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Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000
Email: sdnraidc@parliament.qld.gov.au

Dear Secretary,

I refer to the call for submissions on the *Mineral and Energy Resources and Other Legislation Amendment Bill 2020* (the **Bill**).

Please find attached to this cover letter submissions from Idemitsu Australia Resources Pty Ltd (**Idemitsu**) in relation to the Bill.

Yours sincerely,

Steve Kovac
Chief Executive Officer
Idemitsu Australia Resources

SUBMISSION BY IDEMITSU AUSTRALIA RESOURCES PTY LTD**MINERAL AND ENERGY RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2019****26 FEBRUARY 2020**

Thank you for the opportunity to provide a submission on the *Mineral and Energy Resources and Other Legislation Amendment Bill 2019 (MEROLA Bill)*.

Idemitsu Australia Resources Pty Ltd (**Idemitsu**) supports and adopts the Queensland Resources Council Submission regarding the MEROLA Bill.

Idemitsu also makes the following submissions.

PERSONS IN STATUTORY POSITIONS TO BE EMPLOYEES OF THE COAL MINE OPERATOR

1. Idemitsu does not support the proposal under the MEROLA Bill for persons in statutory positions to be employed by the coal mine operator. Idemitsu submits that this is a disproportionate and unnecessary way to address the perception that persons who are not directly employed by the coal mine operator may more readily be exposed to reprisal action for raising safety matters.
2. It is asserted in the Explanatory Notes that the objective of these changes is to ensure that statutory position holders under the *Coal Mining Safety and Health Act 1999 (CMSH Act)* can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment. The Explanatory Notes do not address this assertion in any detail. Idemitsu is not aware of any compelling evidence, such as evidence tested in the courts, or an anonymous survey of statutory position holders at all coal mines in Queensland, that supports the assertion. If there is any such evidence available to support this assertion, Idemitsu encourages the immediate release of that information for further consultation and in the interests of transparent government.
3. Section 275AA of the CMSH Act already contains strong protections for persons from reprisal on the basis that the person has made a complaint, raised a safety issue, or given help to an official regarding a safety issue. It is therefore clear that the regulator already has the ability to hold persons accountable for reprisal action of the kind that the MEROLA Bill seeks to remedy. Idemitsu believes that historical levels of prosecutions for reprisals under section 275AA is instructive. This indicates that reprisal action is not rife within industry and that section 275AA is doing its job. That said, if parliament remains concerned that section 275AA does not provide a sufficient deterrent from reprisal action, including in respect of statutory position holders who are not directly employed by coal mine operators, the obvious answer would be to raise the maximum penalty available for a breach of section 275AA, rather than to directly prescribe the entity who must employ the statutory official holder. The fact that this simple step has not been proposed in the MEROLA Bill is difficult to reconcile with the far more interventionist step that has been proposed.
4. Above all, Idemitsu is concerned about the very real prospect that the proposed prescription will lead to even greater shortages of appropriately qualified and experienced persons prepared to work in statutory positions within the industry, especially when coupled with the proposed new offence of industrial manslaughter, as it applies to "senior officers". Statutory position holders have traditionally valued their ability to choose to work as contractors or as employees of entities other than the coal mine operator. Removing that choice, and the potential financial and tax benefits that accompany it, will only serve to make other coal mining jurisdictions more attractive for those workers.

INDUSTRIAL MANSLAUGHTER

1. Idemitsu considers that the introduction of a separate industrial manslaughter offence is not justified. Very significant offences addressing fatalities occurring at coal mines already exist in the CMSH Act. It is undesirable to over-complicate the CMSH Act with new offences that cover the same conduct. If parliament is concerned that the penalty for conduct involving gross negligence causing death of a worker at a coal mine is inadequate, then the better and more effective course is to increase the

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maximum penalty available under existing offences where, as an aggravating circumstance, the conduct causing the death involves gross negligence in breach of a relevant existing duty.

Making it clear that the negligence required is "criminal negligence"

2. Idemitsu remains deeply concerned that the drafting of the proposed offence does not make it clear that a necessary element of the offence is "criminal negligence" as opposed to "negligence". Addressing this concern only requires the insertion of a single word and will otherwise remove the present uncertainty about how the proposed amending section is to be interpreted by the courts. Given the punitive nature of the offence and the severe consequences that are likely to follow for any individual convicted of the offence, it seems a simple fix in order to avoid any potential injustice (however unlikely that may seem to the drafters of the amending provision).

