



26 February 2020

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

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

Dear Sir/Madam

**Re: Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Industrial Manslaughter)**

Thank you for the opportunity to provide a submission to the Committee regarding the Mineral and Energy Resources and Other Legislation Amendment Bill 2020. Our submission pertains to Clauses 203 – 208; related to the inclusion of Industrial Manslaughter provisions into the Petroleum and Gas (Production and Safety) Act 2004.

Arrow Energy (Arrow) is a standalone company owned jointly by Shell and PetroChina (50/50). Arrow is an onshore gas company. Arrow explores and develops gas fields, produces and sells coal seam gas and generates electricity. We have been safely and sustainably developing coal seam gas (CSG) in Queensland, Australia, since 2000 and supplying it commercially from the Bowen Basin since 2004 and from the Surat Basin since 2006.

Arrow supports the Australian Petroleum Production and Exploration Association (APPEA) submission (dated 21 February 2020).

As detailed in the APPEA submission; the petroleum and gas industry in Queensland has an excellent record of safety performance. This is a product of our industry's commitment to safety and the effectiveness of the current provisions of the Petroleum and Gas (Production and Safety) Act 2004 (the P&G Act).

Arrow has the following concerns with the Industrial Manslaughter provisions in the Bill:

1. The onshore oil and gas industry in Queensland is committed to workplace safety and has a positive track record in terms of safety performance. Since Q4 2016 there have been no work related fatalities in the Queensland petroleum and gas industry. While any work related death is one too many - Arrow does not believe that the introduction of Industrial Manslaughter into the P&G Act is justified, and risks weakening the effectiveness of the current safety arrangements under the P&G Act.
2. A foundation of the industry's current safety performance and safety culture is its' ability the openly share the findings from incidents so that others can learn and improve - with the goal of avoiding future incidents. The spectre of potential Industrial Manslaughter prosecutions, particularly where there is no limitation on time in relation to starting proceedings, will reduce the open sharing of information and potentially weaken a safety culture that has taken years to develop.
3. Arrow's understanding of the intent of the Bill is to establish an offence of Industrial Manslaughter to apply to **persons with influence over the company as a whole**. Arrow is concerned the current drafting will capture Site Safety Managers (SSMs) and other front line, field based personnel who engage workers as contractors or via labour hire arrangements. It is Arrow position that if Industrial Manslaughter is to be introduced, SSMs should be specifically excluded, and the definitions need to be very carefully considered to avoid inadvertent capture of lower level employees.



4. The draft Bill removes the existing limitation on time in bringing a prosecution for an offence of Industrial Manslaughter. Arrow believes that this places an unreasonable burden on all who are involved with an industrial fatality, including the family, witnesses and others. This limits the ability of organisations to openly share and learn from serious incidents. The original limitation on time of 2 years to bring a prosecution under the P&G Act Section 837 (4) (C) is fairer in our view.

Arrow has provided detailed feedback on the Bill which is attached.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "M. Zaunbrecher". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Michelle Zaunbrecher**  
**Vice President – Health, Safety & Environment Arrow Energy**



## Arrow feedback on Mineral and Energy Resources and Other Legislation Amendment Bill 2020

### Introduction

The need for reform was identified in order to 'strengthen the safety culture in the resources sector'. Given the circumstances surrounding the deaths of workers within the mining sector, Arrow Energy supports the initiative to review the safety performance, and individual safety legislation as it applies to Mining, Quarrying and Petroleum & Gas.

#### 1. Justification for Industrial Manslaughter provision

Justification for the introduction of Industrial Manslaughter laws is on the basis of the need for consistency between provisions of the WHS Act, and the Resources Safety Acts. With respect, this approach belies the oil and gas industries positive record of achievements in safety and compliance, and the effectiveness of the current provisions of the Petroleum and Gas (Production and Safety) Act 2004 (the P&G Act). As detailed in the APPEA submission; the petroleum and gas industry in Queensland has a track record of excellent safety performance on many measures.

Absent from the justification for the introduction of the new laws is any information demonstrating the need for Industrial Manslaughter laws in the P&G Act. Nor is there any evidence to suggest that the introduction of these laws will improve the level of safety or compliance.

Despite the best efforts of employers and their safety management systems, personnel may unintentionally expose themselves or others to harm. Arrow is particularly concerned with Section 799J Exception – The draft Bill in Section 799J removes the defence which has been present in Section 23 (1) Intention – Motive of the Criminal Code Act 1899, namely the defence of an act or omission which occurs independently of a person's will, or an event which the person does not intend or foresee as a possible consequence, or one which an ordinary person would reasonably foresee as possible. The rationale for removing this defence is not clear, recognising that it is based on a common law view of reasonably foreseeable consequences from acts or omissions.

#### 2. Learning from incidents

It is common practice throughout the oil and gas industry to openly share the findings of incidents so that others can learn and improve with the goal of avoiding future incidents. There have been relatively few criminal prosecutions commenced against individuals and companies (vicariously liable for the actions of their employees) under the P&G Act. As with all criminal matters, investigations are conducted in an adversarial climate, with all parties going no further than meeting their legal obligations of disclosure. The spectre of potential Industrial Manslaughter prosecutions which will have no limitation of time for starting proceedings will remove the incentive to openly share the findings of any investigation.

#### 3. Application of Industrial manslaughter offence beyond top-level management

Arrow's understanding of the intent of the Bill is to establish an offence of Industrial Manslaughter to apply to persons with influence over the company as a whole. This intent is not given effect by the Bill.

In particular, the offence is applied to:

- 'senior officers' and 'officers' which would include statutory roles, in particular site safety managers (SSMs), who have operational safety obligations under the P&G Act. SSMs already have significant personal exposure and liability under existing arrangements and increased penalties would therefore not improve safety performance. Such an approach may in fact degrade industry's ability to attract the best staff given the global nature of the petroleum industry.
- 'employers' defined to include a person who employs individuals or engages labour-hire workers or independent contractors (who in turn will be considered as 'workers'), as well as the contracting entity who is the employer of a labour-hire employee.

The above positions are not positions that have influence over the company as a whole and we therefore seek amendment to the Bill as proposed by APPEA.



The most effective way to ensure that statutory roles under the P&G Act are not captured by the term 'senior officer' is to seek to have them specifically carved out in the drafting of the offence and the relevant definitions.

#### **4. Limitation on Time for Starting Proceedings -**

The draft Bill introduces Section 837 (clause 204) of the P&G Act Offences under Act are Summary and in so doing it removes the limitation on time in bringing a prosecution for an offence of Industrial Manslaughter. Arrow believes that this places an unreasonable burden on all who are involved with managing an industrial fatality, including the family, the witnesses, the investigating personnel etc. The original limitation on time of 2 years to bring a prosecution under the P&G Act Section 837 (4) (C) was fairer in our view.