

Murrin Murrin Operations Pty Ltd
ABN 43 076 717 505
Level 3, 30 The Esplanade
Perth WA 6000, Australia
PO Box Z5523, Perth WA 6831 Australia
Tel: 61 8 9212 8400
Fax: 61 8 9212 8401



25 June 2020

Standing Committee on Legislation in Western Australia
Legislative Council
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

lccl@parliament.wa.gov.au

Attention: Hon. Dr Sally Talbot, Chair, Work Health and Safety Bill 2019 Inquiry

Dear Dr Talbot

Re: Standing Committee Inquiry – Work Health and Safety Bill 2019

The Murrin Murrin group of companies (**Murrin**), as wholly owned subsidiaries of Glencore plc (**Glencore**), welcomes the opportunity to make a submission in relation to the Standing Committee's inquiry into the proposed *Work Health and Safety Bill 2019* (WA) (**WHS Bill**).

Background

Murrin is Australia's second largest nickel producer and Australia's largest cobalt producer with all of its operations based in Western Australia, 880km NE of Perth. The Murrin operation employs approximately 1,100 employees and contractors and directly contributes in excess of \$600m to the Western Australian economy each year. Murrin is a fully integrated mine and complex hydrometallurgical plant and our refined nickel metal and refined cobalt metal is exported globally from Kwinana, south of Perth.

Murrin is wholly owned by Glencore, one of the world's largest natural resources companies. Glencore operates 25 mining operations across all mainland Australian states and the Northern Territory. In 2019, Glencore contributed approximately \$14.8 billion to regional, state and national economies in Australia.

We are supportive of policies that improve health and safety. We have concerns with regard to the lack of harmonisation across all Australian jurisdictions and with the introduction of the criminal industrial manslaughter offence and Category 1 serious harm offence in their current form. We also hold serious concerns with regards the proposal to introduce uniquely in Western Australia the simple industrial manslaughter offence.

Glencore's uniform approach to safety

The health and safety of our employees, contractors and the communities in which we operate are our highest priorities. The nature of the mining and metallurgical industry involves hazards and risks and while we cannot entirely eliminate them, we aim to control risks and create safe workplaces which avoid workplace injuries, avoid occupational

disease and eliminate workplace fatalities. Although each of Glencore's Australian operations function independently and in different jurisdictions, Glencore is strongly supportive of a harmonised approach to work health and safety processes. Glencore believes that a uniform approach across Australia simplifies and enhances the sharing of safety and risk learnings and best practices that ultimately benefits all of our operations regardless of jurisdiction.

Glencore's SafeWork initiative is an example of a multi-site, multi-jurisdiction collaborative approach. It is a program that provides clear standards and processes for managing fatal hazards and focusses on changing attitudes towards safety to bring about sustainable long-term positive change. SafeWork revolves around the identification of a series of principal fatal hazards at all of Glencore's operations, and includes fatal hazard protocols, implements life-saving behaviours, communication processes, training material and other support systems and protocols developed to target these hazards. The SafeWork initiative has been a very successful tool in the creation of a uniform approach towards health and safety within the Glencore Group.

Behavioural safety programs such as Glencore's SafeWork stress the recognition of, and focus on, positive safety behaviours to create lasting change. In the case of Murrin, the move to a more collaborative safety approach, inclusive of the SafeWork initiative, has contributed to a reduction of 80% in the Total Recordable Injury Frequency Rate (TRIFR) over the last 10 years.

The success of a multi-site, uniform safety approach is dependent not only on Glencore's own internal processes but is also heavily influenced by external factors such as regulatory consistency. Glencore's harmonised safety approach will be most successful if it can be implemented consistently across each of the states and territories in Australia. Our opinion is shared by Safe Work Australia which states that the main object of the model WHS Act is to provide for a *balanced and nationally consistent framework* to secure the health and safety of workers and workplaces.

WHS Bill

We have significant concerns about Division 4 Subdivision 2 – Industrial Manslaughter of the WHS Bill and Subdivision 3 – Category 1 offences in their current format.

Firstly, at the most fundamental level, the Industrial Manslaughter provisions are not currently part of the Model WHS law and are not uniform with corresponding legislation in other Australian states. The inclusion of the industrial manslaughter provisions in the WHS Bill contradicts the intent of establishing harmonised WHS legislation across Australia.

Further, major differences in safety legislation between Australian states, such as Western Australia's proposed inclusion of a 'simple offence' for manslaughter, has the potential to create a unique risk management environment within Western Australia that may preclude the benefits of harmonisation from other jurisdictions.

