

27 February 2020

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

**RE: The proposed introduction of an Industrial Manslaughter Offence to the *Coal Mining Safety and Health Act 1999 (Qld)***

Dear Committee Members,

We write to you as the Site Senior Executives (**SSE**) currently appointed under the *Coal Mining Safety and Health Act 1999 (Qld)* (**CMSH Act**) and working in the Queensland coal mining industry for BMC and BMA. Together, we represent 382 years of experience in Queensland's coal mining industry.

Please consider this submission alongside the previous letter we sent the Minister of Natural Resources, Mines and Energy in November 2019 (attached). Our intention in this submission is not to go over and reiterate what has already been stated, but rather focus upon sharing our thoughts on three areas including:

- 1) Legislative Overlap
- 2) Safety Culture
- 3) Risk Appetite

We also note that BHP is making its own submission on this topic.

**Legislative Double Up**

A significant review of Queensland's mining legislation was undertaken in 1999 following many Royal Commissions, Courts of Enquiry and accident investigations – the CMSH Act is essentially written based upon the learnings from the past. It has been written specifically for the mining industry and contains the learnings from the mining industry and the disasters of the past.

We believe that trying to merge the industrial manslaughter provisions of the *Work Health and Safety Act 2011 (Qld)* (WHS Act) into the CMSH Act fails to take into consideration the purpose, history and considerations of the CMSH Act.

SSEs have many specific obligations defined in the CMSH Act, with existing penalties that apply for failure to meet these obligations. Such provisions are not provided for in the WHS Act, as the role of the SSE is not contemplated in that legislation. Therefore, while the Bill before the Committee does not expressly exclude SSEs, it has the potential to “double up” on the SSE, while at the same time creating uncertainty for other members of the management structure.

Given the burden that already rests on SSEs, we ask that the Committee recommend that the definition of “senior officer” in the Bill expressly exclude SSEs.

### **Safety Culture**

In our pursuit of safety outcomes across the BMA/BHP sites, we recognise the importance of getting ahead of hazards, particularly those hazards that have the potential to cause fatal outcomes.

We know these hazards exist at our mine sites every single day and we rely upon our managers and supervisors to be actively searching out and correcting potential hazards for the safety of our workforce.

We also rely on our frontline coal mine workers, who feel the confidence and support to step up, identify and correct potential hazards. An engaged workforce means that we have around 20 sets of eyes for every one supervisor across our mines, all dedicated to identifying hazards and keeping the workforce safe. This is where we feel the power of a proactive and widespread safety culture. We can never rest in our united pursuit of these hazards – we have to find them and correct them, with chronic unease, always knowing that the job is never done. We know we have a way to go to continue to foster this cultural outcome, but we believe we have made some inroads.

Across BMA/BHP our teams have been reporting more hazards than ever before. Over the last two years we have seen nearly double the number of hazards reported than the year before, with strong reporting performance again this year. It's not that there are any more hazards, it's that our teams are becoming more proficient at identifying hazards, feeling confident to report them and working out ways to rectify them to keep people safe. We have led and driven this outcome across each of our sites. We want to do everything we can to ensure that our workforce feels empowered to speak up about safety – this is the best way to ensure the long-term safety of our industry.

If SSEs are not expressly excluded from the industrial manslaughter offence, our ability to encourage a culture of safety and proactively report hazards will be impaired by the perceived need to adopt legally defensive behaviours and reduce reporting, out of fear. This will pose an ethical dilemma for SSEs across the industry – do we continue our proactive cultural pursuit of hazard reporting, knowing that we are eliminating fatalities in the industry, or do we adopt an approach of self-preservation in the face of the law, minimising documentation so that we may stand a better chance in court in the event of a fatality? Fear drives the wrong safety outcomes. It has to be safe to speak up and call out hazards.

On this basis, we recommend that the “senior officer” to which the industrial manslaughter offence applies should expressly exclude SSE's and those reporting into SSEs.

### **Risk Appetite**

Clearly, the recent fatalities that have occurred in the industry are an unacceptable outcome. We will continue to provide leadership in supporting the work that is needed, following the report by Dr Sean Brady.

