

9 December 2019

RSH Policy
Resources Safety and Health
Department of Natural Resources, Mines and Energy
PO Box 15216
CITY EAST QLD 4002
Via email: RSHPolicy@dnrme.qld.gov.au

Dear Resources Safety and Health Policy team

Cement, Concrete and Aggregates Australia (CCAA) is the peak industry body representing the \$12 billion-a-year heavy construction materials industry in Australia. Our members are involved in the extraction and processing of quarry products, as well as the production and supply of cement, pre-mixed concrete and supplementary materials. We welcome the opportunity to provide feedback on the Consultation Draft – Mineral and Energy Resources Legislation Amendment Bill 2019 (*draft Bill*).

The Queensland Extractive Industry

The Queensland extractive industry produces approximately 45 million tonnes of material per annum from hard rock, sand and river gravel quarries. The material is used for a range of local construction purposes, most particularly in concrete (made up of about 80% rock, sand and gravel), road base (made up of about 90% rock, sand and gravel) and a range of other applications, such as railway ballasts, landscaping, drainage, water filtration, and sporting fields.

- The vast majority of extractive materials are used *locally* (usually within a 60-80km radius) as transport of goods (usually by heavy vehicle) is expensive. Unlike the mining industry, the extractive industry is spread right across the State, particularly in areas closer to population settlement and where the geology is most suitable.
- There are approximately 500 operational quarries across the state which regularly provide materials to customers, and another 500 smaller quarries that on an “as needs” basis. The State’s largest quarries produce in the order of 2 million tonnes of material per year.
- The industry has a diverse range of operators – from publicly listed or internationally-headquartered companies with integrated cement, concrete and quarrying operations, to small, family-based operations with 1-2 employees.
- Most quarries (about 60%) have less than 15 people employed at their site. Just over 40% of quarries have 10 employees or less.
- Unlike the mining industry, quarries are usually located on freehold land, and gain approvals through local government planning and development processes.

Our industry's perspective on health and safety and how it is regulated

Our industry has worked hard over many years to improve its safety performance, and endeavours to put in place the necessary steps to ensure that all workers, contractors and those involved in the sector have a safe and health working environment.

In regards to health and safety legislation, CCAA believes that the regulatory environment should demonstrate the following principles:

- Positive impact on health and safety;
- Proportionate;
- Informed;
- Collaborative;
- Clear; and
- Industry specific (that is, recognising differences between different industries).

The feedback and perspectives provided on the draft Bill into account this set of principles.

Overall feedback on the draft Bill

As the legislation is currently drafted, CCAA and its members do not support the introduction of Industrial Manslaughter provisions into the *Mining and Quarrying Safety and Health Act 1999* (the Act). CCAA members also believe that the current legislative provisions already provide a set of very detailed obligations on employers to ensure appropriate health and safety outcomes for their workers.

The Minister for Natural Resources, Mines and Energy has stated the Queensland's mining legislation is considered among the best in the world. The current legislation already has serious penalties for negligence and wilful misconduct. As well, there is no evidence that the changes will improve health and safety in the extractive industry, and has the potential to detract from the current culture of sharing of health and safety knowledge, initiatives and potential issues.

As well, there are a number of ways in which the current legislative provisions can be strengthened without the addition of Industrial Manslaughter provisions (ie introduction of additional inspectors to visit more sites etc).

CCAA specific feedback on the draft Bill

Feedback from CCAA members on specific areas of the draft Bill includes reservations about **five main areas** of the draft Bill being:

1. Lack of clarity in regards to the definition of "**senior officer**" under Part 3A S45A of the draft Bill.
2. Misalignment of the level of risk between the Mining and Quarrying Safety and Health Act 1999 and the WHSQ Act.
3. Lack of clarity regarding "criminal negligence" under S45C(1)(c) and S45D(1)(c).

4. The role of the WHSQ Prosecutor.

1. Lack of clarity regarding definition of a “Senior Officer”

CCAA believes there is a lack of clarity regarding the definition of a “senior officer” under Part 3A, S45A of the draft Bill:

senior officer, of an employer for a mine, means-

- (a) If the employer is a corporation – an executive officer of the corporation; or
- (b) Otherwise – the holder of an executive position (however described) in relation to an employer who makes or takes part in making, decisions affecting all, or a substantial part, of the employer’s functions.

