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25 February 2020

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

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

I am a mine Site Safety Executive (SSE) with 30 years in the industry (with 15 years as an SSE). Under the existing legislation, the *Coal Mining Safety and Health Act 1999 (CMSHA)*, I have many 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 SSE with 30 years' experience in the mining industry and over 20 years' experience in the coal industry, I am passionate about safety. I was part of the original group of professionals who were involved in the latest major revamp of the mining legislation, and then I was working as SSE when the new legislation was introduced to industry. As a part of this original review group, I was involved in the frontline of a major cultural shift in the way safety was managed across the Queensland black coal mining industry. The shift from old style proscriptive legislation to one based primarily on the management of risk was a major change for the industry, with every coal mine worker from truck driver right through to senior executives having to learn a new way of doing things.

My experience on the front line of coal mine safety has taught me the importance of a good culture, and I spend a large amount of my time in the industry working to ensure the culture of the mines I operate in are encouraged to be open and trusting places. It is my experience

that coal mine workers will readily report issues requiring attention in environments where they feel valued and trusted. I have regularly run workshop sessions on site for all people in leadership positions (both statutory appointed roles, and other leadership positions) to ensure there is clear alignment on the creation and maintenance of a culture which encourages reporting, and appropriate action on issues requiring attention.

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. This is already happening with key statutory roles such as Open Cut Examiner and Underground Mine Manager, where shortages of suitably qualified people results in very high wage rates for roles where there is a shortage.

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 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 jailtime.

Recommendation:

In addition to deleting s48B from new Part 3A, so that s23 of the Criminal Code does apply as well as s24 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 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 a system of safety interactions where every person on site working in a leadership role is required to conduct at least two interactions per week with a person who is on the frontline performing tasks. The interactions are loosely structured to include person to person contact and a frank discussion about the tasks being undertaken so the various measures being used to control risks can be discussed, evaluated and improved if required.

There are several reasons why these interactions are critical to the success of the safety management effort including keeping safety at the forefront of workers' minds, but I believe the most important reason is that they allow relationships to be built between coal mine workers, fostering trust.

I do not think that the Division 2 amendments will help improve 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 will be completing paperwork and struggling to fill statutory roles instead.

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, as a result of the introduction of these requirements. I do not believe this measure will 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.

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 industry participants 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



Mark Turner
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BOE-SSE/10/011