

To: Western Australian Standing Committee on Legislation

Re: Work Health and Safety Bill 2019

26 June 2020

Introduction

The Association of Mining and Exploration Companies (AMEC) represents companies with hundreds of employees across Western Australia. It is the highest priority of our members, and the Industry, that each employee is safe and returns from work unharmed. The mining and mineral exploration sector has, and will continue to, heavily invest in ensuring the safety of our workers and sustaining a strong safety culture.

We therefore have a direct interest in the proposed reforms and appreciate the opportunity to provide input on the modernisation of Western Australia's *Work Health and Safety Bill 2019*.

About AMEC

The AMEC is a national industry body representing over 275 mining and mineral exploration companies across Australia, with the majority invested in Western Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 133,000 people in Western Australia.

Comments on the Bill

Model legislation

AMEC is supportive of the implementation of the model work health and safety legislation in Western Australia and this step toward national harmonisation. This Bill will satisfy Western Australia's obligations under the Inter-governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety.

Furthermore, this Bill draws upon the 2018 Review of the model Work Health and Safety laws¹ by Marie Boland (Boland Review) which made 34 recommendations to improve the model legislation. These recommendations have been broadly adopted in this Bill, which are largely supported by AMEC. The following comments are provided on key provisions of the legislation:

Entry provisions

The decision to not duplicate the Western Australian and Commonwealth Industrial Relations legislation entry provisions is supported.

¹ A copy of the full final report is available here:

https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

Third party prosecutions

No provision has been made for third party prosecutions in the current drafting of this legislation. The inclusion of such a power would have a detrimental effect on the integrity of the regulator.

Industrial manslaughter

AMEC does not oppose the Government's intention to introduce industrial manslaughter provisions in this Bill but consider they must be tightly defined and appropriately focused.

As detailed in recommendation 23A of the Boland Review, and reflected in the strong national community response, there is a strong mandate for industrial manslaughter provisions for acts of a "gross deviation from a reasonable standard of care"²

Industrial manslaughter was not included in the model legislation because as delineated in the Boland Review, "The seriousness of offences and sanctions should relate to the culpability of the offender and not solely to the outcome of the non-compliance. Otherwise, egregious, systemic failures to eliminate or control hazards and risks might not be adequately addressed."³

However, the breadth of the proposed provisions will alter the focus of Western Australian Work Health Safety legislation from one that is about the management of risk to one where the outcome becomes the determinant. This could have unintended consequences divergent to the intentions of the Government.

Western Australia continues to build a strong safety management culture, with reportable incidents listed under the *Mines Safety and Inspection Act 1994* as occurrences that are required to be reported where a worker may not necessarily have been injured. These reports provide learnings for the broader community and informs improving safety in the wider mining and exploration community.

Category 1 & Simple offences

Specifically, the upgrading of Category 1 offences combined with the creation of 'simple' industrial manslaughter offences in the current drafting of the legislation may have a negative effect on the continued positive development of this culture. Disappointingly, neither of these provisions were consulted upon widely before their inclusion in this Bill as is usual practice. The current drafting undermines the national harmonisation of the legislation and duplicates provisions already available to prosecutors under the WA Criminal Code.

This Bill includes the broadest 'simple offence' in the nation, which steps beyond the model legislation and other States legislation. Under Clause 30B, the Bill relies on 'neglect on any part of the officer', rather than the 'gross negligence' provisions recommended by the Boland review. AMEC strongly recommends the entire Clause of 30B is reconsidered and at the very least the test of negligence upgraded. How such a low threshold of negligence in the current drafting is considered will improve outcomes in the workplace has not been quantified.

² P, 11, Boland Review, https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf

³ P 119, Ibid.

The provisions of the “simple offence” are too broad and do not require the responsible individual or ‘person conducting a business or undertaking’ (PCBU)’s conduct to have ‘caused’ the death, and disregards their ‘knowledge’ the conduct was likely to cause death. The proposal is almost identical to the terms of a Category 1 offence in the WHS Bill, yet the penalties are twice as severe, and allow for a person or PCBU to be charged under both the “simple offence” as well as the Category 1; essentially charging the same conduct with two different offences.

Industry is of the belief that while stringent controls are required to prevent and appropriately prosecute gross acts of negligible duty of care resulting in the death of an employee, the proposed “simple offence” provisions are reactive rather than proactive, and shift the focus from managing risks to creating a blame culture relying on punitive action after a fatality.

Criminal offences

The currently drafted provision of a defined criminal offence that applies to egregious behaviour, and a knowing disregard of reasonable safety practice. The current drafting of the criminal offence is supported, but defences must be clearly identified in the legislation to clarify the intent of the Parliament rather than relying on judicial discretion.

Final comment

AMEC appreciates the opportunity to provide the perspective of Industry on this important legislation.

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