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Mr Rex Hoy
Chief Executive Officer
SafeWork Australia
GPO Box 641
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Dear Mr Hoy,

RE: DRAFT MODEL WORK HEALTH AND SAFETY REGULATIONS & CODE OF PRACTICE

This letter is a submission in response to the Exposure Draft of Model Work Health and Safety (Mines) Regulations and associated Draft Code of Practice for the Work Health and Safety Management Systems in Mining. These follow the release of an Issues Paper in July 2011 outlining the proposals.

At the outset it is important to make the point that the Construction Materials Processors Association Inc (CMPA) considers work place health and safety is of fundamental importance to extractive operations. The fact that many of our members operate family-owned businesses means that safety of all people working in their quarries is of particular importance. The safety record of our industry in Victoria is very good and improving. However, any injury is one too many and regarded as a failure by the industry.

The comments in this response aim to provide you with information about one of the industries that the proposed Model Regulations will apply to and impact on – the extractive industry in Victoria. The response will also provide a brief outline of the industry-specific regulation of our industry, a discussion about harmonisation and the RIS process and finally it will provide comments about specific regulations contained in the draft Model.

The CMPA and the Extractive Industry in Victoria

The CMPA is an industry association representing a broad spectrum of businesses in Victoria engaged in extracting and processing materials such as hard rock, gravel, sand, masonry, clay, lime, soil, and gypsum The Association also represents industry consultants, suppliers and workers. The CMPA was formed more than 10 years ago in response to burgeoning Government demands on the industry.

Reflecting the structure of the industry, the CMPA's membership contains:

- a large number of small, typically family operated and owned businesses (approximately 55% of the total membership) extracting between 30,000-80,000 tonnes annually;
- a large number of medium sized businesses (approximately 43%of the total membership) extracting between 80,000-1.3m tonnes annually; and
- a very few large businesses (approximately 2% of the total membership) that extract greater than 1.3m tonnes of aggregate annually.

Industry-specific regulation in Victoria

In addition to the Occupational Health and Safety Act *2004* that deals with OHS across the State, the Victorian *Mineral Resources (Sustainable Development) Act* 1990 (MR (SD) Act) regulates:

- the mineral exploration and mining industry, including gold, coal, and mineral sands; and
- extractive industries (quarries) for the extraction of stone resources including gravel, sand, soil, building stone and clay (but does not include fine clay, kaolin or salt). This is in combination with other land use controls under the *Planning and Environment Act* 1987.

Administered by the Department of Primary Industries (DPI) the MR (SD) Act requires licensing, approvals, rehabilitation and royalties for extractive industries, mineral exploration and development activities. The Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010 (r 12 and r 13), amongst other things, require reporting of injuries and other incidents in a quarry (see Attachment 1). Until amendments were made to the MR (SD) Act several years ago, the DPI also had responsibility as a safety regulator. Following the revoking of an MOU these responsibilities were centralised with WorkSafe Victoria and the DPI continues as industry regulator for operations and rehabilitation.

The move of safety regulation to WorkSafe Victoria has worked well and the industry has developed a sound working relationship with that body for the benefit of all concerned. Consistent with other comments in this submission, the CMPA is concerned that these arrangements will be put in jeopardy with the harmonisation process.

Harmonisation

Intuitively, the concept of harmonising occupational health and safety laws in Australia makes perfect sense. The benefits of harmonisation will accrue to those businesses that either transcend jurisdictional borders or that have separate operations in each jurisdiction. Harmonising regulatory controls for these businesses means that they will have one set of rules to comply with – one set of training programmes, one set of administrative response documents, one set of regulatory approaches and it makes perfect sense. For the regulators as well there are similar benefits although often States have their own variations to national standards.

The benefits of harmonisation are not so obvious for the remaining State-based businesses, and indeed the majority of our membership. They are already used to complying with one set of rules so there will not be particular benefits or savings for them. In fact, while harmonisation can result in the lowest common denominator being applied, what is necessary to avoid is that it does not impose additional cost burdens on business and industry UNLESS it can be demonstrably shown that there has been a breakdown and, in the case of OH&S, there is a flattening out or, worse, an increasing trend in workplace accidents and fatalities.

Supporting this position, it is recommended that any harmonisation be undertaken on the principle that **it will not impose any additional regulatory requirements** on businesses in the country. This policy position underpins other initiatives, such as the national occupational licensing scheme under COAG's *National Partnership Agreement to Deliver a Seamless National Economy* and should be applied in this initiative.

