18 September 2017

Hon A Palaszczuk MP
Premier and Minister for the Arts
PO Box 75
INALA QLD 4077

Dear Premier,

The Chamber of Commerce and Industry Queensland (CCIQ), Master Builders Queensland (MBQ), Master Electricians, Queensland Major Contractors Association (QMCA), Civil Contractors Federation (CCF), the Property Council of Australia, Australian Mines Metals Association (AMMA) and the Australian Chamber of Commerce and Industry (ACCI) write to express our concerns regarding the *Work Health and Safety and Other Legislation Amendment Bill 2017* (the Bill), which was tabled in Queensland Parliament on 22 August 2017. As a coalition of peak industry bodies, we collectively represent the interests of Queensland's business community.

Foremost, we stress that any death in the workplace is a death too many, and workplace safety is a key priority for our organisations and the businesses we represent. To this end, we collectively support those initiatives which will genuinely increase safety in workplaces throughout Queensland, resulting in less workplace injuries and deaths. However, we do not believe that the Bill in its current form will achieve its intended objectives and deliver improved compliance and safer workplaces, and in some respects, may have the opposite effect. This letter outlines several of our key concerns.

Firstly, the Bill includes the proposal of the new offence of Industrial Manslaughter. It is understood that this is to target the senior decision makers in large businesses and "hold them to account for their failures". The current offences, including the offence of Criminal Manslaughter can already punish any person within the workplace who is responsible for causing a workplace injury or fatality. We are of the firm view that the creation of the new offence of Industrial Manslaughter is not necessary, and that such an extreme punitive amendment will have little to no positive impact on workplace safety.

Secondly, the Bill proposes to prohibit the use of enforceable undertakings as an alternative to prosecution in category 2 offences where a fatality occurs. We believe that this option should not be removed as its use often results in direct improvements to safety within businesses and industries that would not occur if prosecution was the only option. At the category 2 offence level there are circumstances where an enforceable undertaking may be appropriate for a fatality (such as in the cases of suicide, deaths of family members or partners), and the removal of the prosecutor's discretion to allow an enforceable undertaking could stifle safety improvements.

Thirdly, the Bill also includes the expansion of Queensland Industrial Relations Commission (QIRC) powers with respect to WHS dispute resolution. We are opposed to this amendment, as we do not believe that the current review arrangements are ineffective or "broken" therefore warranting such an extreme change. Statistics also suggest that very few requests for such a review are currently sought, again raising the question as to why such a change is necessary. We believe this will place further stress on an already under resourced QIRC.

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Further to this, we believe the process of having a 24 hour mandate on inspectors to attend a dispute is likely to see more disputes ending up in the QIRC due to lack of departmental resources. Having the QIRC as the first party to consider a dispute over an inspector not only undermines the role of the inspector but takes the resolution of complex onsite safety issues away from the workplace and into a courtroom to be decided by a Commissioner who has never attended the site, further exacerbating disputation around safety issues rather than fostering resolution at the workplace level. We also believe this change will expose workplaces to unnecessary shut downs of multiple days (whilst safety disputes are resolved in a courtroom), putting businesses and jobs at risk, increasing business costs and decreasing productivity.

Finally, the Bill proposes to reinstate the legislative status of Codes of Practice to their standing that was in existence under the *Workplace Health and Safety Act 1995 (QLD).* We oppose this amendment as the provisions do not have the same effect as the 1995 provisions and impose a reverse onus of proof on the employer. We are concerned that the mandatory nature of the provision will create the need for Codes of Practice to be extremely prescriptive which will stifle innovation and could result in a drop-off of businesses striving to improve their safety practices.

It should also be noted the new provision (unlike the 1995 Act provisions) do not allow for abrogation where businesses are unable to follow a Code of practice in any way due to the circumstances of the work activity being undertaken. Such circumstance may result in a business achieving a safe workplace/ procedure in a way that may not be considered "equivalent" to the Code, and rather, could be seen as breaching the Code of Practice provision and negligent. In addition, industry has not received any undertaking from the Government that the current Codes to Regulation review will cease as a result of this proposal, therefore creating *a* two-fold increase in regulation and compliance.

It must be highlighted that worker fatality rates have fallen substantially over the last 15 years. The purpose of the *Work Health and Safety Act 2011* is to deter not punish operators. On this basis, we support initiatives that will assist, empower and encourage employers and workers to not only improve safety in the workplace, but also improve the safety culture and attitude in their businesses. Historically this has been achieved through proactive measures such as improvements in education and training, sound safety programs, targeted compliance campaigns and safety leadership mentoring. We do not believe that the punitive and reactive nature of the proposed amendments will improve safety in workplaces.

The Bill as it stands, adds additional red tape and punitive measures. It is a knee-jerk reaction to recent tragic events (in Eagle Farm and Dreamworld fatalities), but which would not necessarily have been avoided if the proposals in this Bill existed.

Stripping resources from education and awareness to bolster prosecution is of a grave concern to us. Whilst we agree that the balance between punitive and educative approaches has shifted and the inspectorate have been less focused on hard compliance, the functional recommendations of the Best Practice Review, if implemented effectively, will go a long way to correcting that imbalance and will likely result in a greater improvement in safety than any provision of this Bill will achieve. However, we are concerned that if the Regulator is unable to maintain that balance and over-shifts to a hard compliance regime and if appropriate resources are not allocated to improving safety programs and awareness, then there is likely to be no improvement in safety, therefore making this whole review process futile.

The Government already has the ability to penalize all of those people who do not take safety seriously and whose workplaces are unsafe. These proposals do not add to these powers, but rather shift the focus of safety improvement from practical safety solutions and education to one of punitive action, fear and retribution.

In closing, we would also like to point out that under the objects of the Act, Queensland has committed to maintaining and strengthening national harmonisation, any move to create additional excessively punitive charges would also be a step away from a national approach.

We would welcome the opportunity to brief you and your advisors on our views on the matters contained herein, please contact Kate Whittle, General Manager – Advocacy at kwhittle@cciq.com.au or 0418 221 265.

Yours Sincerely

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