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CCF WA SUBMISSION

Legislative Council Standing Committee on Legislation Inquiry into the *Work Health and Safety Bill 2019*

Thank you for the opportunity to comment on this Bill, and specifically the proposed Industrial Manslaughter provisions. Of particular concern to our industry is section 30B, the 'second tier' Industrial Manslaughter offence.

CCF WA is a signatory to the separate submission made by the Joint Industry Group. We endorse the detailed comments made in that submission and would like to take the opportunity to make some supplementary comments below.

The Industrial Manslaughter legislation has been hurried through with no consultation or sufficient consideration of the consequences. It had not been considered by the Ministerial Advisory Panel on Work Health and Safety Reform a year earlier.

The Explanatory Memorandum to the Bill notes that Queensland and Victoria have recently introduced Industrial Manslaughter legislation but does not mention that the WA legislation is completely different, nor explains why that is so.

The Boland Report is also mentioned in the Explanatory Memorandum, but there's no explanation why the State Government has proposed that the offence be much more far-reaching than Boland's recommendation of "a new offence of industrial manslaughter ... for gross negligence causing death".

Under section 30B, the bar would be far lower than gross negligence – all that would be required is to prove a failure to comply with a duty of care.

WA's small businesses would be most at risk. Experience in other jurisdictions shows that smaller businesses are more likely to be prosecuted than larger, more well-resourced businesses with sophisticated management systems.

CCF WA's other key concerns with the legislation are:

- The exclusion of employees (apart from officers) from the Industrial Manslaughter offence is inconsistent with the purported aim of the proposed offence, namely improving safety outcomes. CCF WA considers that it is entirely reasonable that where an employee has


engaged in negligent conduct that has caused the death of another person, that they too ought to be subject to this offence.

- Despite the proposed introduction of this very serious offence and significantly increased penalties, the government has not addressed the compromised privilege against self-incrimination for individuals which section 30 creates.

To be clear, the civil construction industry fully supports this Government's commitment to improving workplace safety. The leadership shown by Governments at the State and Federal level have helped our industry to raise the safety bar. The fatality rate on Australian construction sites has nearly halved in the past 20 years. Improvements in site safety haven't come about through threats of bigger penalties; they have been achieved because clients (including governments) and contractors have worked together to continually raise standards.

Safer workplaces are created through a strong workplace safety performance and culture. A strong culture is not created through harsh penalties – we have seen that in our own workplaces. Industrial manslaughter laws are just a distraction from the practical measures that can be taken to improve safety and make sure every worker gets home to his or her family.

Yours sincerely,

 Andy Graham
Chief Executive Officer (WA)