As the draft Bill is currently written, it is unclear as to who the definition of “senior officer” would apply to on an extractive industry operation. Due to the large scope of the definition, there is the potential that the “senior officer” could include quarry Site Senior Executives (SSEs) or even other non-managerial (general worker) roles.

If the definition were to include SSEs, this is inconsistent with the rationale behind the inclusion of the Industrial Manslaughter provisions in the WHS Act which was to apply serious legal ramifications on corporate decision makers and business owners – not a general employee/worker/SSE. While the SSE role may fit the definition of an executive officer, they already hold onerous obligations under the resources legislation attracting a penalty of up to three years imprisonment, and with the provisions of the draft Bill, would also be exposed to charges of criminal manslaughter.

CCAA therefore recommends that the definition of a “senior officer” be clarified so there is no potential for the SSE or other quarry worker to be exposed to the industrial manslaughter offence.

CCAA recommendation:

CCAA recommends that the definition of a “senior officer” be clarified so that there is no potential for the SSE or other quarry worker to be exposed to the industrial manslaughter offence.

2. Misalignment of the “level of risk” between WHSQ Act and the Mining and Quarrying Safety and Health Act 1999

Currently, there exists different definitions of the level of risk under the WHSQ Act and the Act which refers to the level of risk as “as low as reasonably achievable” while the WHSQ Act defines the level of risk “as low as reasonably practicable”. As well, “reasonably achievable” is not defined under the Act, while “reasonably practicable” is defined under the WHS Act.

As there is the potential for more actions which could be found to have been “achievable” following a quarry incident, compared to “practicable” under the WHS legislation. It would appear that those

in the extractive industry are much more at risk of being found criminally negligent under the draft Bill, than equivalent roles in the WHSQ legislation.

3. Clarity around “criminal negligence”

The draft Bill makes industrial manslaughter a crime and imposes the test of negligence, which suggests that the test is for criminal negligence. However, CCAA members note that this is not clear in the draft Bill. In order to remove any doubt, CCAA recommends that the Bill be amended to “the employer is criminally negligent about causing the death of the worker by the conduct” (45C(1)(c)), and 45D(1)(c) to “the senior officer is criminally negligent about causing the death of the worker by the conduct”.

CCAA recommendation:

CCAA recommends that the Bill be amended to “the employer is criminally negligent about causing the death of the worker by the conduct” (45C(1)(c)), and 45D(1)(c) to “the senior officer is criminally negligent about causing the death of the worker by the conduct”.

4. Role of the WHSQ Prosecutor

CCAA members continue to have significant reservations about utilisation of the WHS Prosecutor to prosecute serious offences under the resources safety legislation. CCAA notes that this is a newly formed role and further information about how the role will have the level of expertise to make expert, consistent, transparent, efficient and effective decisions for the extractive industry is still required.

It is vital that safety information and learnings continue to be distributed free from the delays caused by legal proceedings; and that positive performance and actions are recognised as an important way to improve safety in the industry, as much as the penalties of prosecution are.

CCAA also questions whether the WHS Prosecutor will achieve the best possible safety outcomes for the extractive industry i.e. would the focus shift towards prosecution rather than a more meaningful mechanism to improve health and safety outcomes. CCAA believes that there should be a firm but fair regulator, and operators should be rewarded for good health and safety behaviours, while those who do not should be penalised accordingly.

In addition to the trauma already experienced by family members and colleagues of the deceased worker, if the role of SSE is not made exempt from the criminal negligence clause, there is the potential for an individual worker to experience significant work, social and mental health impacts while waiting for a case to be decided through the court system.

CCAA therefore recommends that if the Industrial Manslaughter provisions were to be included in the Act, the Director of Public Prosecutions (DPP) conduct the criminal prosecution, not the WHS Prosecutor.

Thank you for the opportunity to provide our submission. To further discuss any of the issues raised in the submission, please contact me on 3227 5210 or aaron.johnstone@cca.com.au

Yours sincerely



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