Regulatory Impact Statement

We note with considerable concern that the required Regulatory Impact Statement that should assess the costs and benefits of the regulatory proposal was not finalised at the time of publication of the draft Model Regulations. It is understood the Federal Office of Best Practice Regulation signed off on the National RIS on Friday 9 September 2011.

The analysis in the RIS should assist development of the policy initiative – it should not merely be part of the process to implement a decision. The RIS provides the necessary rigorous assessment of the problems being evidenced, the arising objectives, and makes assessments of the various viable options to achieve the objectives. It is difficult to understand how a credible decision can be made about new regulatory controls over an industry **without such a rigorous assessment**. Were business decisions made in a similar fashion the business would be short-lived and most likely face bankruptcy.

Extractive Industries and Mining

The proposed Regulations bring extractive operations and mines together so that the regulation applies to small one-person extractive operations in the same way as for large mining operations employing hundreds of people.

Clearly the safety of the one-person business is the same as for those in the larger business but the administrative processes proposed in the Model Regulations are inappropriate for the small business. Extractive operations in Australia are almost always open-pit operations from which rock are extracted. Most quarries are comparatively small and shallow. Quarries are generally used for extracting building materials, such as dimension stone, construction aggregate, sand, and gravel. They are often located with concrete and asphalt plants due to the requirement for large amounts of aggregate in those materials.

Mining in Australia refers to the wider extraction of solid mineral resources from the earth. These resources include ores, which contain commercially valuable amounts of metals, such as iron and aluminium; precious stones, such as diamonds; and solid fuels, such as coal and oil shale.

A key difference between the extractive industries (or quarrying) and mining in Australia is that typically mining will involve much deeper digging compared with the generally shallow extraction characteristic of quarrying. Some mining, such as coal mining in NSW and Queensland, is underground – an activity not undertaken in quarrying in Australia. The deeper nature of mining and underground mining involves significantly greater risks than typical quarrying operations and should accordingly face a different regulatory regime.

The one-size-fits-all approach contained in the proposed Model Regulations has no regard for small extractive operations that are so much the mainstay of extractive businesses certainly in Victoria but also across the country. Small businesses, such as our members, cannot remain viable if they are compelled to maintain onerous, time-consuming and costly regulatory compliance systems such as those contained in the Model Regulations including: the Work Health & Safety Management System, Principal Mining Hazard Management Plan, emergency plan, emergency signage, ventilation control plan, records of air monitoring, health monitoring records, survey plan and mine records. These numerous regulatory requirements impose huge demands on small and medium extractive operations for little or no apparent benefit.

The CMPA proposes that a more outcome-based approach be adopted for all regulatory requirements for small and medium sized operations.

The draft Model Regulations (Chapter 9 –Mines) refers to mining for the overwhelming majority of the text even though in Victoria at least the extractive industry is bigger than mining (excluding coal). The only reference to the extractive industries is under section 9.1.2 which relates to extracting minerals from the ground and section 9.1.3 which defines rock, stone, gravel or sand as a mineral. As a result the Model Regulations are not representative of the risks, nature and activities that take place in a quarry. For this reason the CMPA considers that where it can be demonstrated that a need exists, there should be specific regulations that relate to the extractive industries.

Confusion over regulations administered by different Government Departments

The draft Model Regulations include requirements for roads, vehicle operating areas, and ground and/or slope stability. Many of these particular matters are the responsibility of the industry regulating body, the DPI in Victoria. Having two government organisations regulating the same matters, that is, WorkSafe Australia and DPI, is duplicitous, unnecessarily costly and will lead to confusion and frustration amongst our members. As has been expressed earlier, the major concern is that many of these controls that only relate to mining will be imposed on the extractive industries because of the one-size-fits-all nature of the Model Regulations.

Lack of coherence in draft regulations

The proposed regulations lack coherence. References to the WHS management systems commence at regulation 9.2.5 stop at Division 2 and emerge again at 9.2.42. Underground mining regulations are treated similarly.

While there are many references to providing an ‘integrated’ safety management system, the regulations themselves lack integration and as a result become incoherent. Assimilating all like regulations in the one part will assist coherence and compliance. It will also show transparently the extent of the new regulations and the additional requirements on business and industry.

Introduction of new regulations

It is understood the Model Regulations are to be implemented and enforced from 1 January 2012. This is unworkable and must be re-assessed. Should the CMPA's proposals for small and medium sized extractive operations not be agreed, the cost of compliance with any new regulations needs to be funded by the Federal Government. The CMPA can assist in determining these regulatory compliance costs upon its members.

