CEMENT CONCRETE & AGGREGATES AUSTRALIA | concrete the responsible choice

9 September 2011

Mr. R Hoy
Chief Executive Officer
Safe Work Australia
GPO Box 641
CANBERRA ACT 2601

Dear Mr. Hoy

MODEL HEALTH AND SAFETY LAWS: CHAPTER 9 – MINES

Cement Concrete & Aggregates Australia welcomes the opportunity to participate in the consultation on the *Model Work Health and Safety Laws: Chapter Nine – Mines.*

CCAA is the peak industry body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries. For your information, a list of CCAA's members is attached.

CCAA members account for approximately 90% of the $7.21 billion in revenues generated by these industries that, between them, employ 18,000 Australians directly and a further 80,000 indirectly.

CCAA members operate rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants throughout Australia.

There are approximately 2,200 quarries operating across the country that produce some 150 million tonnes of stone, limestone, gravel and sand used to produce building and construction materials, such as cement, concrete, bricks, tiles, pavers and road paving. The materials extracted from quarries are known as basic raw materials and the revenue generated through their extraction is estimated to be $1.63 billion per annum.

The industry produces 8.9 million tonnes of cement and 23.9 million m^3 of pre-mixed concrete, with a turnover of approximately $5.58 billion per annum. Further value is added through the manufacture of concrete products and delivering concrete services. The unique nature of the industry is further is attached.

CCAA's members service local, regional and national building, construction and infrastructure markets. The reliable and cost-effective supply to these markets is fundamental to sustainable growth and it is CCAA's aim to promote policies and planning frameworks that recognise the importance of these materials to Australia's sustainable future.

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1 EXECUTIVE SUMMARY

CCAA is supportive of measures designed to improve health and safety outcomes in the heavy construction materials industry. As such, CCAA supports the development of a harmonised legislative approach to work health and safety within Australia.

CCAA understands that the main function of Chapter 9 is to require each mine to develop a Mine Health and Safety Management System that is to act as a single integrated system to ensure coordinated health and safety practices at a mine. However, it is CCAA's belief that the regulations require a simple reordering to ensure that they reflect this intent.

A simple reordering of the provisions within Part 2 of Chapter 9 will ensure that it is easy to interpret by all persons conducting a business undertaking on a mine. Clear and concise regulations, which can readily be interpreted and implemented, will have the greatest impact on improving health and safety outcomes.

CCAA's members operate a number of relatively small quarries located in regional and remote areas. For many of these operators the *Model Work Health and Safety Laws* and Chapter 9 represent significant changes to current work practices. It will take a fair amount of work and time for these quarries to update and amend their management practices, work practices and training regimes so that they can comply with the new regulations.

CCAA recommends that there be a substantial transition period for the heavy construction materials industry and that it should be applied for at least one year.

To support the industry CCAA also recommends that an extensive education program be developed and implemented by the State regulators to help mine operators understand and comply with the new regulations.

Additionally CCAA considers the Small Mines Safety Management Kit, developed by New South Wales, to be a successful model for assisting industry in improving health and safety outcomes. CCAA recommends that a similar program be developed and implemented across the nation.

2 CLEAR AND CONCISE REGULATIONS

There are a large number of quarries, located in rural and remote Australia that are of relatively small scale and are not complex operations. These operators, and many others, require clear and concise regulations that are easy to implement to ensure improved health and safety outcomes.

CCAA does not consider Chapter 9 to be clear and concise. Chapter 9 is not clear as the ordering of provisions in Part 2 does not reflect its intent, which is that the Work Health and Safety Management System is to be a single integrated document designed to manage all health and safety matters. Also, and there are a number of provisions that are identified as dealing with underground mining operations, and some that are not, this lack of consistency can be confusing for the reader.

2.1 Structure of Part 2: Risk Management

CCAA believes that each mine operator must develop a Work Health and Safety Management System (WHSMS) that is to be a single document that coordinates and integrates all aspects of health and safety management on the mine. A single document that clearly identifies hazards, risk

management practices and other health and safety requirements will have the greatest positive impact on improving health and safety outcomes.

However, when reading the regulations, as drafted, it is not clear that the WHSMS should be the main, central document for managing health and safety on a mine.

