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Committee Secretary  
State Development, Natural Resources and Agricultural Industry Development Committee  
Parliament House  
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Dear Committee Secretary,

I refer to The Mineral and Energy Resources and Other Legislation Amendment Bill 2020 that was introduced into the Queensland Parliament on 4 February 2020. Please accept this as my personal submission regarding the MEROLA Bill 2020.

I am employed as a General Manager and hold the statutory position of Site Senior Executive for a coal mine. I have worked in the coal mining industry, both surface and underground, for the past twenty-four years in various management positions and have been a Site Senior Executive at two surface coal mines for the past fifteen years. My highest priority in my role as the Site Senior Executive has always been the safety and health of coal mine workers.

I would like to address Part 3A of the Amendment to the Coal Mine Safety and Health Act 1999 dealing with Industrial Manslaughter. The Department of Natural Resources, Mines and Energy website list the three intentions of the legislation as being:

1. The Bill strengthens the safety culture in the resources sector through the introduction of industrial manslaughter.
2. Under the proposed laws, senior officers and corporations can be tried for industrial manslaughter if criminal negligence is proven for a workers' death.
3. The proposed legislation is consistent with existing offences under the Work Health and Safety Act 2011 and will provide consistent treatment of criminal negligence.

I will address these three intentions in relation to the MEROLA Bill 2020, applicable community research that supports or does not support these intentions, and my own industry experience in these matters.

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***Intention 1: The Bill strengthens the safety culture in the resources sector through the introduction of industrial manslaughter.***

Safety is a very complex issue in society that involves many factors requiring continuous effort by Government Regulators, employers, and employees to prevent serious injuries and fatalities in the workplace. To say that the introduction of Industrial Manslaughter into the CMS&H legislation will “strengthen the safety culture in the resources sector” does not support the findings of studies into past fatalities or studies that have concluded that increasing penalties are not the answer and do little for prevention.

As reported in *“Crime & Punishments by Andrew Bushnell - Institute of Public Affairs: As a matter of principle, overcriminalisation is a perversion of the criminal law, expanding it to areas where what is truly required is a remedy, not retribution. It is essentially an ideological argument about which matters deserve public opprobrium. Call it legislative virtue signaling.”*

It is my view that the safety culture in the coal mining industry has been weakened and not strengthened by the “fear of blame or disciplinary action” that prevents incidents from being openly investigated to determine the root cause and to put in place corrective actions that can effectively prevent reoccurrences. This is supported by the findings of the *Brady Review, A Review of all Fatal Accidents in Queensland Mines and Quarries from 2000 to 2019: “If the industry continues to take a similar approach to safety, using the same philosophies and methodologies adopted over the past 19½ years, then similar safety outcomes are to be expected.”* A specific recommendation from the report states that *“The industry should recognise that the causes of fatalities are typically a combination of banal, everyday, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision. Internal incident investigations in mining companies must strive to capture these combinations of causal factors, and avoid simplifying them to a single cause, such as human error, bad luck or freak accidents, which has the potential to mask the underlying system failures.”*

The report also goes on to state that *“No single change to the mining industry will reduce this rate, what is instead required is a change in approach to how the industry identifies and controls hazards, as well as how it recognises and addresses when these controls are eroding.”*

To improve safety in the mining industry there needs to be a shift from the focus on lagging statistics (Lost Time Injuries, Restricted Work Injuries) as a measure of how well the industry is performing with safety. At a meeting in 2005 with the Mines Inspectorate regarding industry safety reporting, it was strongly suggested that the focus of the monthly reporting for mines move towards the leading indicators for safety such as number of risk assessments conducted, number of safety procedures update, number of critical safety audits conducted, number of safety observations and toolbox talks conducted as a way to shift the focus to managing the inputs to safety to control hazards and prevent incidents rather than a focus on trying to manage the outcomes after the incidents have occurred.

