

13 April 2018

Safe Work Australia  
2018Review@swa.gov.au.

Dear Marie Boland,

#### **SUBMISSION: WHS MODEL LAWS**

Thank you for the opportunity to comment on the review of the model Workplace Health and Safety (WHS) laws. We appreciate you taking the time to meet with us and hear our views. Cement Concrete & Aggregates Australia (CCAA) has also provided input into the Australian Chamber of Commerce and Industry (ACCI) submission.

As the peak industry body representing the heavy construction materials industry throughout Australia, CCAA recognises the need for harmonised national WHS standards. Our members operate in complex regulatory environments in the production of cement, concrete, and the quarrying of hard rock, sand and gravel. Our members account for 90% of total industry output, with around \$15 billion in annual revenue, and employing 30,000 Australians directly.

#### **KEY ISSUES**

There are a number of priority areas for the heavy construction materials industry:

1. WHS legislation in Australia is duplicative across regulatory systems such as heavy vehicles, mines, and environmental policy. This creates an overly complex system which burdens industry to self-manage overlapping and sometimes contradictory regulation. This in turn increases the risk of a WHS incident on worksites. We recommend this review begin discussion on how the WHS system can become harmonised across States and regulatory systems. As a start, it would be useful to develop a set of principles for how different WHS regimes should interact and be mutually reinforcing.
2. While the three tiered approach of the WHS Act, Regulations, and Codes provides flexibility, it can at times lead to confusion. This complicated approach to WHS implementation increases the risk of WHS incidents on worksites. Regulators have responded by producing issue specific Guidelines. This WHS review has the opportunity to recommend that Guidelines produced by WHS bodies such as Safe Work Australia and its state based counterparts, provide *industry specific* guidance that clearly explains the WHS responsibilities for specific industries.
3. As stated in your discussion paper, we support clarification around the roles and responsibilities of different PCBUs operating in the same environment. For example, it is common practice in our industry that heavy vehicle drivers are employed as contractors and therefore operate as their own PCBU. But they also work under our member companies as the responsible PCBU. These situations create complexity when determining who has WHS responsibility in some circumstances. The review should seek to clarify these roles so that it is clear which PCBU has responsibility in which circumstances, noting that all PCBUs have responsibility for a safe workplace.



4. It is critical that regulators take a balanced approach to education and enforcement functions. The current system however, creates a relationship whereby industry does not trust that regulators will assist industry if asked. This is because in the current system, regulators do not take a graduated risk-based approach to WHS issues based on the severity of the situation. Regulators should be encouraged to have clear enforcement parameters that include education and assistance to industry as a first response.
5. The report refers to the Queensland Government's review regarding a possible reintroduction of the "reverse onus of proof". We strongly disagree with this approach and would be concerned with any recommendation that sought to review this legal principle. Our members take their obligations seriously, and any attempt to change basic legal principles around "innocent until proven guilty" would do significant damage to WHS implementation.

#### **NEXT STEPS**

CCAA and the heavy construction materials industry appreciate the opportunity to work with you in the review of the model WHS laws. CCAA remains available to provide further feedback on the review.

Yours sincerely,

A large black rectangular box redacting the signature of Ken Slattery.

**KEN SLATTERY**  
**CHIEF EXECUTIVE OFFICER**  
**CEMENT CONCRETE & AGGREGATES AUSTRALIA**

cc: Australian Chamber of Commerce and Industry