Moreover, to assist extractive operators in the new regulatory arrangements, Federal and State regulators need to fund education programs to inform the industry of the new regulatory arrangements and how compliance is expected and will be enforced. These programs should include provision of a Code of Practice for safety management in small and medium sized quarries. Again, the CMPA is prepared to assist in developing this Code.

Comments on specific proposed regulations

The following is a set of comments on several specific regulations that either are irrelevant to the extractive industry or are overly prescriptive.

WHS management system (Regulations 9.2.5 – 9.2.8, 9.2.42)

These require the establishment of a WHS management system and associated matters. This comprehensive set of new regulatory requirements impose vast administrative, time–consuming and costly burdens on small and medium sized extractive businesses that have very limited ability to deal with these requirements without employing additional administrative assistance. Most disturbing is these additional costs would be spent for little or no perceived benefit.

Moreover, it is ludicrous why such a system would require a description of arrangements for filling temporary and permanent vacancies. Of what possible value is this to occupational health and safety?

Principal Mining Hazard Management Plan (Division 2 regulations 9.2.10-12)

These regulations require the preparation of yet another plan, the Principal Mining Hazard Management Plan. Schedule 9.2 provides the matters which must be specified in the Plan. Elements of this Plan, ground or strata instability [1], roads and other vehicle operating areas [4], mining plant and air quality, dust and other contaminants [5], are all covered under the regulatory requirements for the extractive industry in Victoria through the Regulations under the MR (SD) Act.

The proposed requirements for a Principal Mining Hazard Management Plan therefore would duplicate these requirements. The CMPA considers therefore that the extractive operations in Victoria should be exempted from these requirements.

Underground mining

There are a number of regulations that only relate to underground mines. Most of these are identified as such while there are several others that clearly only apply to underground mines but are not specified as such[1].

As discussed earlier quarrying typically does not involve underground mining so all these regulations are also not applicable to the extractive industry.

Communication between outgoing and incoming shifts (9.2.13)

[1] 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. However, sections 9.2.19, 9.2.25, 9.2.40 and 9.2.41 clearly relate to underground mining but are not described accordingly.

These requirements, again, emphasise where typical small to medium sized quarries (ie the vast bulk of all quarries) are different from mines - quarries do not typically have shifts. This regulation is therefore irrelevant to extractive operations.

It is noted that the regulation is written very prescriptively. Why is this? Would not an outcome-based approach provide more flexibility?

Shafts and winding (9.2.15)

Again, shafts and winding are not a feature of the extractive industry but are prevalent in the mining sector. The regulation has no bearing on the extractive industry.

Mobile plant (9.2.16)

While this refers to mobile plant at a mine, the operation of mobile plants in Victoria do not form part of the regulation of the extractive industry under the MR (SD) Act. It is estimated that in Victoria recycling and mobile plant operations (i.e. those who move readily between resources or process extractive materials on civil projects) contribute about 15% of the total extractive industries production in the State. Consideration will need to be given to applying any relevant parts of the Model Regulations to this sector of the industry.

Air quality (9.2.20- 1, 9.2.24, 9.2.26-27)

These regulations prescribe a range of requirements concerning air quality. Dust suppression is also covered in the regulatory requirements for the extractive industry in Victoria through the Regulations under the MR (SD) Act (see Attachment) and also through the State Environment Protection Authority's *Protocol for Environmental Management*[2].

The proposed requirements for air quality duplicate these requirements and therefore, like other duplicated regulations, it is recommended that extractive operations be exempted from these requirements.

It is noteworthy also here that the EPA's Protocol, like other laws in Victoria and in other jurisdictions, separately addresses mining from extractive operations – calling into question again the approach taken by the proposed Model Regulations that merge the extractive industry with the mining industry.

Closure, suspension or abandonment of mine (9.2.31)

The regulatory requirements for the extractive industry in Victoria through the Regulations under the MR(SD) Act (see Attachment) require extractive sites to be progressively rehabilitated to a *safe and stable condition* and upon closure of the extractive operations left in a *secure state*. The proposed requirement for closure, suspension or abandonment of a mine duplicates these existing requirements. Again, extractive operations in Victoria should be exempted from these requirements.

Mine Survey Plans (Part 9.5 – regulations 9.5.1-9.5.3)

A range of plans are required under the regulatory requirements for the extractive industry in Victoria through the Regulations under the MR (SD) Act (see Attachment). These require a general location plan, a regional plan, and a site plan.