It is my view that Queensland has very good mine safety legislation and the introduction of industrial manslaughter into the CMS&H Act, as it is currently drafted, will only serve to dissuade

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competent personnel from taking on statutory responsibilities to ensure the safety of mineworkers. Having the threat of industrial manslaughter in the CMS&H Act could increase the reluctance for people to be open and honest during incident investigations for fear of having a record on file that could be used against them in a future criminal investigation. I have always made it clear to my team that the disciplinary process has no place in the incident investigation process as it does not represent a preventive measure nor a corrective action.

The punitive approach has never been an effective solution in the past and such simple examples are speeding fines or drink driving fines to reduce road deaths. These factors are still two of the greatest causes of road fatalities. A proactive approach, taking into account the findings of the Brady Review, would be to have a greater number of experienced Mines Inspectors in the field providing safety reviews and working with mining personnel to continue to improve safety systems, this would be more effective than putting additional resources into committees to develop more rules and costly prosecutions.

***Intention 2: Under the proposed laws, senior officers and corporations can be tried for industrial manslaughter if criminal negligence is proven for a workers' death.***

This above intention refers to "*criminal negligence*" which implies negligence giving rise to manslaughter, generally described as gross negligence. It is negligence of such a serious kind that it far exceeds simple carelessness or negligence that occurs frequently in our society. The proposed MEROLA Bill 2020 Clause 48C (1) (d) and 48D (1) (c) refers to "*negligence*" not "*criminal negligence*" as stated in the DNRME Intention 2.

#### **Corporations:**

Corporations have a responsibility to ensure that workplaces are operated safely and are provided the appropriate resources to support the safety function. In many coal mining operations, the corporate structure is a Joint Venture which usually includes a subsidiary company that is the "Coal Mine Operator" as prescribed in the CMS&H Act 1999. The coal mine operator generally employs the coal mine workers at the mine and has the obligation to appoint a Site Senior Executive (SSE), ensure that the SSE implements a Safety and Health Management System for the mine, and regularly audit the Safety and Health Management System for the mine to ensure that it is effective. It is often the case that the Coal Mine Operator is a company that has a single shareholder being an executive officer, appointed by the Joint Venture, who does not have financial control or play a substantial part in the decision making for the coal mine.

There have been major concerns in the coal mining industry about the disproportionate number of fatalities that involved contracted employees. It was considered that contracted employees received less training, due to their shorter tenure, and were less likely to speak out about safety concerns for fear of losing their jobs. The proposed industrial manslaughter legislation defines the employer as "*employer, for a coal mine, means a person who employs or otherwise engages a coal mine worker.*" It stands to reason that a coal mine operator may be inclined to employ more contractors to remove themselves from the "*line of fire*" should an unfortunate future event occur resulting in a fatality.

Labour hire personnel have been used more frequently in recent times to supplement the workforce during peak periods of work. These personnel generally come from companies that are supplying temporary labour to many industries and do not necessarily have an in-depth knowledge of the health and safety legislation in each of those industry. They rely on the host employer to induct, train, supervise, and keep safe their employees while working on the mine site. In this situation is it the labour hire company that represents the employer, or is it the host employer who engages the labour hire employee, that is taken as being *"a person who employs or otherwise engages a coal mine worker"*? I believe that the definition of "employer" needs to be reviewed in Section *"48A Definitions for Part 3A"* to include *"and has the primary obligation for the safety and health of the employee at the mine."*

As stated previously, I don't believe that a punitive approach provides any benefit to the CMS&H legislation and again restate the Brady Review determination that *"No single change to the mining industry will reduce this (fatality) rate."*

#### **Senior Officers:**

The proposed MEROLA Bill 2020 definition of "senior officer, of an employer for a coal mine", means—

- (a) if the employer is a corporation—an executive officer of the corporation; or
- (b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.

Work Health and Safety Amendment Bill 2017 definition of "senior officer" is:

- an executive officer of a corporation (i.e. a person who is concerned with, or takes part in, the corporation's management); or
- for a non-corporation, the holder of an executive position who makes, or takes part in making, decisions affecting all, or a substantial part, of a PCBU's functions.

