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24 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 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 16 years in the industry (with 2 years as an SSE). Under the existing legislation, the *Coal Mining Safety and Health Act 1999* (**CMSHA**), I have a significant number of 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.

I have worked across both QLD and WA in various statutory roles. I do not ignore safety concerns brought to me, I action them and expect my team to action them. Over the course of my career I have unfortunately worked at sites that have experienced fatalities, and it is a terrible experience for anyone to go through, both at a site level and a personal level. No one works in this industry to ever have their workforce hurt themselves or not go home at all. I am incredibly passionate about safety, it is a topic that is discussed everyday, that drives the behavior of the people on site, the way we talk, work and act. I ensure that I continually push for a system that supports our goal of zero harm. Part of this is the safety reporting culture, which is incredibly robust at Moorvale. We do not differentiate contractors or company workers. Everyone is treated equally when raising concerns and you will hear that from the workforce, this was made loud and clear during the recent safety resets in 2019. If contractors feel that they are not able to raise safety concerns tit is our responsibility as

leaders to encourage this openness. This is important to me and I encourage this at Moorvale.

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. 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 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. It is unacceptable to exclude such defences when the punishment might include jail time.

   Recommendation:

in addition to deleting s 48B from new Part 3A, so that s 23 of the Criminal Code does apply as well as s 24 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 various channels, for example, monthly contractor review meetings, safety interactions with the workforce, the recent safety resets where contractors and staff were involved in group discussions to raise concerns.

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 e.g. only seeking relief roles (e.g. to cover staff absences) to allow for more job flexibility 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 e.g. 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 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.

Yours sincerely

Megan Kline
Operations Manager / SSE – Moorvale Mine