

Open Letter to the Government of NSW

Australian businesses are appalled with the suggestion that the NSW Government may not honour the national agreement reached to harmonise Occupational Health and Safety (OHS) laws.

The NSW back-tracking threatens to undermine the principles that have guided industry's involvement in OHS harmonisation – that a new national regime be effective in improving the safety of Australia's workplaces, that legal processes be fair and that it be consistent across the nation.

EFFECTIVE – While unions have an important safety role, more union rights as supported by the NSW Government are not necessary for the delivery of better workplace safety. We strongly oppose the NSW call to add to the model national law provisions granting the unions power to act as prosecutors and reversing the normal onus of proof. Victoria, which was used as the model for the new national laws and which does not have union prosecutions or reverse onus, has between 30% and 50% better safety outcomes than NSW depending on the measurement used.

FAIR – Safety laws should be consistent with the principles underpinning criminal law. Union prosecutions, reverse onus of proof and restrictions on the right of appeal undermine important principles of criminal law. Prosecutions should be conducted by an independent agency which bears the onus of proving the defendant's guilt – not what the State Government is supporting, that you are guilty unless you can prove your innocence.

NATIONALLY CONSISTENT – NSW risks losing investment, jobs and credibility if it walks away from its commitment to the agreed national laws. Industry is profoundly frustrated by having nine different sets of safety laws and regulations around Australia.

We are on the verge of a once in a generation opportunity to end frustration for businesses across the country and to allow companies to concentrate on safety outcomes rather than drowning under legal opinions.

NSW should not undermine this important national reform. Moreover, if we cannot achieve nationally consistent OHS laws then it augurs poorly for the potential for success of other vital national regulatory reform.

We call on the State Government to recommit to the agreed processes on harmonisation and work with all stakeholders on this important and long overdue initiative.

Heather Ridout – Chief Executive, Australian Industry Group

Wal King AO – President, Australian Constructors Association

Katie Lahey – Chief Executive, Business Council of Australia

Peter Anderson – Chief Executive, Australian Chamber of Commerce and Industry

Garry Brack – Chief Executive, Australian Federation of Employers and Industries