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To the Committee Secretary  
State Development, Natural Resources and Agricultural Industry Development Committee  
Parliament House  
George Street  
Brisbane Qld 4000

[sdnraidc@parliament.qld.gov.au](mailto:sdnraidc@parliament.qld.gov.au)

Dear Committee Members

**Re: Consideration of the *Mineral and Energy Resources Legislation Amendment Bill 2019***

I am writing to express my concerns regarding the *Mineral and Energy Resources Legislation Amendment Bill 2019 (Bill)* relating to industrial manslaughter as I believe the current drafting will have a significant impact on statutory holders including Site Senior Executives (SSE's) and will not achieve the goal of improving safety culture in the mining industry.

I am a mine site safety executive (SSE) with over 30 years in the mining industry (with 11 years as an SSE). Under the existing legislation, the *Coal Mining Safety and Health Act 1999 (CMSHA)*, I have numerous obligations which are designed to protect the safety of our workforce. I take these obligations very seriously in discharging my duties. I am supportive of all initiatives that will result in improved safety outcomes and an improved safety culture for our industry. I have concerns though that there are elements in the Bill that will actually be counter-productive and drive the opposite result.

As a mine Site Senior Executive (SSE) with over 30 years in the mining industry, I am passionate about protecting my people and their safety. I take any injury personally and strive to ensure repeat events do not occur. I set clear expectations when on site and hold people to account, including myself, when compliance is not achieved. I strongly believe that no matter what role an individual has on site that there is a consistent approach taken when procedures are not complied with.

I pride myself in the safety record at the sites I have personally managed with one achievement being 4 ½ years at one of my mines without a recordable injury which are injuries that prevent a person from resuming their normal role. I attended every return to work and pre-shift meeting when on site and personally facilitated return to work meetings so that a consistent message on expectations was delivered and feedback could be directly fed

back to me so that the message wasn't distorted. During the safety resets last year, I was pleased that numerous Contractors took the opportunity to actively participate in the resets and were not backward in voicing their concerns.

I am a strong believer that good housekeeping indicates a solid safety culture on a site. I set high standards on my site and held people to account to maintain them which would ensure that risk to workers was at an acceptable level. I would take time to travel in rear dump trucks/sit in the cabin of excavators, so I could hear firsthand any safety issues the operators may have but also to gauge the conditions in pit and on haul roads. I would travel with the OCE/Supervisors on their pit inspections, listen to their concerns but to also highlight any areas that needed improvement or rectification, I saw part of my role as being a coach/mentor to the Supervision on site so that there a degree of consistency in the application of standards. There was always positive feedback from supervision, employees and contractors for taking the time to listen to their issues and more importantly take action to rectify any concerns.

Good safety culture is built on an environment of trust. It cannot be taken as a given when you are first promoted or relocate to another site, trust must be earned. Trust isn't given gained easily when working with a new crew or individual, it takes work, it requires consistency but most importantly it requires an empathetic approach to workers views and concerns. Workers need to be listened to, they need an environment where they feel safe to raise concerns without fear of reprisal. I took pride in creating that safe environment where workers could speak up by showing them that I was open to listening to them and I expected my team to do the same.

Lastly every Coal Mine Worker on my sites knew they had my absolute authority to stop the job if it became unsafe and I would reward them for doing so. One example was if rain effected a circuit they could pull the circuit up safely without having to wait for instructions from the Shift Supervisor or OCE.

My key concerns with the legislation are:

**1. The Bill should exclude statutory holders under the CMSHA Legislation**

The definition of "senior officer" is very broad and ambiguous. The Bill should deal with offences by corporations and executive/senior officers not statutory holders to ensure that this is consistent with the application of the industrial manslaughter provisions in other Queensland workplaces through the Workplace Health & Safety Act.

I am concerned that the Bill, given the unique nature of the CMSHA which creates statutory roles such as SSEs, Underground Mine Managers, Open Cut Examiners, Ventilation Officers etc, will capture people on our sites beyond the original intent of Government policy.

The CMSHA 1999 has very specific obligations for people on site including statutory position holders. Specifically, s 39(f) requires all persons on site *'not to do anything wilfully or recklessly that may adversely affect the safety and health of someone else at the mine'*. There are pre-existing processes in the CMSHA that deal with serious breaches including the type of incidents that would attract the response of the industrial manslaughter provisions in the Bill.

Additional industrial manslaughter provisions may result in a reluctance for people to take on statutory roles and make decisions on site. This would drive a poorer safety culture through losing experienced professionals from our industry.

