PEABODY ENERGY
AUSTRALIA PTY LTD
ABN: 93 096 909 410

100 Melbourne Street
South Brisbane Qld 4101

GPO Box 164
Brisbane Qld 4001
Australia

Tel [redacted]
Fax [redacted]

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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: Consultation on Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Bill)

Peabody Australia (Peabody) is a subsidiary of Peabody Energy Corporation, which is the world's largest private-sector coal company. We have a proud history operating in Australia. Our Australian operations are located across Queensland and New South Wales and we employ approximately 3000 people across our Australian operations.

Safety is Peabody's number one value and we commit to health and safety as a way of life. We strive to operate safe and healthy workplaces that are incident free. We are deeply saddened by the recent fatalities in the coal mining industry and are committed to working with industry and government to strengthen safety culture and improvements in the mining industry.

Peabody sites have robust Safety and Health Management systems in place in line with local regulatory requirements. Peabody also requires our operations to comply with the Peabody Safety is a Way of Life Management System which consists of 20 elements that encompass Leadership, Safety and Health Risk Management and Assurance and with 10 corporate Safety standards and 2 Health Standards. Sites are audited internally against compliance annually, with an external audit conducted every three years. In addition, our operations must meet safety reporting obligations. We then conduct monthly reviews of performance indicators, including safety metrics.

One of the key safety metrics of our leaders, both full time and contract staff, is to conduct at least 2 safety interactions per week on high risk activities. These interactions are logged in our corporate database and actions arising are assigned to the responsible person for the area.

Peabody has a set of Cardinal Rules which are based on high risk activities conducted at sites. One such rule is that a supervisor or manager cannot direct a worker to breach or tolerate a breach of a Cardinal Rule. Breaches are investigated thoroughly and if proven appropriate discipline is applied.

Every worker at any Peabody site has the fundamental right to stop work, including production activities if they believe they or others are at risk. This right applies to all personnel working at a Peabody site, inclusive of Contractors.

The Bill, according to the Explanatory Notes, is intended to:

"strengthen the safety culture in the resources sector through the introduction of industrial manslaughter offence provisions and requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator"

For the reasons we outline below we have grave concerns that this will not be achieved. As a member of the Queensland Resources Council, we strongly support the Council's submission on behalf of the industry.

In particular, we wish to reiterate the following key concerns regarding the legislation relating to the industrial manslaughter provisions and the new restrictions requiring statutory holders to be employees of the coal mine operator.

Industrial Manslaughter provisions

1. **Definition of Senior Officers**

   The definition of "senior officer" is very broad and ambiguous. The Bill should deal with offences by corporations and executive/senior officers and exclude 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.

   The *Coal Mining Safety and Health Act 1999* (**CMSHA**) has very specific obligations for people on site including statutory position holders and other senior roles such as site senior executives (SSEs), open cut examiners, underground mine managers, ventilation officers, deputies/ERZ controllers, electrical and mechanical engineering managers etc.

   Specifically, s39(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 clear processes embedded in the CMSHA that deal with serious breaches including the type of breaches that would attract the response of the industrial manslaughter provisions in the Bill.

   SSEs and statutory roles are already heavily regulated and obligated under the CMSHA. We believe that adding further Industrial Manslaughter provisions to those roles will drive away experienced people from the industry which will have a detrimental impact on safety culture and safe workplaces.

   Recommendation:

   We 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. As the punishment could include jail time then the degree of negligence should be the same as for crimes generally, that being criminal negligence.

   Recommendation:

   We recommend that the Committee insert in the Bill the express term "recklessness or gross negligence" to avoid any ambiguity.

3. **Standard of proof for industrial manslaughter**

   Industrial manslaughter is a criminal offence. The standard of proof for an offence of industrial manslaughter should therefore be criminal negligence. It is unacceptable to exclude such defences when the punishment might include jail time.

   Recommendation:

   Delete s48B from the new Part 3A, so that sections 23 and 24 of the Criminal Code apply. There should be an additional defence for those individuals who can demonstrate that they took all reasonable precautions and exercised proper due diligence.

4. **Prosecuting entity**

   The prosecuting entity responsible for progressing industrial manslaughter prosecutions should be the Director of Public Prosecutions, who has the greatest level of expertise in criminal offences, not a Workplace Health and Safety Prosecutor. Any individual conducting industrial manslaughter prosecutions should be suitably experienced in prosecuting criminal offences.

5. **Time limitation**

   There should be a 12-month statute of limitations on industrial manslaughter charges from the date of the death, not unlimited.

Requirement for Statutory Holders to be employees of the Coal Mine Operator (CMO) is impractical (Division 2 amendments)

We are 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 and no specific data to back up the alleged rationale.

Our safety culture encourages all people at our sites to raise safety concerns and issues, irrespective of whether they are employees, contractors or visitors.

This change is unworkable in the mining industry given the current structures in place (as we outline below) and will result in considerable administrative burdens for no positive impact to safety culture in the mining industry. We fear that it will drive away experienced professionals from our industry, result in difficulties in filling statutory roles and hence have the effect of *detrimentally affecting* safety culture.

It will simply cause a distraction while all companies transition to this requirement and take the focus away from being visible leaders at sites encouraging better safety practices. Instead of a focus on having meaningful safety interactions with workers and continuing to reduce risks, there will be a need to complete paperwork, transfers of employment and time taken struggling to fill statutory roles.

The Division 2 amendments will affect our business drastically given that statutory holders are not currently employed or engaged by the relevant CMO as:

1. Many of our statutory holders are employed by a Peabody subsidiary that employs Peabody staff across our Australian operations, not the relevant mine CMO. Some of our statutory holders may be employed by a mine specific subsidiary that employs our hourly workforce employees. These subsidiaries are not usually the CMO. All are Peabody employees and have the absolute right (as is our expectation) to raise safety concerns no matter who their employer is on paper. Transferring all of these existing employees carries unnecessary administrative burdens and will have no positive impact on changing the safety culture. Issues will also arise in certain joint venture arrangements if the CMO is not the employing entity.

2. Some people choose to contract individually to a company rather than be an employee. These individuals may make this choice for personal reasons eg only seeking relief roles (to cover staff absences) or choose to earn income as a sole consultant/contractor. This is an individual's choice. There are limited statutory holders in Queensland. 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. Shortages of experienced people will impact safe operations.

3. Specialised contractors carry out specific work and sometimes require their own statutory holders eg 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.

The Industrial Manslaughter and Division 2 Amendments will not improve safety culture

Concerningly, we believe the legislation as it is currently drafted has the potential to damage the safety culture of the resources industry, which is against its very objective. Peabody and many others in the industry have a mature safety culture and support the sharing of learnings across the industry to ensure that all benefit from safer workplaces.

In particular we are concerned that the legislation will lead to safety learnings across the industry not being shared as findings may be tied up in legal privilege. This is disappointing given the current level of collaboration within industry often leads to proactive, rather than reactive improvements.

Peabody's many SSEs and other statutory position holders are very concerned about what this legislation may mean for them personally. The fact is that mine sites are already highly regulated and the way the legislation is currently drafted does not recognise that SSEs are already subject to a regime that makes them personally responsible for workplace-related deaths.

We fear that this legislation is counterproductive in that it will discourage highly skilled and competent safety experts from assuming these important roles, therefore posing a threat to the ability of resources operations to operate safely into the future. We ask that the Committee consider our recommendations to improve the operation of the Industrial Manslaughter provisions.

Yours sincerely

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Janette Hewson
Vice President – Government Relations Australia and Asia Pacific
Peabody Energy Australia