CEMENT CONCRETE & AGGREGATES AUSTRALIA

11 September 2020

Alexandra Blood
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Dear Alex,

Draft Mining Regulations 2020 - Submission

Cement Concrete and Aggregates Australia (CCAA) is the peak body for the Heavy Construction Materials Industry in Australia. Our members operate hard rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants.

Our members account for 90% of total industry output and are vital to the nation's $200 Billion building and construction industries, generating approximately $15 Billion in annual revenue and employing approximately 30,000 Australians directly and a further 80,000 indirectly.

In South Australia, our members are essential to the Government's infrastructure program and to any construction led economic recovery post COVID-19.

CCAA wishes to acknowledge that we have a good working relationship with the Department for Energy and Mining and that the comments below are made on the understanding that we are collectively looking for improvements to enable a more robust industry for the benefit of all South Australians.

Before commenting on the proposed regulations, CCAA, on behalf of its members wishes to register our objection to the short consultation period given for such an important piece of regulation. Whilst we understand the Government's desire to enact these regulations by 1 January 2021, this should not be at the expense of good community consultation. We understand that this is not DEMs own doing, but the delay having the regulations drafted should be reflected in a revised consultation timeline.

In addition, the Government's own South Australian Productivity Commission (SAPC) has only just provided their report to the Government regarding the Extractives Industry Supply Chain at the end of August and this report should be fully considered before draft regulations are finalised.

CCAA formally requests that the consultation period for the regulations be extended until after the Government has considered the SAPC report and their recommendations can be adequately reflected in the regulations.

Notwithstanding the above, CCAA wishes to address a number of matters proposed in the regulations as follows:

Draft Mining Regulations 2020

Regulation 3 – Definition of "social impact"

CCAA considers that it is inappropriate to define the term social impact, by using the words social impact within the definition. By its very nature, this is circular and does not provide clarity. Further, the definition seems to be one which is all encompassing and could be interpreted broadly by anyone reading the document to include them if they themselves consider that it does. For example, someone objecting to a coal mine who lives on the other side of the world, could reasonably argue that the definition includes the impact of burning that coal in another country and the mere fact the carbon emissions are released affects everyone in the world.

Industry is rightly concerned that the definition is both circular in nature and far too broad to enable a reasonable understanding as to who might be considered to be affected and under what circumstances. CCAA would be happy to assist DEM in the drafting of a new definition that was not unlimited in its nature.

Regulation 14 – "Other matters to be placed on register"

This clause provides additional administrative burden at the very least. Of greater concern is that there needs to be some protection on commercially sensitive information that is controlled by the company concerned and not at the whim of the Government. The documents proposed to be included on the register will, by their very nature, contain substantial commercially sensitive information which could be exploited by competitors.

CCAA seeks amendments to reflect the need to protect commercially sensitive information, particularly to protect accepted competition principles.

We also understand from the DEM briefings that a compliance direction will be put onto the mining register as soon as it is issued to a company without the opportunity for that company to rectify the compliance issue. Then, once rectified, a note will be made on the register outlining how the compliance direction has been addressed. Operators should be given the opportunity to rectify a non-compliance (particularly those of a minor nature) prior to details being made publicly available. History has shown that community angst can increase when they see or perceive there to be a problem and the method of dealing with the problem is not released concurrently.

Regulation 16 – Compilation, keeping and provision of material

Once again, the concern from industry is that of creating significant additional administrative burden.

Part 10 - Scoping

Regulations 42 to 45 in this Part introduce a new concept into the Regulations which purports to establish a scheme for mining leases, retention leases and miscellaneous purposes licences that enables them to be categorised according to their potential impact and "assigned

for assessment pathways that are appropriate in their particular circumstances".

It enables the holder of a tenement, an applicant for a tenement or even a proposed application, not yet made, to be the subject of these provisions.

Such a scoping report may be required by the Minister to categorise the level of environmental and social impact it creates, determine the appropriate level of detail for information to be provided, identifying, and prioritising issues and determining the extent of work required for the purposes of environmental and social impact assessment. A scoping report is to be the subject of consultation as the Minister determines.

This appears to be an attempt to address the longstanding issue of the context in which applications are made under the Act, which has not previously distinguished between major operations of significant impact and those which are minor and have little or no impact. This has long been an area of criticism of such matters.

However, we note there remains no expressed "discretion" in the hands of the Minister or the Executive Director to waive requirements of the Act and Regulations if the circumstances of a case require it, or allow time to be abridged or create an accelerated process that might bypass or modify the requirements of the Act or Regulations, where the nature of the proposal dictates a more sensible streamlined approach.