It appears that the order of provisions within the regulation does not represent its intent. For example, the structure of Part 2 does not reflect the central nature of the WHSMS, rather it makes it a sub-section of risk control practices, as illustrated below:

Current Structure of Part 2	
Part 2	Managing Risks
Division 1	General control of risks
9.2.1	Identification of hazards
9.2.2	Assessment of risks
9.2.3	Control of risk
9.2.4	Review of risk control measures
9.2.5	WHS management system – duty to establish and implement
9.2.6	WHS management system – content

In order to make it clear that the WHSMS is a single integrated plan for managing health and safety on a mine CCAA recommends that the provisions in Part 2 of Chapter 9 simply be reordered so that it reflects its intent, as illustrated in the table below:

Recommended Structure of Part 2	
Part 2	Work Health and Safety Management System
Division 1	WHS management system
9.2.1	WHS management system – duty to establish and implement
9.2.2	WHS management system – content
9.2.3	WHS management system – monitoring and auditing
9.2.4	WHS management system – review
9.2.5	Giving Information to the regulator
Division 2	Managing Risks
9.2.6	Identification of hazards
9.2.7	Assessment of risks
9.2.8	Control of risk
9.2.9	Review of risk control measures

Amending the structure of Chapter 9 as illustrated in the above table will ensure that the reader of the regulations is aware that the WHSMS is an integral and important part of mine health and safety in Australia.

Another related issue with the current drafting of the provisions that detail the WHSMS is that they do not clearly indicate the integrated nature of the system.

Rather, it would appear that the regulations require the WHSMS to be a sub-section within a ‘control of risks’ document and that other key components of the WHSMS, such as the ‘emergency plan’, ‘mine survey plan’ and the ‘mine record’, be separate documents that are not fully integrated into the WHSMS.

This occurs due to the manner in which 'Section 9.2.6 WHS management system – content' is drafted. It currently states that a WHSMS needs to contain a health and safety policy, a risk management system that identifies, assesses and controls risks, a description of the management structure, a health monitoring system, a safety role for workers, including Principal Mining Hazard Management Plans and arrangements for monitoring, auditing and reviewing the system.

However, this section does not recognise that the WHSMS should also contain the requirement to develop an emergency plan, mine survey plan or keep a mine record, despite Chapter 9 later going on to state that these are integral components of the WHSMS. As such, it appears that the emergency plan, mine survey plan and mine record do not need to be integrated into the WHSMS.

Part 2 of Chapter 9 requires a simple re-ordering to ensure that the reader is aware of the integrated nature of the WHSMS and the provision setting out the content of the WHSMS could be clearer by simply including all components and aspects of the WHSMS.

2.2 Clear Identification of Provisions

Currently there are a number of provisions that only relate to underground mines that are clearly identified as such and some that are not. This inconsistency diminishes the impact on the clarity and preciseness of the regulations, meaning that the regulations are not as easy to implement as they should be, which will negatively impact on health and safety outcomes.

For example, Sections 9.2.17, 9.2.18, 9.2.22, 9.2.23, 9.2.28, 9.2.29 and 9.2.38 all clearly indicate in their heading that they only relate to underground mining activities. Whereas, Sections 9.2.19, 9.2.25, 9.2.40 and 9.2.41 do not inform the reader that they relate to underground mining, as they are not labelled.

It would vastly improve readability and usability if each provision that only deals with underground mining is marked as such, and that those provisions that are relevant to all mines or above ground, open pit mines are identified as such.

If Part 2 is reordered and labelled as described above then they will concisely describe the central and integrated nature of the WHSMS and provide mine operators with the knowledge and understanding that positive mine health and safety outcomes are best achieved through the development of a single document that integrates all aspects of mine health and safety.

3 SPECIFIC COMMENTS ON PROVISIONS WITHIN THE REGULATION

Beyond the structure and identification of provisions within the regulations there are a number of specific issues with the provisions that need to be acted upon to ensure positive health and safety outcomes. If these are ignored then the regulation will be onerous, prescriptive and will not improve health and safety outcomes.

CCAA's specific comments on the provisions within Chapter 9 are illustrated in the tables below:

Part 9.2: Managing Risks	
Section 9.2.6 (1a)	This section refers to a 'safety policy', when it should refer to a 'health and safety policy'.
Section 9.2.6 (1c)	Part (i) of this sub-section should be removed from the regulation, as it is too prescriptive and does not contribute to health and safety outcomes. The sub-section requires the PCBU to describe arrangements for filling temporary and permanent vacancies. This is a human resource and industrial relations matter and does not belong in a WHSMS.
Section 9.2.13 (a)	The objective of communication of safety issues between shifts is supported. The requirement for communication between shifts should be performance and outcomes based, rather then prescribed. For example, handover information at a quarry can easily and effectively be communicated between shifts through a crib room meeting using a whiteboard. Quarries often do not have the human resources required to provide written reports between shifts. As such, the regulations need to state that effective communication occur between shifts, rather then prescribe written communication between shifts.
Section 9.2.13 (b)	This section should refer to the communication of 'all relevant' information.
Section 9.2.18 (2)	This section should refer to all measures where 'reasonably practicable'.
Section 9.2.19	This section should refer to a mine operator must were 'reasonably practicable' ensure that:
Section 9.2.24	In this section it refers to 'other persons' when it should really refer to 'relevant other persons'.
Section 9.2.31 (3)	This subsection should be removed from the regulations. It has no applicable meaning due to the fact that it cannot prevent a mine being abandoned if it is being poorly managed. If the subsection is to be retained it should refer to the code of practice.
Section 9.2.32 (4)	CCAA has previously indicated that small and remote quarries in rural and remote Australia can experience difficulties in consulting with emergency services, as they often have other priorities that stretch their resources and capacities, such as underground mines, large open pit metalliferous mines and fighting bush fires. Therefore, this section should refer to the mine operator needing to make all reasonably practicable attempts to consult with emergency services, rather then 'must' consult with emergency

