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26 June 2020

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

Email: lcic@parliament.wa.gov.au

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

Dear Dr Talbot,

My name is Bob Goodwin, Deputy Chief Operating Officer and a Registered Mine Manager at CITIC Pacific Mining's (CPM) Sino Iron magnetite project south of Karratha, in Western Australia's Pilbara region.

Sino Iron represents the largest-ever overseas investment in the resources section by a Chinese entity. Today we are a leader in the downstream processing of Australian iron ore, with a direct and indirect local workforce of approximately 3000 people. We're a major economic contributor to WA and supporter of our community.

I'm writing to you as both a representative of our company and someone who has worked in the Australian resources sector across a range of commodities (copper, gold, coal, nickel, mineral sands and iron ore) for 40 years, to express serious concerns about elements of the Work Health and Safety Bill 2019 (the **WHS Bill**) – specifically the proposed introduction of Industrial Manslaughter offences.

At Sino Iron, we recognise and fully agree that appropriate laws are required to respond to workplace fatalities and to hold individuals and organisations responsible for reckless and intentional acts. However, I am concerned that proposed offences in the WA legislation move well beyond the objective of national harmonisation of Work Health and Safety laws.

The crime of industrial manslaughter carries a high bar and requires evidence that:

- a) A person has a health and safety duty; and
- b) Engages in conduct that causes the death of an individual in circumstances where the person knows that the conduct was likely to cause the death of the individual.

However, the simple offence of industrial manslaughter proposed in s30B of the WHS Bill does not require any knowledge element and may arise where a person fails to comply with a health and safety duty causing the death of a person.

This would result in the introduction of the broadest of all industrial manslaughter offences in Australia. We believe this has potential significant unintended consequences which would undermine the most important objective of the WHS Bill - to protect worker health and safety.

Any death on a minesite is traumatic on many levels – not only for the family of the deceased but for his or her work colleagues, supervisors and managers. I've experienced this first-hand. It

is devastating for everyone involved. This is why, every day, we do everything possible to ensure all staff and contractors return safe and well to their loved ones at the end of each swing.

Individuals work in complex, high-risk environments as part of a team. When things go wrong, it is rarely the result of one individual's error – modern accident prevention models tell us this. Incidents often arise from a combination of factors. Decisions and conduct of individuals occur in the context of broader organisational and systems failures. Risks to health and safety often may arise when a series of weaknesses or failures align across a whole system of activity. However, this bill in its current form completely disregards this reality – instead seeking to “make someone responsible”, no matter the circumstances.

I'm very concerned that s30B of the WHS Bill proposes a low threshold of culpability and as drafted is likely to capture all fatalities able to be prosecuted, regardless of the contributing factors. To elaborate, s19 of the WHS Bill enshrines an overarching 'primary duty of care' for a Person Conducting a Business or Undertaking (PCBU) to ensure the health and safety of workers. To prosecute a 'simple' offence, the WorkSafe Commissioner would simply need to prove there was a failure of this general duty and that this failure had a clear causal link to the death of the individual. DMIRS prosecutions to date shows the similar duty in current legislation (section 9, The Mines Safety Inspection Act 1994) is regularly successfully prosecuted, demonstrating the likely broad application of the offence.

From my perspective, there are legal and procedural fairness issues relating to the proposed offence. The maximum penalty for s30B is 10 years and a fine of \$2.5 million. These are significant charges to be brought by the WHS regulator and heard in the Magistrate's Court. It is unclear if defendants would have access to defences available under WA's criminal code - for example accident and mistake of fact. I question whether this application of industrial manslaughter and much lower bar of culpability under the 'simple' offence meets community expectations. As it stands, the bar of culpability is extremely low but the consequences for unfairly targeted individuals and their families is terribly high.

My wider concern is the potential damage these provisions could have on the way in which workplace health and safety is managed. While it is important to have penalties for breaches of legislation it is my experience that fostering positive and cooperative safety cultures is most impactful in improving health and safety 'on the ground'.

One of the key objectives of the Bill is to foster cooperation and consultation (Part 1 s.3(c)). Overly-punitive approaches may hinder efforts to foster collaborative safety cultures and discourage the sharing of information.

We fully support the views and concerns articulated by our industry peers and the detailed submission provided by the Chamber of Minerals and Energy of Western Australia (also attached).

Thank you for your consideration of this very important matter.

Yours sincerely

Bob Goodwin

Deputy Chief Operating Officer, Registered Mine Manager
CITIC Pacific Mining Management Pty Limited