The proposed law will lead to confusion and impose an unfair and unreasonable burden

3. Part 3 the CSMH Act prescribes a number of duties on coal mine operators, site senior executives, officers of corporations, workers and others. A breach of these duties can result in an offence under section 34 of the CSMH Act.
4. A very significant legal issue with the proposed offence of industrial manslaughter is that, unlike the offence of manslaughter in the Criminal Code¹, or existing offences under the CSMH Act, the MEROLA Bill sets out the proposed offence of industrial manslaughter without attaching it to any statutory duty. This begs the questions: what is the duty that the employer or senior officer must not be negligent in discharging to avoid a charge of industrial manslaughter? Is it the common law duty to take reasonable care? Or is it a duty held by that person under the CSMH Act? If so, which one or ones? Does it extend only to duties that attach to them as "senior officers"? Or does it also extend to the duties that attach to them as a "coal mine worker"? Does it extend to duties under the Regulations? This vagueness and uncertainty is likely to lead to time consuming and costly litigation about the validity or enforceability of the proposed offence. It may also result in prosecutions being successfully defended on a technicality or otherwise overturned on appeal.
5. The duties imposed on coal mine operators, contractors, service providers etc, site senior executives and individual statutory position holders under the CSMH Act are the most onerous duties imposed under safety laws in Queensland, and possibly in Australia. They are certainly more onerous than those imposed on persons conducting a business or undertaking and their workers under the harmonised *Work Health and Safety Act 2011*. It follows that, if the duty that an employer or senior officer must not be negligent in discharging is interpreted to include any of the extremely onerous duties imposed on those persons under the CSMH Act (referred to above), the proposed offence of industrial manslaughter will have a far greater reach over, and disproportionate impact upon, those persons than it would have on equivalent persons at other workplaces in Queensland (or for that matter, Australia). This cannot be a fair or properly reasoned approach by a legislature.

The removal of defences otherwise available to citizens charged with similar offences

6. Idemitsu is extremely concerned about the proposed absence of any defences for the proposed offence of industrial manslaughter. It is difficult to comprehend how defences which are available for manslaughter under the Criminal Code (and would apply to a worker) could justifiably be removed in respect of industrial manslaughter under the CSMH Act, particularly in so far as individuals are concerned and particularly given the very serious penalties involved which equate to those for manslaughter under the Criminal Code. Similarly, under the MEROLA Bill, the defences in Part 3,

¹ Criminal negligence is founded in an offender breaching a duty under the Criminal Code. Chapter 27 of the Criminal Code prescribes a number of duties relating to the preservation of human life. A breach of duty as set out in the Criminal Code can result in the offence of manslaughter.

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Division 4 of the CSMH Act will not apply to the proposed offence of industrial manslaughter. These defences otherwise apply in any proceeding against a person for a contravention of an obligation imposed under Part 3, Division 2, 3 or 3A of the CSMH Act. There can be no proper policy or other justification for these defences not also applying to the proposed offence of industrial manslaughter.

Expanding the definition of officer

7. The introduction of additional definitions for officers such as "senior officer" and "executive officer" is unnecessary and only serves to further complicate the law. "Officer" is already appropriately defined in the CSMH Act by reference to the *Corporations Act 2001* definition of "officer" (while expressly removing any person appointed as, or whose position reports directly or indirectly to, the site senior executive for a coal mine). Where the employer is a corporation, a "senior officer" is defined in the MEROLA Bill to mean an "executive officer of the corporation". The term "executive officer" is in turn defined to mean "a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer". Notably, this is a wider definition than the comparable definition of officer in the CSMH Act and in the *Corporations Act*. Importantly, the definition is likely to catch the site senior executive and, depending on the management structure, some members of the senior leadership team at a mine. Persons in such operational roles are not captured by the industrial manslaughter offence as it exists under the *Work Health and Safety Act 2011*. There does not appear to be any sensible justification for this approach. Furthermore, applying the industrial manslaughter offence to the SSE will be inconsistent with the non-application of the "officer" duty to the SSE in section 47A of the CSMH Act.

Idemitsu would be pleased to provide further feedback or clarification on its submissions where requested to do so.