



26 June 2020

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

Email: lc@parliament.wa.gov.au

Dear Dr Talbot

**SUBMISSIONS TO THE LEGISLATION COMMITTEE INQUIRY:
WORK HEALTH AND SAFETY BILL 2019**

I write on behalf of Roy Hill Holdings Pty Ltd (ABN 71 123 721 077) in relation to the Standing Committee on Legislation's inquiry into the Work Health and Safety Bill 2019.

The Chamber of Minerals and Energy of Western Australia (CME) has consulted with us on its submissions to the Committee regarding the *Work Health and Safety Bill 2019*. We fully endorse the CME's submissions and recommendations. We make the following additional submissions in our own capacity.

In line with the rest of our industry, we strongly support the introduction of the harmonised workplace health and safety (WHS) laws into Western Australia. We also support in principle the introduction of a new industrial manslaughter offence to ensure commensurate accountability for workplace fatalities. We can all agree that any measures that effectively improve safety outcomes and reduce the number of workplace fatalities are to be welcomed.

Accordingly, we support the adoption of a new s30A *Industrial Manslaughter - criminal offence*. We agree that any conduct that satisfies the criteria for this offence warrants criminal prosecution and the potential penalties that apply to a successful conviction. Given the severity of these potential penalties, we are also encouraged that prosecutions of the criminal offence will be managed by the Office of the Director of Public Prosecutions (DPP) and heard in the District or Supreme courts. This accords with the principles of natural justice and will ensure anyone facing the prospect of a substantial prison sentence will be treated consistently and afforded full procedural fairness.

We are concerned the proposed s30B *Industrial Manslaughter – simple offence* is not the best means to achieve the twin objectives of commensurate accountability and improved safety outcomes. In our view, the proposed s30B offence is counter to these objectives. We oppose its adoption on that basis.

We acknowledge that in the case of a workplace fatality, it is natural to want to provide a deterrence and some sense of justice for the person's loved ones. But people who could potentially lose their freedom for up to a decade are entitled to justice as well. By setting the bar for a simple offence so low – essentially any breach of a duty of care that causes death, including the overarching primary duty of care – the offence is likely to create scapegoats rather than accountability, and promote an agenda rather than improved safety outcomes. This is

particularly concerning given that simple offences can be prosecuted in the Magistrates court by a Regulator and without DPP oversight. Our understanding is that the rights, defences, immunities, and rules of evidence that would normally be available under existing criminal laws for such a significant prison term would not be available to someone charged with the simple offence. We cannot see how this is conducive to the fair administration of justice. Particularly as the simple offence substantively replicates the existing model WHS category 1 offence, but carries penalties twice as severe (and allows simultaneous prosecution under both offences for the same conduct).

In our view, the best means of keeping everyone as safe as possible is to promote a culture of industry best practice, which can only be achieved through collaboration and transparency. Certainly, there needs to be serious consequences when safety falls below an acceptable level and causes a fatality, and the criminal and category 1 offences provide this. But the proposed new simple offence poses a serious and unnecessary risk to the very culture of collaboration and transparency necessary to prevent workplace fatalities. Where industry is made to work in fear of its regulators rather than partnership, and incentivised to prioritise compliance over outcomes, safety will suffer.

Yours sincerely

Danny Spadaccini
General Manager – Health and Safety