

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

27 February 2020

By email: SDNRAIDC@parliament.qld.gov.au

Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Dear Committee Secretary,

I make this submission for consideration of the Parliamentary Committee reviewing and making recommendations to the Minister in relation to the proposed Mineral and Energy Resources and Other Legislation Amendments specially relating to the introduction of the Industrial Manslaughter offence.

Background

By the end of this year, I will have worked in the Coal Mining Industry across NSW and Queensland for 20 years. During this period I have held key statutory positions including 5.5 years as an Open Cut Mine Manager in NSW and 3.5 years as Site Senior Executive in Queensland. I am a qualified Mining Engineer having graduated from the University of New South Wales with First Class Honours. I make this submission with best intentions to provide my perspective for the consideration of the Committee faced with decisions that will have massive implications for the industry where I have worked my entire career. Fundamentally, I support changes that result in an improved safety outcome for this industry and am passionate about changes that fulfil this objective.

Summary

1. Proposing to retrofit Queensland Work Health and Safety Legislation into the Coal Mine Health and Safety Act is not appropriate and lacks respectful consideration of the foundations and history of the current legislation. It produces an outcome whereby the SSE, who already has obligations and penalties defined under the CMHSA, being subject to a definition of “negligence” as compared to “recklessness” for all other Coal Mine Workers at the mine, due to the fact that the “Senior Officer” position is not defined and could be taken to include SSE’s and site managers.
2. The release of the Brady Review, December 2019 “A Review of all Fatal Accidents in Queensland Mines and Quarries from 2000 to 2019”, commissioned by the Minister, does not call for the urgent introduction of Industrial Manslaughter to reduce the fatality rate in industry or to improve safety outcomes of the industry. In fact, it is silent on legislative reforms in the 11 recommendations made.
3. The introduction of legislation prescribing that statutory officials must be employed by the Coal Mine Operator I believe will result in an unintended outcome of an Industry wide skill shortage and potentially provide impetus for further legislative reform, including revision of the number of statutory positions of competency required to operate a Coal Mine. At a time when the industry needs skills and competence to provide the safety outcomes being sought, this is not aligned with what I believe to be the desired outcomes of the proposed changes.

Existing Coal Mine Health and Safety Legislation

There was a significant review of the Queensland Mining Legislation undertaken in 1999 following many Royal Commissions, Courts of Enquiry and accident investigations – this legislation is essentially written

based upon the learnings from the past. The Queensland Work Health and Safety Act 2011 hence does not apply to the Coal Mining Industry, because it has not been written specifically for the Mining Industry, and does not contain the learnings from the Mining Industry and the disasters of the past. New South Wales, during the Work Health and Safety Act harmonisation process in 2013, realised the importance of dedicating specific legislation to the Mining Industry with careful consideration and extensive industry consultation before amending the previous Coal Mining specific legislation. To try to retrofit Queensland Work Health and Safety Act legislation, or pieces of it, into the Coal Mine Health and Safety Act I believe does not consider existing provisions within this legislation nor respect the past disasters and recommendations upon which it is based.

Site Senior Executives have many specific obligations defined in the Coal Mining Health and Safety Act with existing penalties that apply for failure to meet these obligations. Such provisions are not provided for in the Queensland Work Health and Safety legislation as the role of the SSE is not contemplated in this legislation. The result is that the role of the SSE is subject to what I consider to be an unfair legislative outcome and will drive behaviour among those in leadership roles across all mine sites in Queensland to be one of protectionism and a lack of transparency, resulting in a detrimental impact upon the safety culture and safety outcomes for the Industry.

Brady Review Recommendations

A legislative review, "Expert Legal Assessment CMSHA, CMSHR and Recognised Standards", as well as the Brady Review, has been recently completed with a series of recommendations, including those related to SSE's and their obligations. Given the Brady Review does not list "adoption of industrial manslaughter legislation" in the top 11 priorities for the Industry to be focussing upon, I question the motive and validity of the current proposed legislation. The focus should now be upon urgently determining how to address the elements outlined by Brady in his report and the legislative review, not the passage of new legislation.

Statutory Roles Employed by the Coal Mine Operator

My perspective on the use of contractors to fill statutory roles across the Industry is that it offers flexibility, one to the Companies and to the Individuals. My concern with this legislative change is one relating to the unintended outcomes again that it will drive. The Industry already has a shortage of people to fill key statutory roles and so changes to this provision without giving due consideration to this, I believe may cause pressure for further regulatory reform to scale back even the need for these positions. The late change for this proposed amendment inclusion in this legislative review suggests that little work has been completed to fully understand the implications of this proposed change.

Conclusion

If the intention is to drive a "Safe to Speak up" culture as a key enabler for safety in the industry, The Industrial Manslaughter legislation needs to be amended to expressly exclude SSE's and their direct reports as they are already covered by the CMHSA. Further, I believe a deeper understanding is required of the implications for the longer term competency and capability of the industry, before making changes to the requirement for statutory roles needing to be directly employed by the CMO. These key points are necessary for the ongoing sustainability of our Industry.

Yours sincerely,

Elizabeth Watts
Site Senior Executive