We also note this was a matter of apparent concern to the recent SA Productivity Commission inquiry which had regard to whether "red tape" requirements were excessive or unnecessary. The final report is yet to be publicly released.

CCAA is concerned that Regulation 45 (5)(e) in respect of a scoping report, leaves the details to be provided, to be completely open ended. This provides a higher risk to industry and is contrary to the Government' desire to attract investment to South Australia.

Regulations 46, 47 and 48

As these Regulations provide that any such information sought will be in a form determined by the Minister, with such evidence as he/she determines and must comply with any requirements he/she makes; this provides for uncertainty due to the nature of the open ended provision.

In addition, the requirements set out a level of detail which would need to be the subject of reports and assessments by external consultants, increasing costs to the industry.

Part 12 - Change in operations

CCAA contends that there must be a definition of "significant impact", without which a risk adverse employee or Minister may be likely to consider that ANY "different impact" on the environment is significant, including a lesser impact!

Part 15 - Programs for Environment Protection and Rehabilitation (PEPRs)

The inclusion of a provision enabling the Minister to make "any other requirement" than those specifically expressed is a far too open ended. CCAA requests that these words be removed as they are unwarranted. Alternatively, some limitations should be put around these words.

Regulation 75 – Compliance reports

CCAA does not understand the need for annual reporting, particularly in a manner and form determined by the Minister, which is again open ended.

Such annual reporting is another significant administrative burden added to a tenement holder.

Regulation 77 – Incident reports

The requirement to report to the Minister within one business day of a "reportable incident" is of concern as it might not be immediately clear/obvious that a breach has occurred, and further investigation may be required. In NSW, the requirement is to report "as soon as is reasonably practical" and in the case of more significant incidences, "no later than 7 days". Typically, most jurisdictions provide for a much longer period than a single day.

The NSW provisions in this regard would be a sensible and pragmatic approach to adopt. The "as soon as is reasonably practical", is sensible and still puts pressure on the operator to report promptly.

Regulation 79 – Public Liability Insurance

Large companies may typically prefer not to have public liability insurance and in those circumstances (particularly organisations with sufficient financial backing and that don't need third-party insurer financial support) the regulations aren't useful/appropriate.

Ideally the regulations would clearly define what constitutes a large organisation (e.g. the ATO definition https://www.ato.gov.au/business/large-business/) and have an exemption for those large entities.

Regulations 81 and 82 – Declaration to accompany an application

Provision of a declaration by an individual poses an unnecessary personal burden on employees.

Work Health and Safety (Mine Manager) Variation Regulations 2020

The proposed changes substantially increase the risk for quarry operators and potentially for Quarry Managers.

It is not at all satisfactory to consider the regulation changes without also considering the intended gazettal notice outlining the requirements that must be satisfied by a person to be considered competent as a Mine Manager. For example, will the qualifications obtained by a mine/quarry

manager in another state be recognised in South Australia? Will the previous qualification obtained in South Australia be recognised?

CCAAA members also have questions regarding the potential auditing by SafeWork SA and whether SafeWork SA may deem that a quarry manager is not satisfactory?

For many quarry operators in South Australia, it is not unusual to have multiple operations, some which may only be campaign mined. For some smaller operators, they may have 20 to 30 operations which may only be accessed when specific material is required for a customer. In such circumstances, it is impractical for each operation to have a separate Quarry Manager. Rather than limiting a Quarry Manger to a single site, an alternative definition may be to limit a Quarry Manger to one site or multiple sites with up to a total of 500 employees, whichever is the greater.

Consideration should also be given to tiers or mine/quarry managers to ensure that the same requirements are not imposed upon a manager responsible for thousands of people in a complex underground mine operation, compared with a low risk shallow sand mining operation comprising several people and no or little processing equipment.

Overall Comments

The regulations as a whole need to be revisited as they clearly create:

1. Additional administrative burden (e.g. retention and provision of documents, Mining Register, annual compliance reporting and incident reporting etc.).
2. Additional, and somewhat open ended, requirements for public consultation which may cause greater levels of public angst.
3. A greater level of uncertainty with the Minister able to seek an “open ended” amount of information.
4. Greater levels of personal accountability and the shifting of more risk to the private sector.

CCAA does not see the need to “throw out” the draft, but rather to change the document in line with the Productivity Commission’s draft recommendations regarding the reduction of red tape and administrative burden.

CCAA would appreciate the opportunity to work through each of these matters with your team to ensure that each item can be addressed to ensure that there are no additional regulatory burdens placed on industry. Accordingly, I can be contacted at jason.kuchel@ccaa.com.au or on mobile 0448 848 848.

Yours sincerely,

JASON KUCHEL
State Director – New South Wales and South Australia

cc. Dan van Holst Pellekaan, Minister for Energy and Mining