

**For the Attention of the Review Committee, dealing with the proposed new Industrial Manslaughter Laws.**

The Queensland mining industry has recorded 8 fatalities in just over the past 18 months and 6 of those fatalities occurred in the coal mining industry in just over 6 months. It is time for the industry to enact significant changes which implement programmes that achieve the objective of changing attitudes and behaviour on mine sites.

The Queensland Government has tabled a bill for industrial manslaughter in state parliament to strengthen safety culture in the resources sector. The legislation amendment bill sets out a maximum penalty of 20 years imprisonment, or 100,000 penalty units, to an employer deemed responsible for causing the death of a mine worker.

The introduction of industrial manslaughter laws will weaken the safety culture in the resource sector not strengthen it. The introduction of this legislation will weaken the mine safety reforms introduced after the Moura No 2 underground tragedy which claimed 11 lives. At the time of the inquiry a No Blame culture was evident where accident information flowed freely which enabled the true facts to be established, so procedures could be put in place in order to prevent a recurrence of the accident.

However, after the Gretley 1996 inquiry which took 8.5 years to complete, when 4 miners died through an inrush of water, the Australian mining industry safety culture was changed in a very negative way. It was the first time in the history of the industry that companies and managers were prosecuted. This sequence of events initiated the "Blame Culture"

Only people who act "wilfully and recklessly" should be prosecuted.

The three Australian mine managers at Pike River in New Zealand acted Wilfully and Recklessly and should have been prosecuted.

Prosecution is counterproductive, inhibits thorough safety investigation, which stimulates a defensive rather than a proactive safety culture.

This attitude promotes a defensive culture where the respective parties are encouraged to seek legal privilege. Companies are advised by the legal profession to be very careful about generating reports about the incident or accident. Employees are encouraged not to write written documents in relation to accidents.

It is the overwhelming view that management personnel are guilty until they can prove their innocence. They want the legislation to change such that in the event of a prosecution, management personnel are innocent until proven guilty, as is the case with civil prosecutions. This would transform safety accident investigation so that the industry could return to the no blame culture

The current approach to prosecution has resulted in the common use of legal professional privilege which inhibits safety investigations and causes a defensive rather than a proactive safety culture. This impedes the timely sharing of information within industry to help prevent recurrence of incidents.

Very often, the first person on the site of the accident or incident these days is the company lawyer who then effectively takes charge of the investigation with a consequent shut down of the free flow of information. “How is it possible to investigate a fatality or serious injury if all the information to do so is not readily available”?

Near miss reporting, audits and high potential incidents are also subject to prosecutions which means that vital information is withheld and as a consequence not available in order to prevent a recurrence of the accident or incident.

The proposed introduction of industrial manslaughter legislation in Queensland may appease the general population, but it will do little for those who have recently buried their loved ones as a result of a mining accident. These laws will drive safety further backwards such that people will not share safety information and as a consequence investigators of accidents will not have access to all the facts that could prevent a recurrence and moves away from a no blame culture. It will secure an even more entrenched position for lawyers – the shutters will come down very firmly into the future and has a consequence Safety in our Mining Industry will continue to go backwards. It will certainly make the task of recruiting managers more difficult, due to the onerous responsibilities required to manage mines.

**We must start and put safety first and ensure that the industry enforces a positive “No Blame” safety culture.**

I have included comments from the following people which support my submission;

MCA CEO Tania Constable said the proposed laws will not contribute to general or specific deterrence or improvements in health and safety outcomes. This must be the priority, not imposing oppressive and unnecessary criminal liability on selected individuals.”

David Cliff a research fellow at the Minerals Industry Safety and Health Centre, said the main argument against the law is its potential to frighten workers into silence – failing to report incidents for fear of prosecution. Industrial manslaughter is a complex question, he says. If you bring in a big stick to frighten people into vigilance, the negative perception of that stick will have a detrimental impact on health and safety because people become unwilling to share what happened. From a commercial point of view, he adds, when people are afraid of prosecution it will become increasingly hard to recruit and re-train employees because they will perceive the role as holding risk to them.

According to Cliff, rather than use penalties to deter accidents, companies should be seeking to promote an open environment that encourages discussion around incidents. The new industrial manslaughter law risks that not being as open as it has been in the past.

Queensland Resources Council (QRC) chief executive Ian Macfarlane expressed his concern that the proposed legislation unintentionally weakened the mine safety reforms introduced two decades ago following a tragedy at the 1994 Moura 2 underground mine which claimed 11 lives. QRC believes it is critical the reforms developed in the wake of that tragedy remain in force and are built upon.

Yours Sincerely,

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