

# CEMENT AUSTRALIA PROCEDURE – GUIDELINES FOR RESPONDING TO AN ACCC “RAID” AT CEMENT AUSTRALIA PREMISES

The Australian Competition and Consumer Commission (ACCC) may without notice enter premises and seize material (electronic or hard copy) under the authority of a search warrant. This procedure should be followed in the event of such a “raid.” It also outlines guidelines for responding to phone calls and written correspondence from the ACCC. **All inquiries by the ACCC should be treated as serious matters whether in person, by phone or in writing. There is no such thing as an “off the record” communication with the ACCC.** Do not advise anyone outside Cement Australia about any ACCC communication. This applies especially to advising competitors even if there is a suggestion that those competitors might be investigated too.

## IF AN ACCC REPRESENTATIVE CALLS YOU ON THE PHONE:

If someone calls you and says that they represent the ACCC and would like to speak to someone in relation to an “inquiry”, “investigation” or “alleged breach” of law by Cement Australia (or anyone else), ask for the person’s name, organisation, contact telephone number and ask what their call is in relation to. Say that an appropriate person will call them back shortly. Make a full record of the conversation and contact the Legal Team (see Contact Details in table below) as soon as possible.

If the caller insists on speaking with someone immediately, explain that it is company policy that all communications with the ACCC must be conducted through the Legal Team and give them the name of a member of the Legal Team.

However, if the investigator insists on speaking to you about an investigation into an alleged wrongdoing by you, Cement Australia or anyone else, you may nonetheless decline to speak to them. But, if you feel that it may antagonise the caller not to at least listen to what they have to say:

- ask for an explanation of the investigation and details of the alleged wrongdoing;
- be courteous and co-operative but politely decline to answer any question (or ask that it be put to you in writing) unless you are sure of the answer and it is uncontentious (eg your position in the company, the company’s registered office);
- make a full record of everything said; and
- contact the Legal Team as soon as the phone call is over.

## IF THE ACCC WRITES TO YOU:

If you receive a written communication from a representative of the ACCC (including any statutory notices requesting documents, information, or an interview/examination) do not respond but contact the Legal Team as soon as possible.

**IF THE ACCC VISITS YOU:**

The ACCC may visit your site or your home unannounced. The conversation with the ACCC visitor should be handled in the same way as a phone call. The representative **cannot** enter your home or the company's premises without permission unless they have a search warrant. If the inspector does not have a search warrant and asks for your consent to entry, you should contact senior management and your organisation's legal advisors before consenting to entry.

**IF AN ACCC INSPECTOR ARRIVES AT CEMENT AUSTRALIA PREMISES WITH A SEARCH WARRANT:**

The ACCC has the right to conduct unannounced searches of premises where an ACCC inspector obtains a search warrant, having satisfied a Federal Magistrate that there are reasonable grounds to suspect that there may be evidence relating to a contravention of the Australian Competition and Consumer Act (CCA) on the premises. The ACCC inspector may be accompanied by ACCC staff, members of the Australian Federal Police, lawyers and IT experts. The ACCC can seize documents, computer records, mobile phones and other information storage devices.

In such a situation you should follow:

- the one page "Reception's Guide to managing an ACCC 'Raid' with Search Warrant"; and
- the guidelines below.

