

6 May 2020

Mr Kym Bills
Independent Reviewer
NSW Resources Regulator – Regulation Department
PO Box 344
HUNTER REGION MAIL CENTRE NSW 2310

Attention: Mr Bills

Statutory Review of the Work Health and Safety (Mines and Petroleum) Laws

Cement Concrete & Aggregates Australia (CCA) is the peak industry body for cement manufacturers, concrete suppliers and extractive operators throughout Australia.

Collectively known as the heavy construction materials industry, our members are engaged in the quarrying of sand, stone and gravel, the manufacture of cement and the supply of pre-mixed concrete to meet Australia's building and construction needs. These businesses range from large global companies, to SMEs and family operated businesses.

Heavy construction materials are vital to delivering the infrastructure required to support the NSW population and economic growth. 63 Million tonnes of sand, stone and gravel are used in the construction of NSW homes, workplaces, public buildings and roads each year.

CCA is grateful for the opportunity to participate in the statutory review of these laws. We note the review's Terms of Reference to examine and report upon its operations and the appropriateness of its current provisions. We also note its requirement, under Section 77 of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, for the review to be carried out after the period of five years from its first commencement to enable the Minister to report on review outcomes tabled in each House of the NSW Parliament.

Our submission focuses upon answering those questions that are most relevant and specific to the heavy construction materials sector.

Question 1. Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles?

Question 2. Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?

Question 3. Has the WHS (MPS) framework facilitated effective interstate regulatory cooperation?

Nationally consistent legislation remains a valid objective and would be very useful for our sector, particularly for our larger members who operate across many or all state/territory jurisdictions, to reduce unnecessary red tape and complexity.

We note that previous attempts to align state and territory WHS legislations to create one single, nationally consistent piece of legislation has failed to materialise and that the present framework has not been effective in achieving or delivering enhanced co-operation as some states have chosen to hang on to existing legislations for political advantage.

Question 4. Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?

Dust and RCS Management has become a key issue for members of our sector, given the upcoming change to the exposure standard in NSW that reduces the TWA from 0.1 mg/m³ to 0.05 mg/m³ from July 1, 2020.

The current legislation in Queensland, using the QGL02 guideline provides a stronger understanding and a more flexible approach for managing potential dust exposures onsite. Adoption of the Queensland model would lead to the provision of clear and standardised requirements across mine and quarry sites while ensuring that the relevant Regulator maintains a proper understanding of the challenges and level of risk across each site.

Question 5. Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended? (Part 1 of Act)

Question 6. Are there any areas arising from application of the WHS (MPS) laws that have had unintended outcomes? (Part 1 of Act)

Question 7. Are the provisions under the WHS (MPS) laws for incident notification still valid, appropriate and working as intended? (Part 3 of the Act)

The objects of the Act remain valid and generally work as intended. However, a preference exists for greater clarification or distinction between the varying types of the operations covered under the Act such as underground coal mines, quarry and petroleum sites.

Industry members believe that NSW maintains the most comprehensive list of reportable items of any state jurisdiction. However, vague descriptions have often led to a struggle for the quarry manager to determine what is a notifiable incident and which matters require periodic notification.

In general, we note that industry has expressed concern that scrutiny by the regulator of smaller independent quarries is often not to the same standard as the focus on larger quarries, resulting in arguably a significantly different level of safety.

Question 14. Are the provisions for nomination and appointment of operators still valid, appropriate and working as intended? (Part 1A of the Regulation)

Members have raised concerns about recent changes to Unrestricted Permits for Quarry Managers.

The new scoring mechanism for a site to determine if an unrestricted certificate applies is disproportionately weighted toward silica content of the rock, over other significant risks.

Question 15. Are the provisions for managing risk in addition to the WHS Regulation still valid, appropriate and working as intended? (Part 2, Div 1, Subdivision 1 of the Regulation)

These provisions are appropriate and working as intended.

Question 16. Are the provisions for SMS, including PHMP & PCP, still valid, appropriate and working as intended? (Part 2, Div1, Subdiv 2-4 and Div 2 and 3 of the Regulation)

CCAA notes that measures to monitor airborne dust and exposure standards, referred to in Part 2, Division 4, Subdivision 2, observe ambient air and not specifically what a worker is breathing in.

Furthermore, our sector believes that fatigue, referred to in Part 2, Division 4, Subdivision 3, will re-emerge as a monitoring activity into the future.

Question 17. Are the provisions specific control measures still valid, appropriate and working as intended? (Part 2, Div4-5 of the Regulation)

Question 18. Are the provisions for emergency management still valid, appropriate and working as intended? (Part 2, Div 6 of the Regulation)

Question 19. Are the provisions for information, instruction and training still valid, appropriate and working as intended? (Part 2, Div 7 of the Regulation)

Feedback from members have indicated that the provisions relating to Questions 17-19 are generally working well and as intended.

Some members have noted difficulty in obtaining confirmation from the Regulator that a site or business is acceptably managing its risk. Provisions for emergency management, while remaining valid, are not seen as relevant for smaller quarry sites.

Question 23. Are the provisions for notifications and information to be provided to the regulator and information to be kept by the operator still valid, appropriate and working as intended (Part 6 and Part 7 of the Regulation)

We wish to flag concerns with regards to Part 6 - Clause 128 - 5 (q) & (r) - 7 day reporting requirement for RD & RCS, in particular, we believe that the time allocated to report an exceedance of either an RD or RCS atmospheric concentration to be too short.

CCAA believes that the focus for quarry sites should be focused upon managing onsite exceedance in order to reduce or eliminate reoccurrence as soon as practicable. At present, the allocation of resources in order to meet and comply with legislative requirements serves to reduce the focus upon worker safety.

Quarry operators require more time to verify the accuracy of testing results, conduct preliminary investigations of exceedances and to gain an understanding and learnings for safety issues and awareness. We note that the comparable Queensland legislation allows for 28 days to report exceedances to the Regulator which enables more appropriate and robust reporting.

Emerging issue – Electronic Control Systems and Safety

As quarry sites become increasingly automated, a range of complexities are likely to emerge in the future with regards to the heavier reliance on electronic control systems. Ultimately, industry and regulation must keep pace with new technologies and the safety surrounding these new products. These regulations fail to provide any clarity or guidance for the future use of electronic control systems across our sector.

Thank you again for the opportunity to provide our comments into the review Statutory Review of the Work Health and Safety (Mines and Petroleum) Laws. We hope that the thoughts and suggestions of our sector will be taken on board and viewed constructively.

Should you require further comments or feedback, please contact Jason Kuchel on [REDACTED] or [REDACTED]

Yours sincerely,



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State Director NSW & SA