CEMENT CONCRETE & AGGREGATES AUSTRALIA

27 February 2020

Committee Secretary
State Development, Natural Resources and Agricultural Industry
Development Committee
Parliament House
George Street
BRISBANE QLD 4000
Via email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary

CCAA SUBMISSION – MINERAL AND ENERGY RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2020

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for the $15 billion-a-year heavy construction materials industry in Australia. Our members are involved in the extraction and processing of quarrying products, and the production and supply of cement, pre-mixed concrete and supplementary materials. CCAA members account for approximately 90% of heavy construction materials produced in Australia and employ over 30,000 Australians directly and supports the employment of a further 80,000 people. We welcome the opportunity to provide feedback on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (*the 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% sand and gravel), road base (made up of about 90% 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) and 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.

- 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.

- Unlike the mining industry, quarries are usually located on freehold land, and gain approvals through local government planning and development processes.

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

Our industry has endeavoured to strengthen its safety and health performance, and to put in place the necessary steps to ensure that all workers, contractors and those involved with the sector have a safe and healthy working environment.

Overall Comments on the Bill – Industrial Manslaughter provisions

CCAA notes that the Bill introduces industrial manslaughter offences in the *Mining and Quarry Safety and Health Act 1999* (the Act). The Bill includes an offence for industrial manslaughter for an employer or senior officer where a worker dies in the course of undertaking work or is injured and later dies; and the employer or senior officer's conduct causes the death; and the employer or senior officer is negligent about causing the death. The maximum penalties provided for are for an individual 20 years imprisonment

CCAA and its' members continue to have very strong reservations about the introduction of Industrial Manslaughter provisions into the *Mining and Quarrying Safety and Health Act 1999* (the Act). CCAA has previously submitted 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. As well the current legislation already has serious penalties for negligence and wilful misconduct.

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

1. Lack of clarity regarding the definition of a "Senior Officer" under Part 3A S45A of the 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).

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 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.

We believe that 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

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"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 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 Bill, than equivalent roles in the WHSQ legislation.

3. Clarity around "criminal negligence"

The 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 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".

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Thank you for the opportunity to provide a submission. To further discuss any of the issues raised in the submission, please contact me on [redacted] or [redacted]

Yours sincerely

Aaron Johnstone
CCAA State Director - Queensland