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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 SSEs and will not achieve the goal of improving safety culture in the mining industry.

I am a mine site senior executive (SSE) with 35 years in the industry (with 11 years as an SSE). Under the existing legislation, the *Coal Mining Safety and Health Act 1999 (CMSHA)*, I have over [200] 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 person who has had 35 years operational experience in underground mines, I take the safety of the personnel very personally. It is in the interest of individuals and our business to keep people safe from harm. I proactively encourage safe behaviors and practices. The impact of injuries and fatalities are devastating to all affected.

I always use 3 points when planning activities, or when faced with situations to make the correct decision. These being;

- The safety of personnel and the mine
- Are we complying with the legislation?
- We cut coal safely and efficiently

The start of shift slides that I use to maintain a consistent safety message, keeping it simple, and aligning with the safety reset day "The most important thing to come off the mine site today is you", and how do we do that so all personnel are empowered. We do this by;

- We do not take short cuts

- We do not accept or walk past an unsafe act or condition
- We make sure that the decisions we make do not put us in a position that we will regret.

I have had the opportunity to work with a vast range of people over the years and each with a differing view. I came into Statutory positions to make a difference and to encourage others to make a difference. At times during my career I have seen some managers who do not want to hear bad news and they brow beat the person who delivers that news. I however embrace that news and use it to strengthen relationships and the safety culture at the mine.

I have made a lot of words and how have I demonstrated that in the past and currently, by conducting observations and interactions with work groups. During these observations if the activity is being conducted to a high standard I congratulate these people for their efforts. I have also found activities that are being undertaken to a low standard without appropriate controls and I have stopped these activities until the controls have been implemented.

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 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.

**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.

**Recommendation:**

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 my site it is my expectation that every person whether an employee, contractor or visitor will openly report any safety incidents. I do this through;

- The induction process and expectations no matter if you are a contractor or employee, you have the same obligations.
- The visitors induction process explains that you have to report any safety concerns to your host

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. My staff and I are not currently employed by the CMO for our mine. We 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. The legislation prior to the 2001 Regulations and the 1999 Act required that the Deputy be employed by the colliery, can the review committee consider changing the employment options so that they are employed by the mine site.

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

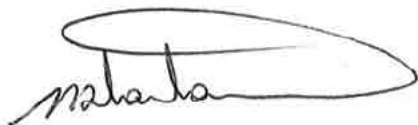
#### **5. The Bill is likely to drive poorer safety cultures**

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.

I would just like to finish by saying that the legislation is a document to protect all of the concerned parties, and these parties are also the Statutory persons on the mine site. I feel that by making the changes above will have the opposite impact. I also believe that if everyone at site does everything right we will have no problems and that is the problem we have been faced with, not everyone will do the right thing. My question to the parliamentary committee is how am I protected if someone at my mine site makes a poor decision, despite all the systems and controls I have put in place and the culture I have encouraged.

Yours sincerely



Neville Stanton  
Site Senior Executive  
Underground Mine Manager