GENERAL STAFF	IN-HOUSE LEGAL/CONTACT PERSON
<p><b>If you are involved with a search of the premises by the ACCC ...</b></p> <p>Review the “Reception Guide” and ensure that contact has been made with the Legal Team/external lawyers.</p> <p>Follow the procedures outlined in the “Guidelines for In-House Legal / Contact Person” if you have to take charge.</p> <p>Arrange for someone to accompany each investigator during the search.</p> <p>Take good notes of everything that is said and done by you and all the investigators.</p> <p><b>If the warrant is valid and the search proceeds:</b></p> <ul style="list-style-type: none"> <li>✓<b>DO</b> be co-operative and allow them access to files and documents, including those in computers.</li> <li>✓<b>DO</b> provide reasonable assistance to them to access and locate files and documents (including giving computer passwords). You are not required to create a document or to answer questions about the meaning of documents.</li> <li>✓<b>DO</b> provide access to printing and photocopying facilities.</li> <li>✓<b>DO</b> make a list of the documents they take, and photocopy them first/request a copy of all material seized.</li> <li>✓<b>DO</b> inform the inspectors if any information collected is commercially confidential to Cement Australia</li> <li>✓<b>DO</b> remember: investigators are entitled to take original documents and <b>there are substantial penalties for resisting or obstructing investigations, and for failing to answer questions about the search warrant.</b></li> </ul> <p>x<b>DON'T</b> allow investigators to view or take away documents that are irrelevant to the search or that are legally privileged (ie advice from in-house or external lawyers). Ask that such documents be held by an independent lawyer to determine whether they should be given to investigators. If the investigators are insistent, give them the documents expressly "under protest", and make a note of the protest.</p> <p>x<b>DON'T</b> let them "clone" any computer hard drive to take away where not everything on the hard drive is relevant. Ask that copies or cloned material be held by an independent lawyer to determine whether they should be given to the investigators.</p> <p>x<b>DON'T</b> engage in “chit chat” or answer any questions except about practical matters relating to the content of the search warrant (ie where documents are located). If you are asked any questions about company business say “<i>There are some internal procedures that I need to go through before answering. Please put your questions down in writing.</i>”</p> <p>x<b>DON'T</b> consent, if asked, to the video/ tape recording of the search or of your answers to questions.</p> <p><b>DON'T</b> advise anyone outside Cement Australia about the search. This applies especially to advising competitors even if there is a suggestion that those competitors might be investigated too.</p>	<p>When investigators arrive, ask the lead investigator to:</p> <ul style="list-style-type: none"> <li>•provide his or her name and position (ACCC inspectors must have an identity card), and identify the people in the inspection team;</li> <li>•identify the reason that entry is sought;</li> <li>•produce a search warrant; and</li> <li>•identify whether any of Cement Australia’s other premises are also being visited.</li> </ul> <p><b>Do not agree to inspectors entering Cement Australia premises without a warrant.</b></p> <p><u>Take a copy of the warrant and check that:</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> it shows the correct Cement Australia company name;</li> <li><input type="checkbox"/> it shows the correct address for the premises sought to be inspected;</li> <li><input type="checkbox"/> it names the inspector who is attending;</li> <li><input type="checkbox"/> the warrant is being executed at the time of day specified, and that the time before the warrant expires has not passed.</li> </ul> <p><b>If any of these details are wrong, do not allow the investigation to proceed.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Review the alleged contraventions in the warrant and the evidential material to be searched for under the warrant</li> </ul> <p><b>Next:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Issue the inspectors with a name tag to identify them. Follow the instructions for “General Staff” if the search proceeds. Notify CEO of the raid if not already done.</li> <li><input type="checkbox"/> Identify and quarantine documents which may be legally privileged – do not provide these.</li> <li><input type="checkbox"/> Ensure that the investigators leave a schedule setting out the documents removed and request a copy of all material removed.</li> <li><input type="checkbox"/> Check that the schedule of documents is correct before accepting a copy.</li> <li><input type="checkbox"/> Confirm to which regulatory staff member further enquiries should be addressed.</li> </ul> <p><b>When the investigators have left:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare a written summary of events and attach copies of the warrant and schedules of documents.</li> <li><input type="checkbox"/> Ensure all documents relating to the issues under investigation are secured – suspend routine electronic document deletion processes, retain backup tapes</li> <li><input type="checkbox"/> Notify Board, insurers, affected company personnel.</li> <li><input type="checkbox"/> Respond to media inquiries as per approved Communications policy.</li> </ul>

## CONTACT LIST:

### Cement Australia Legal Team

Person	Office phone	Mobile
Sophie Evans Group General Counsel & Company Secretary	07 3335 3152	0409 266 388
Bronwyn Rymer Corporate Counsel	07 3335 3061	0417 341 702

The legal team may contact Cement Australia's external competition lawyers for assistance. They may send a lawyer/s to assist you immediately.

If you are unable to contact the legal team, contact one of the **external lawyers** below:

Person	Office phone	Mobile
Liza Carver, Partner, Ashurst Lawyers, Sydney	02 9258 5897	0414 926 310
Jane Ellis, Partner, Ashurst Lawyers (Brisbane/Sydney)	07 3259 7320 02 9258 6307	0401 586 561
Alyssa Phillips Senior Associate Ashurst Lawyers, Brisbane		0488 362 225