

## Resources Safety and Health Legislation Amendment Bill 2024

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Committee Secretary  
Clean Economy Jobs, Resources and Transport Committee  
Parliament House  
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2 May 2024

Dear Sir/Madam

### **Response to the *Resources Safety and Health Legislation Amendment Bill 2024***

Anglo American has actively participated in every step of the consultation process leading up to the draft Bill because we believe that the practical experience of industry makes an important contribution to ensuring the legislation achieves its objectives. We welcome the opportunity to explain our views on the Bill and to make recommendations for small changes that we believe honour its intent while ensuring its practical and effective implementation.

#### **Anglo American initiatives**

The primary rationale given for these legislative changes is to facilitate High Reliability Organisation (HRO) behaviours in the resources industry.

At Anglo American, safety is our most important value. We are constantly working towards eliminating fatalities and addressing systemic safety risks across our operations. Initiatives under Anglo American Steelmaking Coal's Safety Transformation Program aim to drive improvements in risk management, culture and operational leadership. These are consistent with the principles of HRO theory, putting emphasis on the practices, planning and work systems that create an enabling environment for safe, responsible production. Anglo American therefore has a strong motivation to understand how this proposed legislation supports or impedes the measures we are committed to implementing with our workforce.

#### *Safety Leadership Practices*

The Safety Leadership Practices (SLP) program is a multi-year program focused on everyone, at every level of our business, supporting each other in consistently displaying positive practices and behaviours. SLP was informed by a gap analysis process and developed by Anglo American with the help of internal and external organisational and safety experts.

The program defines positive practices that support a proactive safety culture and flags the negative practices that detract from achieving this. The practices are aligned to our Values and their associated behaviours and are linked to safety critical themes: usable standards, effective communication, proactive risk management and the active involvement of everyone.

Expert coaches are working on each of our sites to support our workforce and create common language, routines and skills that reinforce safety leadership practices and behaviours. Everyone – managers, supervisors, workers and contractors – will have clear guidance on how to think and respond in all situations, not only safety critical tasks.

### *Visible Felt Leadership*

Being visible in the field and having quality conversations about the job is one of the most impactful ways to role model SLP. It makes sure that Anglo American “walks the talk” on the message that nothing is more important than being safe.

Measurable expectations are placed on leaders to complete minimum numbers of quality conversations each week to build trust, encourage speaking up and drive improvement. The emphasis is on recognising people for doing the right things and, where necessary, addressing any inappropriate actions or behaviours. Just as important is taking the time to action any follow up required and report back.

Structured time in the field is being supported at every level of the business through measures like standardisation and the rationalisation of activities that impinge on the time leaders can spend with their teams. In 2023, Anglo American undertook a structured program of work to remove administrative burden on our frontline leaders availing them to engage more, and more effectively, in field. With a strong bias toward change, yet not at the compromise of safety, we reviewed the volume of meetings, attendees, their frequency and duration with the aim of reducing the constraints on time in field. By responding to feedback from our workforce we were able to identify and implement over 50 initiatives that make a material difference to time available in field and give priority to visible felt leadership.

### *Fatal Risk Management*

A key focus for Anglo American in 2024 is the Fatal Risk Management (**FRM**) project. FRM provides a simple but effective set of tools to the workforce, to ensure a clear understanding of the Fatal Risks in their environment and the controls needed to be in place and verified to manage such risk.

The FRM Project team has already started work to co-design the risk assessment tools that will be used by frontline workers. Each of Anglo American’s sites has nominated someone from its workforce to be embedded full-time with the FRM Project Team. Contractors and our Exploration team are also represented. These workers will bring their perspective and experience to inform the integration of Fatal Risks and Fatal Controls into the frontline daily work routines and environment. Risks and Controls will be part of pre-start meetings, SLAM/Take 5 books, Job Risk Assessment/Job Safety Analysis as well as signage and supervisor routines, ensuring that Fatal Risks and Fatal Controls are known, front of mind and effective every time.

This re-design will result in simple, standardised and practical tools and processes for assessing risk effectively in a dynamic work environment.

## **Key issues**

### **1. Clause 9 - Senior Site Executive to be located at or near the coal mine**

Anglo American does not agree with the proposed amendment to Section 41 of the *Coal Mine Safety and Health Act 1999 (CMSHA)* requiring a Senior Site Executive (**SSE**) or acting SSE to be located at or near the coal mine when performing the duties of the SSE. It is poorly drafted and ambiguous on fundamental points.

The amendment introduces the requirement to be “at or near the coal mine” but does not define what constitutes at or near. It provides an exception when an SSE is absent for work reasons or on leave but does not account for an SSE being away from the mine on other non-working days like weekends.

As currently drafted, this would mean that an SSE could not give instructions by phone in the case of an emergency on a weekend if they have travelled away from the mine, without the Coal Mine Operator being in breach of the provision.

Anglo American understands the intent of the amendment. However, if the committee believes it is necessary to introduce such an obligation on coal mine operators it is recommended that members consider the wording in section 133 of the [NSW Work Health and Safety \(Mines and Petroleum Sites\) Regulation 2022](#). It requires an individual nominated to exercise a statutory function at the mine to be “readily available to exercise and is capable of exercising the statutory function”.