Fundamental to the mining industry on a day-to-day basis is the management of risk. There is an ongoing balance that plays out between risk and reward, what is acceptable and what is unacceptable. Risk management is a fundamental part of the SSE's role. However, if the Bill is passed in its current form, each of us will deeply contemplate whether the risk profile of continuing in the job of the SSE creates an unacceptable level of risk for us, given the additional legal exposure this Bill could create.

It is debatable whether those with a high-risk appetite are suited to the role of SSE. SSEs who have been around fatalities carry that weight with them every day for the rest of their lives. There is a knowledge of this responsibility when we take the role. We consider the risk and we do everything that we can - physically and mentally - to ensure our people go home safely every day. It is a 24 hour a day, 7 day per week job. Fundamentally, the role of the SSE is for people who care about people, often at the sake of significant personal sacrifice.

### Conclusion

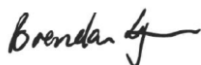
We understand that there is an appetite for improved safety outcomes across the mining industry and we understand that, in our roles as SSEs, we play a pivotal role in bringing those changes into action.

We are united in our belief that the application of the industrial manslaughter offence, in its current form, will not generate the required safety outcomes, for the reasons outlined above.

We hope that the Committee will consider this submission and amend the Bill, so that the "senior officer" to which the industrial manslaughter offence applies expressly excludes SSEs and those reporting into SSEs.

We will happily appear before the Committee as part of the SSE forum.

Yours sincerely,



Brendan Lynn

Peak Downs General Manager / SSE

29 Years Mining Industry Experience

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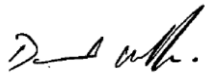
Sean Milfull

Goonyella Riverside General Manager / SSE

20 Years Mining Industry Experience

[REDACTED]

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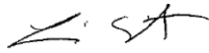
Dan Illife

Saraji General Manager / SSE

21 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Lori Smith

Daunia Mine General Manager / SSE

19 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Brad Prytherch

Caval Ridge Mine General Manager / SSE

15 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Mick Thomas

Broadmeadow Mine General Manager / SSE

14 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Tom Lukeman

Blackwater Mine General Manager / SSE

30 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Sonia Winter

Poitrel General Manager / SSE

25 Years Mining Industry Experience

[REDACTED]

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Edan Stolberg

South Walker Creek General Manager / SSE

24 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Doug MacGibbon

BMA SSE

25 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Brad Holden

BMA SSE

24 years Mining Industry Experience

[REDACTED]

[REDACTED]



Brent Gee

BMA SSE

16 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Ken Singer

BMA SEE

34 years Mining Industry Experience

[REDACTED]

[REDACTED]



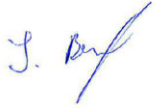
Ross Truelson

Norwich Park Mine SSE

38 Years Mining Industry Experience

[REDACTED]

[REDACTED]



Tony Briffa

BMA SSE

28 Years Mining Industry Experience

[Redacted]

[Redacted]



Liz Watts

BMA SSE

20 Years Mining Industry Experience

[Redacted]

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11 November 2019

Hon Dr. Anthony Lynham  
Queensland Minister for Natural Resources, Mines and Energy  
1 William Street  
Brisbane QLD 4000

Dear Dr. Lynham

**Consultation on the proposed introduction of an Industrial Manslaughter Offence to the Coal Mining Safety and Health Act 1999 (Qld)**

We write to you as Site Senior Executives (**SSE**) currently appointed under the *Coal Mining Safety and Health Act 1999* (Qld) (**CMSH Act**) and working in the Queensland coal mining industry for BHP and BMA.

Our highest priority every day is the safety of our people working at our sites. We support policy reform that will improve health and safety outcomes. However, we hold serious reservations about the Queensland Government's proposed introduction of an offence of Industrial Manslaughter (**IM**) into the CMSH Act, as set out in the *Consultation Draft of the Mineral and Energy Resources Legislation Amendment Bill 2019 (Draft Bill)*. We are concerned that the Draft Bill, if passed in its current form, will negatively impact safety culture and standards within the Queensland coal mining industry.

