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25th June 2020

Dr Sally Talbot
Chair, Standing Committee on Legislation
Parliament House
4 Harvest Terrace
West Perth, WA 6005

Attention: Dr Sally Talbot

Dear Dr Talbot,

Re: Committee Enquiry - Work Health and Safety Bill 2019 (WA)

We are writing to you today following on from a review of the proposed *Work Health and Safety Bill (WA) 2020* and our recent internal discussions surrounding the same. Evolution Mining (EVN) has clear and specific concerns over some of the proposed regulatory changes coming out of the most current version of the proposed *Work Health and Safety Bill (WA) 2019*.

EVN acknowledges WA's review of the efficiency and effectiveness of current legislation reflecting the changing Australian social landscape associate with causality and culpability of employers. EVN is fully aligned with the premise of a safe system of work and that all events are preventable, the latter being one of our principles underpinned by Safety as a company value.

However, whilst EVN agrees with clearly established principles of deterrence as a sentencing element, it is EVN's view that these drafted provisions should be succinct and well-articulated. This is critical for the understanding of those under the management and control of a PCBU and for the prevention of unnecessary future litigation resulting from clarifications and challenges based on the drafted terms utilised presently.

It is EVN view that the current drafting under S30A, S30B and S32 of the *Work Health and Safety Bill (WA)2019* are ill defined by way of their stated terms and related intent of which will result in unintended consequences for officers of companies right across WA.

Example One:

S 30A (1) (d) (i) & S 30A (3) (e) (i) – knowing that the conduct *is likely* to cause the death of an individual.

Likely is defined as such that well might happen or be true, not that is true. Events at times transpire where it is completely not likely that an unintended event will occur then it does. The word is vague in application unless its specifically applied to a quantitative assessment. We suggest re drafting of this provision or at the least definition guidance with the Act.

Example Two:

Both **S 30A (3) (d) & S 30B (3) (d) (i)** – the PCBU's conduct that constitutes the failure is attributable to *any neglect* on the part of the officer.



The use of the term **any neglect** is wide reaching, non-specific and overly burdensome for those holding such duties in industry due to its relatively poor definition which arguably could have enormous unintended consequences with the resultant effect of detracting individuals from seeking out such duty-bound roles within industry. Further to this, the term **any neglect** itself is not defined within Division 3, subdivision 1 definitions section of the *Work Health and Safety Bill (WA)2019*.

Example Three:

There is no definition in terms of **S 32 (1) (c)** – the failure **exposes an individual to a risk of death** or of injury or harm to the individual's health. The phrase **risk of death** is at best a wide and extremely general subjective reference of which one must assume the application of reasonable practicability principles to gather an understanding. This term should be defined.

EVN agrees with the intent of *Work Health and Safety Bill (WA) 2019* with regard to its main purpose of ongoing worker welfare and wellbeing. However, EVN is not aligned to the inclusion of general substantive provisions that are ill defined with the potential for the unintended consequential nature of such provisions on officers of companies not being explored nor rectified prior to enactment and transitional enactment.

On behalf of EVN, thank you kindly for the opportunity to provide feedback on the *Work Health and Safety Bill (WA) 2019*.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Fiona Murfitt', with a horizontal line underneath.

Fiona Murfitt
GM Sustainability
Evolution Mining

