently negotiating the bond level with DPI. Assuming the DPI will endorse the Work Plan in August 2011 the process will have taken 5^{1/2} years.

Case Study 9

This involved an application for variation of a Work Authority involving extraction of an additional 30,000 tonnes each year. The process commenced in September 2006. At the time of the Report the application was still being considered and was with the applicant to prepare a draft Work Plan. This was presented to DPI in December 2009. The DPI required some changes but ultimately the DPI endorsed the work plan on 17/5/2010. This allowed the applicant to proceed to the planning permit stage of the process.

In August 2010 the shire advised the applicant it was ready to advertise the planning permit application and six signs were displayed onsite on 8 September 2010.

This process has taken 4 years so far for a relatively small extractive operation (30,000 tonnes pa) of sand and soil. It can be expected to take at least a further 6 months to be finalised if an appeal is not required. Costs to date for the application are in excess of \$100,000.

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Appendix 2 – Rehabilitation Bonds

Legislative framework

The *Mineral Resources (Sustainable Development) Act* 1990 (the Act) requires extractive industry Work Authority holders to rehabilitate land on which they are operating in accordance with the rehabilitation plan approved by the Department of Primary Industries (DPI). The Act requires rehabilitation works to be carried out prior to the Work Authority expiring. An agreed rehabilitation plan is required to be prepared by the Work Authority holder and must take into account:

- any special characteristics of the land and surrounding environment
- the need to stabilise the land
- the desirability or otherwise of returning agricultural land to a state that is as close as is reasonably possible to its state before the mining licence or extractive industry Work Authority was granted
- any potential long term degradation of the environment

In essence the plan requires the site to be left in a 'safe and stable' condition.

To ensure rehabilitation requirements are undertaken in accordance with the rehabilitation plan the Act requires a holder to provide a rehabilitation bond (s 80). The bond is 'for an amount determined by the Minister' (s80 (1)). The Act does not provide any guidance concerning the purpose of the bond, the matters which the Minister should consider in determining the bond amount, nor in any calculation of the bond amount.

From the DPI website the amount of bond is intended to be 'calculated to address in full the actual and foreseeable liability based on the works specified in the approved work plan'.

As the level of the bond depends on the nature of the particular extractive operation each bond will be different. The Ministers' determination cannot therefore be publicised by regulation or by gazettal but left to administrative processes through the DPI.

It is a condition of the approval of the rehabilitation plan that the authority holder rehabilitates the land in accordance with the plan and the Act allows the Minister to determine a new bond amount where '*he or she is of the opinion that the amount of the bond already entered into is insufficient.*'

The DPI website states "a rehabilitation bond can either be the life of the operation or can be staged so that the amount reflects the rehabilitation liability over the specified period of time". The website also states that '*rehabilitation bonds are periodically reviewed by the Department to ensure that they remain at appropriate levels during the life of the operation. The bond will also be reviewed when a work plan variation or transfer is proposed.*'

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Payment of bond

A Work Authority cannot be granted under the Act unless the applicant has 'entered into a rehabilitation bond' (s 77I (3)). In practice this means that the bond is payable upfront and well before any operations have commenced. In some cases the operator may intend to commence operations several years after securing the Work Authority. In these cases the holder incurs substantial costs in providing an 'insurance' cover for the Government against un-rehabilitated land without having disturbed the land or generated any income from it. Provision should be made that connects the payment of the bond with the working of the land.

Bond calculation

In 2008, a 'Bond Calculator' was introduced by DPI to provide a transparent and consistent approach to bond calculation, allowing operators to assess their own rehabilitation liability and understand how DPI has conducted and calculated the initial bond assessment. The introduction of the Bond Calculator coincided with the merging of the Mineral Resources Development Act with the Extractive Industries Development Act and the calculator is used for both mining and extractive industries.

Independent assessment of rehabilitation liability

Section 79A allows the Minister to require a holder to undertake an assessment of the rehabilitation liability for the purposes of determining the amount of a rehabilitation bond or the reviewed amount of an existing bond. The assessment may be an independent auditor.

Return of bonds

Section 82 of the Act requires the Minister to return a bond if rehabilitation satisfactory 'as soon as possible if the Minister is satisfied' that the land has or is likely to be successfully rehabilitated. If the operation is on private leased land, the bond cannot be returned until after the landowner and the local council have been consulted.

The EID Act (s36(6)) required the Minister to return as soon as possible after the end of the period of 6 years after the Work Authority ceased any part of the amount of the bond that has not been returned. This put a time limit on a holder completing any required rehabilitation and provided a closure of financial liability for the holder. With the merging of the EID Act with the MRSDA Act this 'end date' was deleted as it had not been applicable in the mining legislation. Instead, the new Act requires only that a bond be returned once there is no potential for any long term damage. This is an open-ended provision that can include a wide range of issues such as erosion control, slope stabilisation, drainage management, and protection of slimes dams.