**Recommendation:** I respectfully recommend to the Committee that it include in the Bill's definition of Senior Officer, a similar exception to the definition contained in s. 47A (4) CMSHA:

"Senior officer of a corporation does not include a person appointed as, or whose position reports directly or indirectly to, the site senior executive for a coal mine".

## 2. Test of Negligence is ambiguous – Bill should be “recklessness or gross negligence”

The Bill uses the term “negligence” yet the Explanatory Notes refer to “recklessness or gross negligence”. This is ambiguous. If the punishment could include jail time then the degree of negligence should be the same as for crimes generally, that being criminal negligence.

**Recommendation:** I ask the Committee to insert in the Bill the express term “recklessness or gross negligence” in the Bill to avoid any ambiguity.

## 3. Defences

The defences that apply to the offence of manslaughter under the *Queensland Criminal Code Act 1889* should also apply to an offence of industrial manslaughter under resources safety and health legislation. It is unacceptable to exclude such defences when the punishment might include jail time.

**Recommendation:** In addition to deleting s48B from new Part 3A, so that s 23 of the Criminal Code does apply as well as s 24 of the Criminal Code, there should be an additional defence for those individuals who can demonstrate that they took all reasonable precautions and exercised proper due diligence.

## 4. Requirement for Statutory Holders to be employees of the Coal Mine Operator (CMO) is impractical (Division 2 amendments)

The industry has been surprised by the addition of Division 2 amendments which were not previously included in the consultation draft released in 2019. There has been inadequate explanation and justification as to why this is necessary without any specific data to back up the claims. This change is unworkable in the mining industry and will result in considerable administrative burdens and drive away experienced professionals and not achieve a better safety culture.

At Peabody operated sites every person whether an employee, contractor or visitor will openly report any safety incidents. I did this at my time at Millennium Coal Mine by publicly recognising good safety performance such as a Coal Mine Worker, including Contractors pulling up a circuit or task if it was unsafe, I had labour hire contractors who on numerous times would pull up circuits, especially if rain had made the circuit unsafe, they didn't need to wait on instructions from the Shift Supervisor.

I do not think that the Division 2 amendments will help improve the safety culture in the industry. Rather it will simply cause a distraction while we transition to this requirement and take us away from the more important focus of being visible leaders at our sites. Instead of being with our workers having meaningful safety interactions and continuing to reduce risks, we instead will be completing paperwork and struggling to fill statutory roles.

This is because the amendments will affect the mining industry as follows:

- a. Peabody staff at some mines may not currently employed by the CMO. They are employed by another Peabody company that employs our staff across our Australian business and mines. I would expect that others in the industry are

also structured this way. We have the absolute right to raise safety concerns no matter our employer on paper.

- b. There are limited statutory holders in Queensland. Many of these people are over 50 years of age. Some people choose to contract individually to a company rather than be an employee. These individuals may make this choice for personal reasons eg only seeking relief roles (eg to cover staff absences) or to earn income as a sole consultant/contractor. This is an individual's choice. These people may choose to leave the industry during the next 12 months especially those closer to retirement. This will not drive a better safety culture. It will be difficult to fill existing roles and to find relief coverage.
- c. Specialised contractors carry out specific work and they will sometimes be required to have their own statutory holders eg development work at an underground mine will have their own deputies (statutory roles under the CMSHA). It will be unworkable to have these people transferred to the CMO for the period that they will be working at a particular mine site. This will result in interruptions to their employment tenure and result in considerable administrative burden for them and their employers.
- d. Closed mines undertaking Rehabilitation works require the services of an EEM as an example to undertake scheduled electrical inspections. They are required to be on site permanently or when the directly employed OCE requires leave or is unexpectedly ill the use of a part time replacement is the viable option.

**Recommendation:** Remove the Division 2 amendments.

##### **5. The Bill is likely to drive poorer safety cultures**

I am also concerned that the Bill will result in the reluctance of the industry to share important safety learnings. Currently the industry has an open-door policy for sharing safety incidents and learnings which allows all mines to continuously improve safety performance. Industrial manslaughter is likely to result in companies and individuals being more defensive and the over use of legal professional privilege. This will be a distinct disadvantage in driving an improved safety culture across the industry.

I am committed to improving the safety performance of the mining industry in Queensland. I respectfully ask the Committee to make the recommended changes to the Bill to achieve the desired effect of improving safety culture and ensuring that experienced professionals continue to work in this industry.

Yours sincerely



John Anger (SSE – BOE-SSE/09/199)  
Director Safety, Health, Environment and Mine Closures