

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

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Attention: Dr Jackie Dewar

I refer to the Committee's consideration of the [Mineral and Energy Resources and Other Legislation Amendment Bill 2020](#) and in particular amendments to introduce the offence of Industrial Manslaughter into the Quarrying Safety and Health Act 2004 (Part 12) and *Petroleum and Gas (Production and Safety) Act 2004* (Part 16).

The amendments contained in this Bill are similar to amendments to the *Work Health and Safety Act 2011* (WHS Act) passed by Parliament in 2017 and are aimed at ensuring consistent treatment of the worst cases of criminal negligence that cause the death of a worker across mining and non-mining workplaces. As a person with a background in work health and safety, electrical safety, workers' compensation policy and involved with the 2017 amendments, I am concerned that the amendments as drafted will not achieve the Government's stated policy intent of consistency of the application of this offence in mining and non-mining workplaces.

While the Bill mirrors the provisions in the WHS Act, the Resource Safety Acts and the WHS Act are very different in their operation. The Resource Safety Acts require the level of risk to be "as low as reasonably achievable" while the WHS Act requires risk to be "as low as reasonably practicable". The WHS Act states that reasonably practicable means "that which is ... reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters...". Reasonably achievable is not defined in the Resource Safety Acts. This difference in definitions creates the potential for different interpretations and weightings by the Courts in the prosecution of the offence of industrial manslaughter.

In addition, the statutory positions of Senior Site Safety Executives, District Worker Representatives and Site Safety Health and Safety Representatives have explicit statutory functions which vary from the consultative arrangements in the WHS Act. While the conduct of employees and agents is imputed to the company, it is not clear what this means for statutory position holders who exercise their functions under the Resource Safety Acts. For example, the statutory functions of a Site Safety Health and Safety Representative include:

- (a) to inspect parts of the operations and participate in inspections and investigations conducted by the site senior executive or a supervisor, inspector, inspection officer or authorised officer;
- (b) to review procedures in place at the mine to control the risk to workers so that it is at an acceptable level;
- (d) to consult with supervisors about corrective and preventive action, and about other safety and health matters;

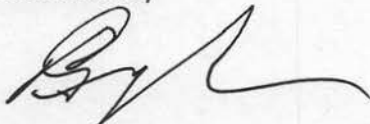
Because the offence of Industrial Manslaughter also applies to a senior officer these statutory positions require clarification and certainty. Like the WHS Act, the Bill defines the term Senior Officer. A **senior officer** is:

- if the employer is a corporation - an executive officer of the corporation; or
- 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.

Where a term is not defined in legislation (throughout Australia), the Macquarie Dictionary is used. The Macquarie defines "Executive" 'charged with or relating to the execution of laws, or administration of affairs'.

I am concerned that the potential capture of these statutory positions is inconsistent with the intent of the industrial manslaughter offence in the WHS Act, which is to apply to corporate decision makers and business owners.

Yours sincerely



Paul Gidsbrough

6/03/2020

Note: I would ask that if the Committee publishes this submission, my address and phone number are deleted.