### **2. Commencement of offence proceedings**

Anglo American does not support the proposed amendment to section 257 of the CMSHA that would require proceedings for breach of the Act to commence within two years of the offence coming to the knowledge of the complainant. While this amendment places a time limit for commencing proceedings on the complainant, in this case, the Workplace Health and Safety Prosecutor, it also has the effect of giving Resources Safety and Health Queensland (**RSHQ**) an unlimited amount of time to carry out its investigations before bringing the matter to the prosecutor for a decision whether to prosecute.

Under the current CMSHA, the latest proceedings can commence is three years after the commission of the alleged offence. The amendment proposes to take the onus off RSHQ to manage its procedures effectively and conduct its investigations in an efficient and timely manner. Letting investigations drag on with no defined end date places a heavy burden on the families of injured workers waiting for an outcome as well as employers and workers being investigated.

Anglo American has seen the effect on individuals against whom complaints have been made or threatened, who have suffered under the stigma, uncertainty and stress of these complaints or potential complaints, which have subsequently been dropped or have been found by courts to be without basis. To make that state of being never ending is unconscionable.

In the Consultation Regulatory Impact Statement for the Bill, RSHQ explains the need for the amendment by reference to the need for sufficient time to conduct complex investigations. If there is evidence that the current three-year time limit has caused that impediment, that problem could be addressed with an amendment allowing for an application to extend the timeline in defined circumstances. This maintains accountability for RSHQ in how it manages investigations and balances the right of others impacted by the process to have the justice of a timely resolution.

### **3. Publication of information**

Anglo American is a strong believer in the value of sharing information about incidents across the industry to enable learning and continuous improvement. We are an active participant in initiatives led by the Queensland Resources Council and the Minerals Council of Australia (**MCA**) that aim to provide information, analysis and platforms for promoting learning. For example, the MCA has developed a

database of fatal incidents using consistent classifications across Australian jurisdictions enabling more granular analysis and comparison to enrich industry knowledge. We believe this experience of cooperating with others in industry to share information and lessons puts us in a good position to judge what type of information is of value to drive improved performance.

The proposal to enable the Minister, CEO of RSHQ and Chief Inspector to publish information including not just a description of an incident but the *number* of HPIs and serious accidents over a period and the name of the coal mine and operator goes further than what is needed to support decision making for better safety outcomes. The risk of league tables, “naming and shaming” of companies and unintended consequences is too high when the stated purpose can be achieved by publishing de-identified information to facilitate analysis, education and the identification of trends and mitigating measures.

By way of comparison, the NSW legislation in section 70 of the [Work Health and Safety \(Mines and Petroleum Sites\) Act 2013 No 54](#) avoids this risk and largely restricts publication to matters related to investigation and enforcement activities, a higher bar than HPIs and serious accidents. The catch-all clause that enables broader publication is qualified by the need for the information to be “of relevance to mine operators.....in connection with compliance by them of duties imposed by the WHS laws.” It is arguable that knowing the identity of other coal mines associated with particular incidents would not pass that relevance test.

Anglo American also questions the alignment of this amendment with the objective of the Bill to facilitate High Reliability Organisation (**HRO**) behaviours as recommended by the [Brady Review](#) of fatal accidents. The review identified that one of the core aspects of HRO theory is that it considers a safety culture to be a reporting culture. On page 73 it notes that “honest and accurate reporting of HPIs by the wider industry and encouragement to do so should be of paramount importance” and further that “the Regulator should not do anything that encourages the driving down of HPI reporting.”

The purpose of data collection should be analysis, identification of developing trends and timely dissemination to industry in the interests of educating rather than the threat of naming and shaming.

#### **4. Directives relating to acceptable level of risk**

Anglo American does not agree with the extent of the changes proposed in Clause 54 of the *Resources Safety and Health Legislation Amendment Bill 2024 (the Bill)*.

The amendment will give an Industry Safety and Health Representative (**ISHR**) power to give a directive to suspend coal mining operations based on a belief that a risk *may* reach an unacceptable level. This introduces a highly ambiguous test into the legislation. The current Act requires an ISHR to have a reasonable belief that a risk may reach an unacceptable level. That language has not been changed in other sections of the Act, for example section 101 relating to the powers of a Site Safety and Health Representative and Anglo American recommends that, notwithstanding the other changes in Clause 54, the reasonable belief test is appropriate and should be retained.

#### **5. Board of Examiners**

On Anglo American’s estimation, the requirements in the Bill for key critical safety roles such as Electrical Engineering Manager and Surface Mine Manager to hold a Certificate of Competency will require 400 of these position holders across the industry to acquire these qualifications that are yet to be developed. While we acknowledge the proposed transition arrangements, taking on this task together with the expanded Practising Certificate regime is a massive undertaking for the Board of Examiners. Careful consideration needs to be given to the capacity and resourcing of the Board of Examiners to carry out this task in the required time and the options available to expedite the process such as adopting the competencies already in use in NSW as a model for the Queensland qualifications.

## 6. Conclusion

The committee should not underestimate the scale of the changes proposed in the draft Bill and Regulations and their implications for time and human resources. Anglo American's preliminary analysis identified multiple proposals that will necessitate new procedures, administration and paperwork. This is coming at a time when we are putting all our processes under scrutiny to ensure simplicity, clarity and a direct relationship to safety outcomes. The changes proposed in this Bill need to be held to the same standard so there is nothing in the legislation that makes those objectives harder to achieve.

Anglo American appreciates the opportunity to provide feedback, on the draft Bill regarding the points made in this submission. Please direct any inquiries to our Government Relations Manager, Kirsten Livermore at [REDACTED]

Yours sincerely

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