

26th June 2020

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

Email: lccl@parliament.wa.gov.au

Dear Dr Talbot,

COMMITTEE INQUIRY: WORK HEALTH AND SAFETY BILL 2019

My name is Aaron Nash and I have 20 years' experience in leadership and health and safety management in the resources sector across a range of countries, Australian states, operations and commodities.

I write to you regarding the Standing Committee on Legislation's current Inquiry on the Work Health and Safety Bill 2019 (the Bill), specifically with regards to the proposed introduction of Industrial Manslaughter offences.

Summary of concerns:

- No fatality is acceptable. As a leader, I have witnessed firsthand the devastating impact fatalities and serious injuries have - on families, workers and within communities and organisations. You do not pursue a leadership career in resources sector without a genuine desire to keep people safety and improve workplace health and safety.
- My broad concern is the potential damage these provisions could do to the way in which workplace health and safety is managed across the resources sector. While it is important to have penalties for breaches of legislation it is my experience that fostering positive and cooperative safety cultures based on reinforcing the positive and risk management is most impactful in improving health and safety 'on the ground'.
- I highlight 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.
- Additionally, from my perspective, there are legal and procedural fairness issues relating to the proposed offence. The maximum penalty for 30B 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 magistrates 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 lower bar of culpability under the 'simple' offence meets community expectations.

Reduction of sharing of lessons learnt:

- As any health and safety focused leader in the resources industry does, I work to learn from others and share my learning with others. Be they peers and other teams within my organisation or within the broader resources sector. The modern resources sector has an active culture to share key learnings from fatalities, injuries (serious and minor), near misses and hazards. Commonly referred to as 'safety shares' or 'lessons learnt', they are referenced every pre-shift meeting, leadership forum, board meeting and conference throughout the industry. We do this collectively as leaders, health and safety professionals and an industry knowing we are putting ourselves on the line for reputational damage – however we overcome these concerns of potential reputational damage due to our collective higher goal of bringing the industry to zero harm.

- Only yesterday I drafted a letter to the department of Dangerous Goods to alert them to an issue which I do not legislatively need to report. However, I did because I saw it as my duty of care, allowing the department to review and potentially share with others in the resources sector to learn from our near miss.
- In a new world of the threat of simple offence would I still be motivated to share this information considering concerns of this information being used in future prosecutions of myself/organisation/team or select the 'legal privilege' button in our investigation system to protect us?
 - I ask not to be placed in that position and prefer a legislative framework which encourages and reinforces sharing of health and safety information broadly.

Yes, we need reform:

- I recognise and agree appropriate laws are needed to respond to workplace fatalities and to hold officers and PCBU's responsible for reckless and intentional acts. However, I am concerned the Government's proposal to introduce the broadest of all industrial manslaughter offences in Australia, Part 2, s30B *Industrial Manslaughter – simple offence*, is not a proportionate offence that may have significant unintended consequences which undermine the most important objective of the WHS; to protect worker health and safety.
- My sense is there is a general acceptance of the move to implement industrial manslaughter offences in WHS laws in jurisdictions across Australia, further to recommendations from national reviews. These should be drafted and introduced further to careful consideration to ensure no unintended consequences. My view is they must only be reserved for gross disregard for known risk to an individual's life.
- The factors which contribute to safety incidents are complex, this is something I see firsthand. 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.
- 30B proposes a low threshold of "any neglect" and as drafted is likely to capture all fatalities able to be prosecuted, regardless of the contributing factors. To elaborate, section 19 of the WHS Bill enshrines an overarching 'primary duty of care' for PCBU's 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.

Thank you for your consideration of this important matter. My details are outlined below should you need any further information.

Yours sincerely

Aaron Nash

BaEng (Honours first class), MBA, Western Australian Unrestricted Quarry Manager