The proposed requirement for a Mine Survey Plan therefore duplicates the requirements already in place in Victoria and again, extractive operations in the State should be exempted from these requirements.

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2 http://epanote2.epa.vic.gov.au/EPA/publications.nsf/d85500a0d7f5f07b4a2565d1002268f3/d218c109bf0eb75fca257384001aebbd?OpenDocument

Enforcement of the Model Regulations

The Model Regulations impose additional requirements on the extractive industry in Victoria (along with other States and Territories it is presumed). For any regulation to be effective it must be enforced appropriately. Depending on the risks involved typically the industry being regulated will be responsible to fund whatever enforcement resources are required. Where an industry clearly understands the need for the regulation it will correspondingly understand the need for it to fund the enforcement activities.

Neither the Model Regulations nor the associated papers have provided any guidance as to what enforcement regime will be implemented and how it will be funded. Again, this is a major flaw in the development process for the Model Regulations and the CMPA cannot understand how the proposals have progressed to the stage they have without a full assessment of the cost implications for the industry, the enforcement regime and funding model and the costs for Government.

Summary

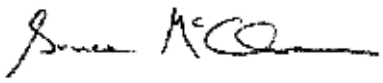
This submission makes the following specific points:

1. The CMPA considers work place health and safety is of fundamental importance to extractive operations. The fact that many of our members operate family-owned businesses means that safety of all people working in their quarries is of particular importance.
2. The structure of the extractive industry in Victoria is characterised by a large number of small, family-owned and operated businesses, a large number of medium sized businesses and a very small number of large businesses;
3. The extractive industry in Victoria, like extractive operations in other States, is subject to specific industry legislation.
4. Harmonisation is a useful initiative for the Australian economy but the benefits accrue mainly to businesses that operate across State borders not for most small to medium sized extractive operations.
5. No new regulatory imposts should be introduced unless it can be demonstrably shown that workplace safety is deteriorating. Supporting this position, it is recommended that any harmonisation be undertaken on the principle that it will not impose any additional regulatory requirements on businesses in the country.
6. It is of considerable concern that the draft Model Regulations have been given in-principle endorsement by the Ministerial Council without assessment of the costs and benefits and impacts for industry. This is blind policy development and has no regard for the drivers of the economy – business and industry.
7. The proposed Model Regulations apply a one-size-fits-all approach to mining and extractive sectors resulting in management systems not being proportional to the risks in the workplace. The regulation of these two industries should be separate.
8. The draft Model Regulations lack coherence and duplicate existing industry-specific regulations over the extractive industry in Victoria. For these controls the industry should therefore be exempt from the Model Regulations.
9. The planned introduction of the Model Regulations 1 January 2012 is unworkable. Introduction should be undertaken with Federally-funded education of the new arrangements, a Code of Practice for small quarries, along with funding for the costs of compliance with any new requirements. The CMPA is prepared to assist with the development of the education system and Code and in assessing the compliance costs.
10. Many of the new regulatory requirements, such as the WHS management system, the Principal Mining Hazard Management Plan, emergency management regulations and the mine survey plans, would impose unwarranted cost impositions for small and medium extractive businesses for no apparent benefit.
11. A major flaw in the proposals for introduction of the Model Regulations is the lack of any assessment of the cost implications for the industry, the enforcement regime and funding model anticipated and the associated costs for Governments.

12. It should be noted that in Victoria the Extractive Industry sits within the Construction and Utilities Program WorkSafe Victoria whereas the Mining Industry sits within the Hazard Management Program WorkSafe Victoria.

Thank you for the opportunity to comment on the draft Model Regulations. If you require clarification of anything in this submission or need additional supporting information please contact me. The CMPA would also be happy to discuss our comments with you at a later stage.

Yours sincerely



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WORK PLAN REQUIREMENTS
Mineral Resources (Sustainable Development)(Extractive Industries) Regulations 2010

12 Information relating to injuries arising out of work done under work authority

For the purposes of section 116A (1) of the Act, in relation to any injuries arising out of work done under an extractive industry work authority—

a) the prescribed form is in writing accompanied by a statutory declaration signed by the holder of the authority verifying that the contents of the summary are true and accurate; and
b) the prescribed information is a summary of statistics of any injuries arising out of work done under the authority within the following periods in each year—
   i. the period beginning on 1 January and ending on 30 June;
   ii. the period beginning on 1 July and ending on 31 December; and
c) the prescribed time is no later than 4 weeks after the end of the period to which the information relates.

