

27 June 2008

Ms Angela Jurjevic
Executive Director
Aboriginal Affairs Victoria
GPO Box 2392
Melbourne, Vic, 3001

Dear Ms Jurjevic,

Re: Review of Aboriginal Heritage Regulations 2007

The Victorian Division of the Minerals Council of Australia (MCA) is pleased to make a submission to the Review of the *Aboriginal Heritage Regulations 2007*. The Regulations commenced in May 2007 and whilst the review fulfils a commitment made at the time by the Government it is good policy.

The Minerals Council of Australia represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The Victorian Division is a fully integrated Division of the MCA and represents the interests of member companies operating in Victoria.

When the exposure draft of the *Aboriginal Heritage Regulations* was proposed in 2007 the MCA publicly supported the draft. At that time we said:

“The minerals industry takes the view that it is simply good business to have improved Aboriginal cultural heritage legislation including regulations in Victoria. The old Aboriginal heritage laws were flawed; they were a combination of Victorian and Commonwealth law and superimposed administrative boundaries that were inconsistent with native title boundaries. They led to confusion and unnecessary conflict.

We believe that the new Act and Regulations will:

- > more closely align cultural heritage with native title,
- > eventually create more certainty for businesses wishing to develop land, and
- > offer formal processes for the resolution of disputes.

The minerals industry expects implementation difficulties with the new Act and Regulations but anticipates that eventually there will be greater certainty as heritage sites are identified and recorded and as clarity is provided through guidelines.

There are two key points of intersection between the new Aboriginal Heritage Act and minerals industry activity.

The first key point of intersection is the requirement for cultural heritage management plans (CHMP). Mining projects will be required to undertake a CHMP in areas of “cultural heritage sensitivity”; a requirement that is consistent with current practice and is considered responsible. Exploration, including low impact activities and drilling are not prescribed in the Regulations and can proceed without the need for a CHMP. Naturally, exploration works that involve “significant ground disturbance” by machinery in the course of grading, excavating, digging or dredging will require a CHMP.

The second key point of intersection is with the agreed cultural heritage management schedules incorporated into the native title proforma agreements and a large number of completed native title agreements that include cultural heritage management undertakings.”

We have now had the benefit of 12 months experience with the new Regulations and whilst there have been some implementation issues that required resolution we can report that Aboriginal Affairs Victoria’s ‘Exploration Licence Holders - Advisory Note: January 2008’ has resolved a lot of the uncertainty raised in the first key point above. **We strongly recommend that the Advisory Note be maintained in its current form.**

The resolution of the second key point mentioned above, that is the conflicting cultural heritage management requirements included in the proforma native title agreements has commenced. MCA is currently in negotiation with Native Title Services Victoria (NTSV), Aboriginal Affairs Victoria (AAV), the Department of Primary Industries (DPI) and the Department of Justice on redrafting the proforma agreements to remedy the conflict. The negotiations are proceeding slowly although with a great deal of common purpose. **We strongly recommend that the Government continue to support the negotiation process and continue to fund the involvement of the Solicitor Generals Office in redrafting the proformas.**

Whilst our experience has been largely positive there are a few issues that we wish to raise:

- > We are concerned that the most rigorous and therefore expensive options for Cultural Heritage Management Plans (CHMPs) are consistently being required when lesser studies may suffice. The rigorous studies are proving very expensive, much more expensive than originally envisaged. **We request that action is taken to ensure that the level of studies to be undertaken is appropriate for the site as a step to reduce costs.**
- > We note that progress is being made with identification of the Representative Aboriginal Parties (RAPs) and that there is close alignment of these with the native title claim groups. **We continue to encourage the registered native title claimants to become RAPs for their claim area.**
- > We are concerned that the significant advances made by DPI in the processing of work plans for exploration work are being impacted by the *Aboriginal Heritage Regulations*. In March 2008 DPI issued the ‘Area Work Plan Guidelines for Exploration’. The area work plans have been introduced to avoid the need for a separate work plan for every hole to be drilled. DPI will only approve a work plan

when a CHMP has been prepared or they are assured that a CHMP is not required. This has meant that they will no longer approve area work plans where there is uncertainty as to whether or not a CHMP may be required. Consequently, we now have a hybrid approval system with area work plans only approved in 'areas of cultural heritage significance' where 'significant ground disturbance' is excluded. This is inefficient regulation. **We request that AAV and DPI streamline the approval process so that the efficiency gains of area work plans can be fully implemented.**

When the process of developing the Regulations commenced; MCA was concerned about exploration companies becoming the 'agents of AAV' when seeking to do work on private land. We were concerned that private landowners who may prefer not to have a cultural heritage assessment of their property undertaken would attempt to deny access to explorers for mineral exploration work. This concern has not materialised at this stage although we continue to be vigilant in this regard.

We continue to encourage AAV to develop and refine the areas of cultural heritage significance through detailed archaeological surveys. The growth of these accurate maps is critical to creating certainty and quality heritage outcomes.

Also, we request that NTSV is briefed adequately on the review and invited to actively participate. It has been our experience that it is important for the representatives of the native title claimants to be engaged in the new Aboriginal Heritage Regulations so that we can make sure that potential conflicts between the cultural heritage aims of traditional owners and the Victorian Aboriginal Heritage Council are aligned. This can only help with the speedy resolution of native title claims in Victoria.

We would welcome the opportunity of discussing this submission with you or the Council. I can be contacted at 03 8614 1851.

Yours faithfully,



Chris Fraser
Executive Director, Victoria