Unlike resources legislation, the WH&S Act does not have statutory positions, such as "site senior executive" and other statutory roles with specific obligations. It is through the management structure developed for the Mine's Safety and Health Management System that the responsibilities of senior officers are defined. A major concern is that a fatality at a mine, other than natural causes, would infer that there was a failure in the effectiveness of the Safety and Health Management System and therefore call into question the documented specific safety and health obligations for senior officers at the mine. Put more simply, the structure developed to support safety and health at the mine could be used as a mechanism to conduct a witch hunt with the sole purpose of looking for someone to blame.

If the intent of the legislation is retribution or "an eye for an eye", this may be a perfectly reasonable justification for punishment. But that is not good public policy. The only utility to a retributive sentence is emotional satisfaction. It does not improve safety in the mining industry. A fatality has a devastating effect on the family of the deceased and the fellow workers at the

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mine. It is difficult to understand how devastating another family by charging a senior officer at the mine with industrial manslaughter serves a useful purpose. This is on the basis that the current legislation provides the Commissioner the powers to prosecute, or the following persons to recommend to the Commissioner that there be a prosecution for an offence against this Act—

- (a) an inspector;
- (b) an industry safety and health representative;
- (c) a site senior executive.

I believe that all coal mine workers at a coal mine work together to provide a safe place of work and regardless of their position within the Safety and Health Management System Structure, they all have the same obligations as *“coal mine workers”* and therefore should not be included as *“senior officers”* for the purpose of the industrial manslaughter legislation.

**Intention 3: The proposed legislation is consistent with existing offences under the Work Health and Safety Act 2011 and will provide consistent treatment of criminal negligence.**

As stated previously, the WH&S Act does not have an equivalent to the obligations placed on statutory positions under the CMS&H Act. Compared with the PCBU model, statutory positions under resources safety legislation serve to centralise safety responsibilities and create the situation where an SSE is ultimately responsible for the safety of all coal mine workers. As such, with the SSE and other senior officers, it is highly likely that these statutory positions would be captured by the proposed industrial manslaughter charge. When post incident investigations are occurring it would have to be assumed by their employer that they are captured. Such positions with this level of explicit responsibility do not exist in the WH&S Act, so this was not an issue that had to be addressed when the offence was introduced into that Act in 2017.

Capturing these positions is inconsistent with the stated intent of mirroring the WH&S Act amendments. This unintended consequence could be redressed by excluding all site-based statutory officials from the proposed legislation. A prosecution can still be brought under the current legislation if it is found that the senior officer’s conduct caused the death of a mine worker.

### **Conclusion and Recommendations:**

It is of major concern to coal mine workers if there is a perception from the industry regulator that mine safety and health has become too difficult and that the only answer is to take a *“big stick”* approach to fixing the problem which will not work because it is a more complex solution that needs to be implemented. Coal mine workers come to work with the clear intention of not hurting themselves and not hurting others, which comes back to taking a change in approach as an industry to implementing improved safety systems that allow for human error. I see the Brady Review as the first glimmer of light that supports an approach to safety that continues to put in place hard controls that allow for human error to manage the hazards that are present in every workplace.

If the Government wants to pursue the introduction of industrial manslaughter into the resources sector, it is my recommendation that the definition of a *“senior officer”* in relation to the industrial manslaughter legislation should only apply to senior positions *“not employed at the mine”*

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removing those persons in the site safety and health management structure who can currently be prosecuted under the CMS&H Act 1999 (suggested wording shown below).

*“senior officer*, of an employer for a coal mine,  
means—

(a) if the employer is a corporation—an executive officer of the corporation; or  
(b) otherwise—the holder of an executive position (however described) in relation to the employer, *who is not employed at the mine*, who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer’s functions.”

I also recommend that the definition of *“employer”* needs to be broadened to provide a better understanding of who is being referred to as the *“employer”* (suggested wording shown below).

*employer*, for a coal mine, means a person who employs or otherwise engages a coal mine worker **and has the primary obligation for the safety and health of the coal mine worker at the mine.**

Thank you for your consideration of this submission.

Sincerely,



Ian Cooper