Glencore submits that the proposed industrial manslaughter provisions should be removed from the WHS Bill until such time as Australia-wide uniform provisions are agreed and a harmonised national approach can be applied.

Glencore is aware that Marie Boland's national review of the WHS law has supported the introduction of an industrial manslaughter offence where gross negligence leads to a workplace fatality. Glencore does not oppose the introduction of industrial manslaughter laws which reflect Ms Boland's criteria. Ms Boland's review recommends that industrial

manslaughter applies only in circumstances where Persons Conducting a Business or Undertaking (PCBU) and officers have contributed to the fatalities through *intentional acts or with knowing disregard* of WHS duties.

In regards to the proposed 'simple offence' for industrial manslaughter, Glencore considers its inclusion a significant departure from the original reason as to why industrial manslaughter provisions were proposed, namely to ensure that the most egregious safety breaches which result in workplace fatalities were to be punished appropriately. The inclusion of the 'simple offence' in the current draft of the WHS Bill fails to meet this link between egregious safety breaches and punishment by making the standard of breach too low. Our interpretation of the current draft results in a breach of any safety duty which relates to a workplace fatality could result in a charge and a conviction of a PCBU for a 'simple offence'.

Glencore is also concerned that the bar for convicting an officer or a PCBU under the 'simple offence' provisions is too low.

An officer could be convicted of a simple offence if a PCBU's conduct, which resulted in a breach of duty, causes a death which is attributable to neglect on the part of an officer. It is submitted that the exposure of an officer to such serious penalties should not apply in the circumstance of neglect but should only apply where the officer has acted without reasonable excuse or with reckless disregard to the risk. This low threshold is concerning especially in light of the lack of clarity on the application of defences (for example accident and mistake of fact), rights and immunities in the WHS Bill and the inability of the court to choose whether to impose financial penalties and/or imprisonment, depending on the nature, circumstances and seriousness of the offence.

We have the same concerns about the low threshold for a breach of a Category 1 offence. We consider that such serious penalties should only be applicable in circumstances where a person has acted without reasonable excuse or with reckless disregard to the risk.

Unintended Potential Negative Impact

The Key Occupational Health and Safety statistics as set out in the October 2019 document published by the Department of Mines, Industry Regulation and Safety (**DMIRS**) shows a decrease in work-related time injuries, diseases and fatalities in Western Australia over the last 10 years. This decrease is indicative of the effectiveness of current risk reduction and best practice safety processes and approaches being implemented and continually improved within the mining industry.

We query whether the low culpability thresholds required for a charge under the industrial manslaughter and Category 1 offences in their current formats will achieve better safety outcomes or whether it in fact may lead to unintended negative consequences which may undermine the most important objective of the WHS; to protect worker health and safety, due to the potential to:

- restrict early sharing of lessons and ideas between duty-holders and regulators, in turn detracting from an industry body of knowledge;
- encourage organisations and affected individuals to adopt purely defensive positions that invoke all legal rights available to them, delaying prompt sharing of safety information;
- limit organisational sharing of valuable safety lessons at ground level and amongst industries as a result of ongoing proceedings and enduring caution; and

- materially and adversely affect the calibre, breadth and capacity of potential candidates for senior statutory office positions and safety-critical roles due to the imposition of additional potential criminal liability the subject of regulatory discretion.

Best practice risk management and safety outcomes are always linked to clear management accountability. The broadening of accountability in the manner proposed undermines this.

We question whether the introduction of the industrial manslaughter regime as proposed will improve safety outcomes in Western Australia. While the elimination of workplace fatalities and injuries must remain the key driver of all workplace safety approaches, the introduction of the industrial manslaughter regime and Category 1 offence as proposed could significantly detract from the constructive safety culture that underpins best practice in the mining industry and have far-reaching implications for modern safety management in Western Australia.

Conclusion

We are supportive of the Bill's objective to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. However, we believe that the Bill, if passed in its current form, could have the opposite effect. It is for these reasons that Glencore is opposed to the industrial manslaughter and Category 1 offences provisions of the WHS Bill being enacted until the matters set out above are addressed.

Although we make this submission in our own capacity, we also support and agree with the concerns set forth in the detailed submission made by the Chamber of Minerals and Energy.

If you have any questions in relation to the submission please contact Odelia Du Toit, General Counsel, on Tel: 08 9212 8400 or odelia.dutoit@glencore.com.au.

Yours sincerely



Peter Hancock
VP Minara Resources