13 Information relating to reportable events at quarries

(1) For the purposes of section 116A(1) of the Act, in relation to any reportable event arising out of work done under an extractive industry work authority—

a) the prescribed form of furnishing the information is in writing containing the relevant prescribed information set out in paragraph (b);
b) the prescribed information is—
   (i) a report of the reportable event notifying the Minister of the event, either orally or in writing, including—
      (A) the date, time and place of the event;
      (B) a description of the event;
      (C) the steps taken to minimise the impact of the event; and
   (ii) if the Minister so requests, a written report of the reportable event, providing further details to the Minister about the event, including—
      (A) the date, time and place of the event;
      (B) the details of the event, including the impact, or likely impact, of the event on public safety, the environment or infrastructure;
      (C) any known or suspected causes of the event;
      (D) details of the actions taken to minimise the impact of the event;
      (E) details of actions taken or proposed to be taken to prevent a recurrence of the event;
c) the prescribed time is as soon as practicable after the event has occurred.

(2) In this regulation ***reportable event*** means—

(a) an event, abnormal to expected, or usual, operations, that results, or may result, in significant impacts on public safety, the environment or infrastructure;
(b) an explosion or major outbreak of fire;
(c) slope failure, unexpected creep, progressive slope collapse or failure of slope stability control measures; an injury to a member of the public caused by the carrying out of the extractive industry or associated operations;
(d) an uncontrolled outburst of gas;
(e) an unexpected or abnormal inrush of groundwater, other water or other fluid;
(f) an ejection of flyrock outside the worksite from blasting;
(g) an escape, spillage or leakage of a harmful or potentially harmful—
   i. substance; or
   ii. slurry; or
   iii. tailings; or
(h) a breach of a condition of the extractive industry work authority;
(i) an occurrence that results in non-compliance with the work plan or work plan conditions.

WORK PLAN REQUIREMENTS
Mineral Resources (Sustainable Development)(Extractive Industries) Regulations 2010

1. A general description of the geological information of the location including estimates of stone resources.
2. A general location plan at a scale of 1:100 000 or 1:50 000.
3. A regional plan at a scale of 1:25 000 showing the extent of Crown lands, private lands, private land allotments, rivers and streams within the proposed work plan area and, where possible, parks and reserves within 2 kilometres of the site. Copies of certificates of title must also be submitted with respect to any private land allotments.
4. A site plan at an appropriate scale including cross sections, showing and describing existing surface contours and topographical features, drainage patterns, water courses, vegetation features and soil information and also including the following—
   a) the surface facilities including the proposed location of buildings and the location of crushing, screening and other processing plant;
   b) the anticipated extent of extraction with proposed bench heights, berm details and working batters;
   c) the sequencing of extraction;
   d) the location of topsoil and waste rock dumps and stockpile areas;
   e) the location of proposed water dams, any slimes dams and sediment retention systems and any measures for the diversion of water from the site;
   f) access roads.
5. Description of processing methods to be used including the proposed plant layout.
6. If the general location plan includes a declared quarry, the quarry stability requirements set out in Part 2.
7. An environmental management program setting out the following—
   a) proposals for the disposal of any effluents, protection of groundwater and drainage and erosion control;
   b) proposals for the suppression of noise, dust from any source and vibrations from blasting operations;
   c) proposals for the effective monitoring of the operation.
   8. A rehabilitation plan that complies with section 79 of the Act and sets out the following—
   a) the concepts for the possible end use of the site;
   b) the proposals for the progressive rehabilitation to a safe and stable landform of extraction areas including slope batters, road cuttings and dumps;
   c) the proposals for landscaping to minimise the visual impact of the site;
   d) any proposals to protect and conserve native vegetation during the production phase of the operation;
   e) any proposals for the final rehabilitation and vegetation of the site including final security of the site, securing water dams and slimes dams and removal of plant and equipment.
9. A description of any significant community facilities that may be affected by the proposed works.
10. A community engagement plan that—
   a) identifies any community likely to be affected by extractive industry activities authorised by the extractive industry work authority; and
   b) includes proposals, in relation to extractive industry activities authorised by the extractive industry work authority, for—
      i. identifying community attitudes and expectations; and
      ii. providing information to the community; and
      iii. receiving feedback from the community; and
      iv. analysing community feedback and considering community concerns or expectations; and
   c) includes a proposal for registering, documenting and responding to complaints and other communications from members of the community in relation to extractive industry activities authorised by the extractive industry work authority.