

26 June 2020

Legislation Committee
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e: perth@appea.com.au
w: www.appea.com.auLodged online: lclc@parliament.wa.gov.au**APPEA SUBMISSION - WORK HEALTH AND SAFETY BILL 2019**

The Australian Petroleum Production & Exploration Association (APPEA) welcomes the Legislation Committee's examination of the introduced Work Health and Safety Bill 2019 (WA)¹ (the Bill), against the published terms of reference.²

APPEA is the peak national body representing Australia's upstream oil and gas industry. APPEA has 60 full members, operating in both onshore and offshore environments, accounting for approximately 98 per cent of Australia's total oil and gas production, and also represents 130 associate members providing services to the industry.

Despite operating petroleum facilities in remote and challenging environments, Australia's oil and gas industry has a reputation as a leader in safety, compared to other local sectors. Notwithstanding this, our industry is committed to continuous improvement and APPEA works with members and stakeholders to support the primary objective that every worker goes home safe and unharmed.

To demonstrate this value, APPEA advocates the following approaches for health and safety compliance and regulation:

- Promotion of collaborative and consultative corporate cultures to drive continuous improvement in safety performance; and
- Ensuring preventative and persuasive measures are prioritised in regulatory compliance strategies; not punitive penalties which criminalise accidents.

While the Commonwealth's model Work Health and Safety (WHS) Act reflects Robens-style regulation³, underpinned by general duties within the statute, and further detail contained in regulation, it is APPEA's view that petroleum policy makers, legislators and regulators must continue to benchmark against global best practice.

To date, APPEA has provided limited direct commentary on the passage of the Bill in WA. Previously APPEA has been supportive of the McGowan Government's efforts to consolidate occupation health and safety requirements, as currently set out in primary and subsidiary petroleum and pipeline legislation. APPEA will continue to engage with the Government to support these processes.

¹ [https://www.parliament.wa.gov.au/Parliament/Bills.nsf/8F320741B83643A8482584BF000CF89B/\\$File/Bill155-1.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/8F320741B83643A8482584BF000CF89B/$File/Bill155-1.pdf)

² [https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(EvidenceOnly\)/036D9DDC952FB2D54825856F00818FF5?openDocument#ToR](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/036D9DDC952FB2D54825856F00818FF5?openDocument#ToR)

³ Cited in Boland Review - common term used to describe an approach to regulating WHS established under Lord Robens' Report of the Committee on Safety and Health at Work (UK) in 1972. Key features of the Robens model include a unified and integrated system of general duties and self-regulation through greater consultation between workers and PCBUs (person carrying on a business or undertaking).

APPEA would also like to support submissions made in relation to the Bill by our members and other industry bodies such as the Chamber of Minerals and Energy of Western Australia and the Chamber of Commerce and Industry of Western Australia.

Given our members' familiarity with the legislative concepts (detailed in Part 2 of the Bill), APPEA's submission solely focuses on the inclusion of the **simple industrial manslaughter offence** and the unintended consequences of enacting prescriptive provisions.

APPEA notes the main objective of the model WHS Act is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. At the Commonwealth level, there is an appreciation that there are established general offences of criminal manslaughter in each jurisdiction and that existing (specific) criminal offences in workplace health and safety laws are working as intended.⁴

APPEA acknowledges that the Australian Capital Territory, Queensland, Northern Territory and Victorian governments have passed industrial manslaughter laws, however, the Bill in WA is unique in that it has proposed two **industrial manslaughter offences** (crime and simple offence care of 30A and 30B respectively).

In its Consultation Regulatory Impact Statement, Safe Work Australia found that 'the inclusion of industrial manslaughter provisions are complex for implementation'.⁵

APPEA is concerned the Bill's offence provisions are overly litigious, which may distract duty holders or negatively influence behaviours in the office, rather than the field. The raft of offences proposed by the Bill are likely to encourage **officers** to go to great lengths to record / document their **conduct** and the **reasonably practicable** steps undertaken to ensure the health and safety of workers. The Bill contemplates this process against the definition of **due diligence** (see s.27).

The Legislation Committee is well placed to determine whether the administrative burden to be placed on persons conducting businesses or undertakings is appropriate, and whether said burden would distract duty holders from focusing on real hazard prevention and mitigation that leads to better safety outcomes in the workplace.

To that end, it is worth noting comments made by the Minister for Industrial Relations, Hon Bill Johnston MLA that:

"...the improved legislation, based on the national model Work Health and Safety Act, will help reduce costs for industry."⁶

It is unclear whether the administrative burden / cost for person/s conducting business or undertakings has been factored in during the policy debate.

While penalties are important, APPEA recommends a cautious and evidenced-based approach be considered to the structure and relationship of offence categories / provisions within the Bill.

Such an approach could recognise that Western Australia has the benefit of working with other jurisdictions to examine investigation and prosecution practices further.

⁴ Senate motion No. 644 – 12 June 2020.

⁵ https://www.safeworkaustralia.gov.au/system/files/documents/1906/consultation_ris_2018_review_recommendations.pdf

⁶ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/02/Work-Health-and-Safety-Bill-to-be-debated-today.aspx>

APPEA also notes that the later definitions and associated provisions, of Part 2 Division 3, are quite prescriptive; however, these provisions may provide the required clarity needed for different types of industries, especially those that may be unfamiliar with a systems-based approach to safety regulation (ss20-26A).

In conclusion, APPEA appreciates the opportunity to provide comments on the Bill and is hopeful that the Committee will consider in detail the appropriate balance between risk /objective-based regulation and necessary legislative prescription; and the incentives and deterrents to promote scalable, safe and responsible behaviours.

While we note that changes to Western Australia's occupational health and safety laws formed part of the WA Labor platform 2017⁷, APPEA firmly believes reforms to safety regulation should be evidence-based and carefully constructed to ensure they improve, and do not degrade, the safety of workers.

Yours faithfully

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APPEA

⁷ https://walabor.org.au/media/5sspa0sd/180216_2017walaborplatform.pdf