	services.
Section 9.2.42	The WHSMS as described in Chapter 9 will be a large document that contains a number of key health and safety components, such as risk control documents, a description of the management structure, a health monitoring system, principal mining hazard management plans, emergency plans, mine survey plans and the mine record. The WHSMS will also be an evolving document as it is reviewed and updated. As such the WHSMS will in a lot of cases be an electronic document. Therefore, this section should refer to the workers right to access a copy of the WHSMS, rather then referring to the workers 'right to see a copy of the documented' WHSMS.
Section 9.2.46 (b)	All sections within Chapter 9 and the broader health and safety regulations should have a consistent approach to the maintenance of records.

Part 9.3: Fitness for Work and Health Monitoring	
Section 9.3.4 (2b)	Health monitoring can only occur after employment has ceased if the worker is cooperative. If a worker, who has ceased employment, does not want to participate in health monitoring then it cannot be forced upon them. As such, this section should refer to health monitoring occurring 'where reasonably practicable' after employment has ceased.
Section 9.3.4 (4)	Workers should only need to be consulted on the registered medical practitioner when there is to be invasive monitoring.

Part 9.4: Consultation and Workers' Safety Role	
Section 9.4.1	It is unclear what is meant by 'workers safety role' - does this mean each mine must appoint a health and safety representative as stipulated in the *Model Work Health and Safety Regulations*, or just that workers must participate in health and safety matters, either way the intent of the provisions needs to be made clearer.
Section 9.4.2	This provision should be removed from Chapter 9. The *Model Work Health and Safety Regulation* already contains comprehensive instructions on the need to consult with workers on health and safety matters. The provision in Chapter 9 repeats this and does not provide for increased health and safety outcomes in a mine.

Part 9.5: Mine Survey Plans	
Section 9.5.2 (c)	Quarries that produce over 1 million tonnes of materials a year may require a review on an annual basis, anything under that should be on a 2 yearly basis, as the scale and complexity of the operations do not require annual reviews of a mine survey plan.
Section 9.5.3 (1)	It should be clearly stated in this section of the regulations that the survey plan should reflect the complexity and scale of the operation. Not all small extractive operations require a full survey plan to achieve health and safety outcomes. For example, many small operations only require photo-geometry with GPS coordinates to meet health and safety requirements, full Australian Height Datum is not essential.

Chapter 9, amended as recommended above, will be clear and concise regulations that are not too prescriptive or onerous on a person conducting a business or undertaking and ensure positive health and safety outcomes.

3 TRANSITION AND ASSISTANCE

Quarries operating across Australia are subject to different requirements for managing work health and safety dependent on their State jurisdiction. In certain States and for a number of quarries the work health and safety management systems detailed in Chapter 9 represent a significant change from current work practices.

If the *Model Work Health and Safety Regulations* are implemented and enforced from 1 January 2012 as intended then there will not be enough time for quarry operators to assess and amend there current health and safety management practices, work practices and training regimes to ensure that they comply with the new regulations.

To further complicate the matter a number of States, namely New South Wales, Queensland and Western Australia will be introducing additional provisions that have yet to be finalised and released for public comment. CCAA believes that this two tier regulatory framework is confusing for industry and contributes to the difficulty in implementing the new regulations.

If the implementation date cannot be amended to provide time for industry to comply, then a substantial transition period needs to be applied. This substantial transition period will provide industry with time required to assess current work health and safety management practices and adapt these to the new requirements identified in Chapter 9.

To assist mine operators in this process, State regulators need to provide an education program designed to inform the industry of the new laws and how to comply with them.

New South Wales has developed a Small Mines Safety Management Kit that represents best practice in assisting quarry operators in complying with health and safety laws. CCAA recommends that this model be adapted for the Chapter 9 provisions and implemented across the nation.