**Application of IM offence to SSEs and site management**

In particular, we are concerned about the proposed broad application of the IM offence. As it stands, a "senior officer" may be subject to prosecution for the offence. "Senior officer" is broadly defined, and could potentially extend to SSEs and site-based management reporting to SSEs. It is not appropriate to import into the CMSH Act an offence from the *Workplace Health and Safety Act (WHS Act)*, which is structured very differently.

In particular, SSEs have very broad obligations and duties under the CMSH Act to ensure safety on mines, which there is no equivalent of for obligation holders under the WHS Act. This would make the application of the proposed IM offence to SSEs harsh and unreasonable in its operation.

In turn, this is likely to have the following consequences which will negatively impact on safety standards and culture in the mining industry in Queensland:

- decreased willingness to be open and transparent with safety lessons, including following fatalities;
- decreased cooperation between mine site personnel and officials;
- decreased willingness for qualified people to become (or stay) SSEs at a time where there is already a shortage of qualified individuals.

Our position is that the IM offence should instead only apply to the most senior levels of an organisation, consistent with the 'officer' definition in s47A of the CMSH Act and the



*Corporations Act 2001* (Cth). Site-based statutory position holders exercising their statutory functions with due care should be expressly excluded from the scope of the IM offence.

#### **Other concerns with the IM offence**

- The standard of proof to be met in the proposed IM offence is that of 'negligence' – where the person's negligence causes or subjectively contributes to a death. We are of the view that the required standard to be met for conduct of an individual should instead be a subjective test of 'recklessness'. If that is not accepted, the standard that should be applied should be that of 'gross negligence.'
- We are concerned with the proposed exclusion of the defence of 'accident', which is available under s23 of under the *Criminal Code Act 1899* (Qld) in respect of manslaughter, but is expressly excluded under the draft Bill. Because IM is a criminal offence, all of the defences available under existing criminal legislation should be available.
- Because of the serious nature of the IM offence, we consider it appropriate that the offence should only be prosecuted by the Director of Public Prosecutions (**DPP**), consistent with the DPP's level of expertise in the area.
- We are concerned that the Draft Bill does not designate any time limit to commencing a prosecution for IM. Given the broad application of the IM offence as it stands, we are very concerned with the level of uncertainty it introduces for those who fall within the scope. We are of the opinion that the same limitation periods which apply to existing offences under the CSMH Act should apply to the IM offence, to give closure and certainty to everyone in an appropriate timeframe after a terrible tragedy such as a fatality at site.
- We consider the lack of discretion on penalties contemplated in the Draft Bill to be inappropriate. Courts should have the discretion to impose either financial penalties or imprisonment – imprisonment should not be the only available option.
- The immunities under s201 of the CSMH Act which prevent the use of incident investigations reports as evidence in a prosecution should expressly apply to an IM offence, and should be extended to apply to any information or documents created in connection with the investigation report.
- Similarly, an individual being investigated for a possible breach of the IM offence should be entitled to the same rights and protections as afforded under general criminal laws, including the privilege against self-incrimination in relation to any responses they are asked to make and any documents they are asked to provide. Alternatively, where individuals are compelled to answer or provide documentation during an investigation, broad protections preventing the use of that information in a prosecution should be available.

As noted above, in light of these serious concerns, it is our view that the Draft Bill, if enacted, will have significant negative impacts on safety in Queensland's coal mining industry, and we ask that the Draft Bill be amended to address these concerns.

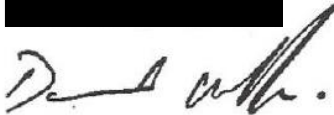
We would like to have the opportunity for some of us to meet with you in person to discuss the matters listed here so as to provide further context in relation to the impacts we foresee with the proposed legislation.

Yours sincerely,



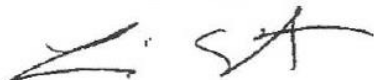
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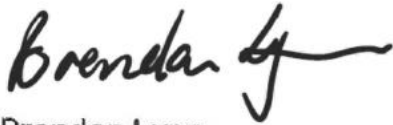
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