

28 May 2021

Mr Anthony Keon
Executive Director
Resources Regulator NSW
516 High Street
MAITLAND NSW 2320

Dear Anthony

CCAA response to amendments to the Work Health and Safety (Mines and Petroleum Sites) Act 2013 and Regulation Discussion Paper

Thank you for the further opportunity to comment upon the proposed amendments to the Work Health and Safety (Mines and Petroleum Sites) Act 2013 and Regulation discussion paper. These proposals were outlined to members of CCAA NSW's OHS Subcommittee by Mr Tony Linnane from your organisation on April 28.

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for cement manufacturers, concrete suppliers and extractive operators throughout Australia. 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 and these businesses range from large global companies to SMEs and family operated businesses.

CCAA acknowledges the consultation that has been conducted throughout the legislative review process and efforts of both the independent reviewer, Kym Bills, and the Resources Regulator to listen to the perspectives of industry stakeholders. The review provides the distinct opportunity to simplify legislation and remove red tape and duplication and our submission provides comment upon those issues and matters which are seen as the most relevant for our sector.

Question 2 (i) – Should there be two types of investigations contained in the WHS (MPS) Act?

CCAA supports the ongoing approach of the causal investigation policy, given its success in achieving the most desirable outcomes for our sector. We support the introduction of these provisions into legislation as a way forward to enhance WHS legislation with regards to the protection of health and safety of workers through the inclusion and provision of information of alerts to identify potential hazards.

Question 2 (ii) – Should persons named in causal investigation reports provided to the Resources Regulator be protected from having that information used as evidence against them in the event that enforcement action is taken?

We believe that protection is warranted in order to facilitate more open and transparent communication and facilitate information more quickly and soundly across the industry with the aim to ensure that such incidents are not repeated.

Question 2 (iii) – Should the function of the mine SHR’s be expanded beyond the HSR functions under the WHS Act and previous mine safety legislation to enable them to participate in investigations? If so, are there any limitations that may be warranted on its exercise?

CCAA argues that the function of SHR’s should not be expanded beyond the HSR functions under the WHS Act and previous mine safety legislation to enable participation in investigations. We believe that effective mechanisms are in place to allow workers to provide input into WHS management systems within a workplace and note that the SHR function is to represent all workers in a quarry site on these matters.

Presently, each incident investigation team is constructed on the expertise and knowledge relative to the incident at hand. CCAA strongly believes that the investigation team should be comprised of those best able and qualified to handle the incident and this may not be the SHR. It would be unsatisfactory if the SHR was to replace the position of a more suitably qualified team member on this team.

Question 2 (iv) – Do you have any concerns regarding the adoption of the amendments for appointment of industry SHRs by the Minister?

We note that the NSW Government’s Guide to Better Regulation (October 2016)¹ refers to a set of Better Regulation Principles, the first of which states - *The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.*

In this instance, we do not believe that sufficient reasons have been provided that would support the need for additional SHR’s to be appointed by the relevant Minister, particularly when the SHR’s function is to represent all site workers at a quarry in addition to the lack of growth in employment numbers.

Question 2 (v) – Do you agree with extending industry SHR’s to mines other than coal mines?

The independent review concluded that there was insufficient information available to determine whether any extension was necessary. As mentioned elsewhere within our submission, CCAA believes that there are effective arrangements in place to handle WHS consultation and we do not support the extension of SHR’s at this time.

Question 2 (xiii) - Should the WHS (MPS) - Regulation be amended to provide certain exemptions for small quarries?

CCAA provided initial feedback to the independent review in support of exemptions to Clause 184 of the Regulation to be extended to include low risk “tier 3” mine sites such as small quarries.

It should be noted that the Resources Regulator has moved to a three-tier classification system for quarry operations across the state with the aim of better targeting resources and to manage competency requirements based upon risk. Tier 3 quarries have now been exempted from certain requirements of the quarry manager statutory function and an operator may now nominate a competent person who does not require to hold a practising certificate.

¹ [Guide to Better Regulation-October 2016.pdf \(nsw.gov.au\)](https://www.nsw.gov.au/guide-to-better-regulation)

The discussion paper provides a definition of a small/Tier 3 quarry that would be included in the list of exemptions under Clause 184 including 5 FTE or less, no blasting operations and the extraction of less than 300,000 cubic metres of material for sale annually. CCAA supports this definition and intent of the exemption to reduce red tape for small quarry operators.

Question 2 (xix) – Should the WHS (MPS) – Regulation be amended so that an automatic update provision (similar to that under Clause 78) is applied to all references to standards in the Regulation?

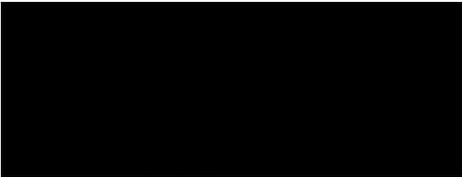
CCAA supports this provision, so long as the Resources Regulator has conducted a review, in consultation with industry, about the suitability, relevance and importance of the updated standard in addition to the ability and capacity of industry to comply with the update.

Question 2 (xx) – Is it appropriate to continue to refer to standards or should the relevant parts be prescribed within the WHS (MPS) Regulation?

We support the Resource Regulator’s position that references to Australian Standards remain appropriate and that prescription or codification of relevant elements in the WHS (MPS) Regulation is unnecessary.

Thank you again for the opportunity to provide further feedback and comments to the proposed amendments to the Work Health and Safety (Mines and Petroleum Sites) Act 2013 and regulation discussion paper. Should you wish to discuss our feedback further, please contact me by email: [REDACTED] or on [REDACTED].

Yours sincerely,



JASON KUCHEL
State Director, New South Wales & South Australia