

26 June 2020

Dr Sally Talbot
Chair, Standing Committee on Legislation
Parliament House
4 Harvest Tce
WEST PERTH WA 6005

Email: lclc@parliament.wa.gov.au

Dear Dr Talbot,

COMMITTEE INQUIRY: WORK HEALTH AND SAFETY BILL 2019

Pilbara Minerals Limited (**Pilbara Minerals**) has been following with some interest the Work Health and Safety Bill 2019 and would like to voice our concern over the inclusion of *Industrial Manslaughter - Simple Offence* within Part 2, s30B within the Bill.

This provision was not included within proposed content of the Work Health and Safety Bill consulted on through 2017 and 2018. The late inclusion of this provision within the Bill, introduced on 27 November 2019, has resulted in the broadest of all industrial manslaughter offences in Australia and had not been subject to consultation with industry on the potential impacts of this inclusion.

Pilbara Minerals' does not oppose the objective of introducing industrial manslaughter offences, (acknowledging findings of national reviews), but considers the drafting of any offence must be carefully considered to ensure there are no unintended consequences that detract from the Bill's objective of driving improved health and safety standards. Pilbara Minerals considers the criminal offence proposed in the Bill meets its expectations given the seriousness of the offences and notes it requires a high threshold with appropriate legal process surrounding its use (for example, charges brought by the Director of Public Prosecutions).

Pilbara Minerals' concern with the current 'simple' offence is that it proposes a low threshold of culpability of "any neglect" and as drafted, will likely capture all fatalities able to be prosecuted regardless of whether they were reasonably foreseeable or not and without regard to other contributing factors. To prosecute a 'simple' offence, Pilbara Minerals understands the WorkSafe Commissioner would simply need to prove there was a failure of a health and safety duty (for example, general duty of care) and that this failure had a causal link to the death of the individual. It would not need to be demonstrated that the neglect was likely to lead to a death or even severe injury.

A review of prosecutions by the Department of Mines, Industry Regulation and Safety (DMIRS) for breaches of the general duty of care in current legislation (section 9, The Mines Safety Inspection Act 1994) reveal it is regularly and successfully prosecuted. This demonstrates the potential broad application of the new 'simple' offence legislation and the extreme and disproportionate form of punishment that may arise.

Furthermore, Pilbara Minerals believes there are unintended consequences of this approach to the 'simple' offence which are potentially significant and could jeopardise the way in which health and safety is managed. Pilbara Minerals and the broader resources sector is committed to keeping its workforce safe and continues to strive for best practice in safety and health management, whilst recognising there will always be room to continuously improve.

It is widely recognised that work health and safety law which facilitates the creation of a collaborative and positive workplace culture towards safety, while also providing a hierarchy of risk-based compliance and enforcement mechanisms is most effective in facilitating improvements to health and safety. Pilbara Minerals believes there is a very real concern that overly punitive offences, such as this 'simple' offence, could discourage such approaches and hinder the free flow of communication within workplaces, resulting in less reporting and potentially more injuries and fatalities. It could also lead to discouraging very experienced personnel and future talent, who are passionate about health and safety, from wanting to pursue (or continuing) a career in this field.

In conclusion, Pilbara Minerals is committed to the continuous improvements of work health and safety laws, however has very real concerns about the inclusion of the Industrial Manslaughter - Simple Offence. It supports the Chamber of Minerals and Energy in calling for the provision to be removed or at least amended to ensure the fault threshold aligns to the Boland review and charges brought only by the Director of Public Prosecutions.

Please do not hesitate to contact me if you wish to discuss further.

Yours sincerely

Ken Brinsden
CEO/Managing Director