



**GOLD FIELDS**

26 June 2020

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Chair, Standing Committee on Legislation  
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Dear Dr Talbot

**COMMITTEE INQUIRY: WORK HEALTH AND SAFETY BILL 2019**

**Gold Fields**

Gold Fields is a globally diversified gold mining company, with nine operations located in Australia, Peru, South Africa and West Africa, and a further project under construction in Chile. Gold Fields has operated in Australia since 2001, when it acquired the St Ives and Agnew operations, and has subsequently expanded its operational footprint within the Region with the acquisition of the Granny Smith and Lawlers mines (now integrated with Agnew), and the development of the Gruyere mine (in joint Venture with Gold Road Resources). Gold Fields' Australian mines comprise approximately half of the overall Group production profile, and the Region is considered a leader within the Group in relation to both technical expertise and sustainability.

**Industrial Manslaughter**

We write to you regarding the Standing Committee on Legislation's current Inquiry on the Work Health and Safety Bill 2019 (**Bill**), specifically with respect to the proposed introduction of the Industrial Manslaughter offences.

We recognise and agree that appropriate laws are needed to respond to workplace fatalities, and to hold organisations (and where appropriate, officers) responsible for **reckless** and **intentional** acts. We also understand the strong public mandate for this. However, we are concerned that the Government's proposal to introduce the broadest of all industrial manslaughter offences in Australia, being section 30B *Industrial Manslaughter – simple offence*, is not a proportionate offence, and may have significant unintended consequences which undermine the most important objective of the Bill: **to protect worker health and safety**.

Whilst there is a general acceptance by industry (and particularly the resources industry) of the move to implement industrial manslaughter offences in workplace health and safety laws in jurisdictions across Australia, we feel that these should be the subject of careful consideration and consultation to reduce the risk of unintended consequences.

The inclusion of these offences in the draft Bill without public consultation is particularly concerning, given the significant implications of the offences. This is also inconsistent with the extensive consultation that has occurred in relation to all other aspects of the Bill.

## Proposed section 30B – simple offence

As you would be aware, section 30B of the Bill proposes a threshold of “*any neglect*” and as drafted, is likely to capture all fatalities able to be prosecuted, regardless of the contributing factors. The effect of this is likely to be that in any case where there has arguably been any breach of a general duty (most likely the overarching primary duty of care for PCBU’s to ensure the health and safety of workers), and there exists a clear causal link to the death of a worker, a prosecution under section 30B will result.

We would question whether this application of industrial manslaughter, and in particular the lower bar of culpability under the simple offence meets community expectations. In our view, the offence of industrial manslaughter should be reserved for the most egregious of conduct – that which represents a gross disregard for known risk to an individual’s life.

## Safety culture – Gold Fields case study

No fatality is acceptable. As an organisation, we are regrettably aware of the devastating impact of fatalities and serious injuries - on families, colleagues and within communities and organisations. We are committed to a goal of **zero harm**.

In 2013, we saw trends in our safety performance in Australia that gave us cause for concern that a fatal incident was a real possibility within our operations. We saw that to reverse this trend, we would need to take a radically different approach to safety management – one that engaged our workforce from the grassroots up, rather than the more traditional top-down approach previously adopted.

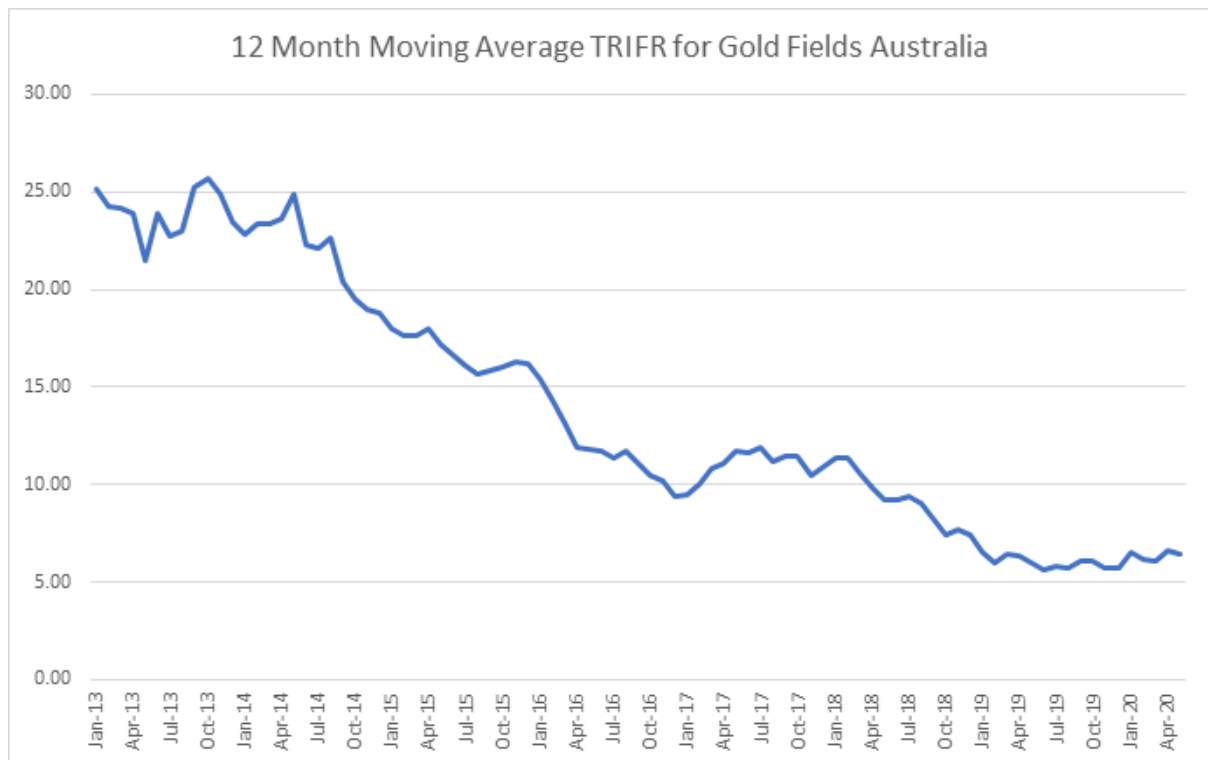
From that year, we have progressively implemented and embedded a behaviour-based program (*Vital Behaviours*), which seeks to create individual accountability and ownership of Gold Fields’ safety goal of maintaining zero fatalities and eliminating serious injuries, underpinned by the creation of a safety-based culture.