Such a kit could contain pro-forma for implementing safety management systems, risk assessments and other safety management practices that are appropriate to the scale and complexity of the extractive operation.

Providing the extractive industry with a substantial transition period and an appropriate education program, coupled with a national small mines safety management kit, will ensure that the new mine safety framework is implemented within all quarries and help achieve the expected improvement in health and safety outcomes.

4 RECOMMENDATIONS

Work place health and safety is a fundamentally important issue for the heavy construction materials industry. CCAA is supportive of the implementation of national laws that will improve the health and safety of workers across the country.

However, for Chapter 9 to be a clear and concise regulation that is easy to implement it needs to be amended as follows:

1. Part 2 needs to be re-ordered to ensure its structure reflects its intent, which is that the WHSMS be a single fully integrated work health and safety management document.

2. Each provision within the chapter needs to be clearly identified so that it is clear which type of mining operation it refers to.

3. Specific provisions within the chapter need to be amended to ensure they are not onerous or prescriptive, as detailed in part 2 of this submission.

4. A substantial transition period must be provided to give industry time to comply with the new regulations. It is recommended that this be for at least one year.

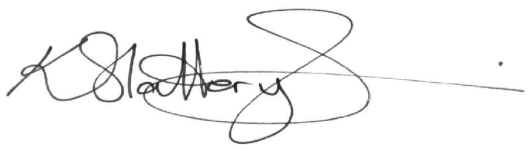
5. State regulators need to provide industry with an education program to assist with complying with the regulations.

6. A Small Mines Safety Management Kit modelled on the system developed in New South Wales needs to be implemented across the nation.

These recommendations will assist all mine operators and especially smaller operators in complying with new regulations and improve health and safety outcomes.

CCAA would like to thank Safe Work Australia for this opportunity to participate in this consultation and looks forward to further consultation on the matter.

Yours sincerely



KEN SLATTERY
Chief Executive Officer
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MEMBERSHIP

AS AT 31 AUGUST 2011

FOUNDATION MEMBERS

Adelaide Brighton Ltd	Boral Construction Materials	Boral Cement Limited
Cement Australia Pty Ltd	Hanson Australia Pty Ltd	Holcim (Australia) Pty Ltd

ORDINARY MEMBERS

Aidan J Graham Pty Ltd	Eziway Concrete (T/as T & M Lynch Pty Ltd)	Parkes Ready Mixed Concrete Pty Ltd
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Barro Group	Handycrete Concrete Pty Ltd	Ransberg Pty Ltd T/a WA Premix and WA Bluemetal
Benedict Sand & Gravel	HBMI Pty Ltd	RNB Trading Pty Ltd
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Broadway & Frame Premix Concrete Pty Ltd	Lime Industries Pty Ltd	Southern Pacific Sands
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Clare Quarry Pty Ltd	Lloyd's North Pty Ltd	Stornoway Quarrying
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CSR PGH Bricks	MSP Group Pty Ltd	Urban Resources Pty Ltd
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Elvin Group Pty Ltd	Nucrush Pty Ltd	Zanows Sand and Gravel
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BASF Construction Chemicals Australia Pty Ltd		Westrac
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ANNEXURE 2

Understanding the Heavy Construction Materials Industry

CCAA believes that there are a number of important characteristics that make our industry unique:

- Heavy construction materials underpin the massive building and construction industry. 90% of all extractive products are used in building and construction. Without concrete and its constituent parts (sand, aggregate and cement) the construction and building industries would not function. Extractive industries are the principal suppliers of materials to public and private infrastructure projects.

- Extractive resources are finite, site specific and limited in occurrence by geological conditions.

- Extractive resources are high volume low cost materials. Extractive industry operations must be located close to the communities that use them if they are to be economically viable and not impose too great an environmental and social cost. In addition, the extractive industries involve minimal value added processing of raw materials.

- The Extractive Industry carries out progressive vegetation clearing in line with sequenced extraction. It does not generally conduct broad scale clearing. Progressive rehabilitation is undertaken where operationally feasible. However, with hard rock sites particularly, there is often a substantial period of time before some active areas are available for rehabilitation.

- Extractive Industries use significant quantities of recycled stormwater for onsite management and operational requirements which minimises stormwater discharge from sites. Quarry developments typically involve the establishment of large stormwater detention and quality improvement devices such as sumps, water storage facilities, and natural wetlands (bio-retention basins).

- Extractive industry operators are long term players with many extractive resource areas in Queensland having lives in excess of 50 years.

- Existing extractive resources sites contain substantial reserves, which, over a long period of time, the industry has identified, investigated, secured and, in a majority of cases, have obtained the necessary planning approvals.