The method of that program is for the entire workforce go through a process of critically examining hundreds of prior incidents, and identify those ‘vital behaviours’ which lie at the core. Examples of those behaviours include *assessing the risk, managing fatigue, following procedures*, and *speaking up*. It is then workforce appointed ‘opinion leaders’ who assist in developing and implementing the actions to address those vital behaviours, creating buy-in from their peers.

Absolutely core to the success of this program is encouraging a culture that supports speaking up, and putting safety at the core of everything we do – our conversations, meetings and reporting. This means celebrating positive behaviours, as well as understanding and learning from incidences of at-risk behaviours.

To support this, we have amended our incentive metrics to encourage transparent reporting by including leading indicators, particularly around potential incidents and near misses.

The impact of this program, together with parallel processes of task-based safety engagements, consistent incident reporting and robust investigation, and regular communication of issues and learnings, has been significant. The Total Recordable Injury Frequency Rate (TRIFR), (being the number of fatalities, lost time injuries, restricted work injuries, and injuries requiring medical treatment per million hours worked) for Gold Fields’ Australian operations has declined from over 25 in January 2013 to approximately 6 in April 2020 (see figure below).



At the same time, the *severity* of those injuries now reflected in the TRIFR has decreased significantly, with injuries now primarily comprising minor lacerations and soft tissue injuries.

The next evolution of our safety strategy is our Courageous Safety Leadership program, which is being implemented from Australia across our global operations. The fundamental principle of the program is that all employees are safety leaders in our business. This is a highly emotive program that seeks to capture hearts and minds, and bring home the impact of serious injuries and fatalities - the *ripple effect* beyond the immediate impact of a safety incident, providing a powerful incentive for the prevention of serious safety incidents in our work place. This also motivates the importance of transparency of reporting of all incidents, as the most important tool we have in identifying underlying issues.

The factors which contribute to safety incidents are undoubtedly complex. Individuals work in challenging, high-risk environments, often performing complex tasks as part of a team. When things go wrong, it is rarely the result of one individual's error. More often, incidents arise from a combination of factors. Decisions and conduct of individuals occur within the broader organisational context – its systems and culture being integral parts of that. Risks to health and safety often may arise when a series of weaknesses or failures align across the whole system of activity, which is why it is important that the management approach is to address each of these factors in a holistic way, rather than focus on one area to the exclusion of others.

We believe that Gold Fields' approach outlined above, which is still evolving to reflect new approaches and learnings, demonstrates the success that can be achieved by taking this balanced approach. We also recognise that the ability to have honest conversation around incidents and risk will be key to our success.

## Conclusion

Our concern with the proposed simple offence regime in section 30B of the Bill is the potential damage these provisions could do to this approach to managing workplace health and safety. Recognising that one of the key objectives of the Bill is to foster **cooperation** and **consultation** (Part 1 s.3(c)), we believe that this punitive approach may hinder our efforts to foster the core practices of speaking up, robust investigation and root-case analysis, and the sharing of information and learnings.

These practices are absolutely critical, particularly in managing multiple operations within a Region, where there is such a valuable opportunity to disseminate information more broadly within the Group and beyond.

It would be a particularly unfortunate, and unintended, outcome of the Bill if these practices were to be curtailed, for fear of creating exposure to future liability.

Thank you for your consideration of this important matter. We are content to provide any further information required to the Committee Inquiry, if required.

Yours sincerely,

**Stuart Mathews**

**Executive Vice President: Australasia**