

8 October 2019

Dr Jennifer Buckley  
Committee Secretary  
Economic Policy Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

Via email: [EPSC@nt.gov.au](mailto:EPSC@nt.gov.au)

Dear Dr Buckley

**RE: WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION) AMENDMENT BILL 2019**

The Minerals Council of Australia Northern Territory Division would like to thank the Secretariat for the opportunity to provide a submission to the Economic Policy Scrutiny Committee (EPSC) regarding the proposed Work Health and Safety (National Uniform Legislation) Amendment Bill 2019, specifically in relation to the introduction of legal frameworks to include industrial manslaughter charges. This submission has been informed by consultation with MCA NT member companies to understand the safety, legal and practical implications of the proposed legislative amendments.

The MCA NT is the peak industry association that represents minerals companies in the Northern Territory. Member companies of the MCA NT are engaged in mineral processing, mining, exploration, or the provision of services to the industry and account for more than 85 per cent of mineral industry output in the Northern Territory.

The MCA NT's strategic objective is to advocate public policy and operational practice for a world class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

**Safety is the minerals industry's number one value**

The minerals industry's number one value and commitment is the safety and health of its workforce, where everyone who goes to work in the industry returns home safe and healthy. The minerals industry is firmly committed to the principle that every individual, regardless of where they work, whether as a direct employee or contractor, and whatever tasks they undertake, should have the same high standard of workplace safety. The industry has set itself the ambitious goal of becoming free of fatalities. MCA member companies nationwide maintain that:

- All fatalities, injuries and industrial diseases are preventable
- No task is so important that it cannot be done safely
- All hazards can be identified and their risks managed
- Everyone has a personal responsibility for the safety and health of themselves and their workmates.

## Existing NT workplace safety regulatory environment

The Northern Territory became the seventh of Australia's nine jurisdictions to introduce laws mirroring the harmonised Work Health and Safety laws in 2011 and operates under the *Work Health and Safety (National Uniform Legislation) Act 2011*. As recently as January 2019, the NT Government released its report of the Best Practice Review of Workplace Health and Safety in the Northern Territory, including a recommendation to introduce two new offences into the Act related to industrial manslaughter (recommendation 19).<sup>1</sup>

## Key issues identified in the draft legislation

The Northern Territory Government on 19 September 2019 introduced a Bill to amend the *Work Health and Safety (National Uniform Legislation) Act 2011* regarding industrial manslaughter. This amendment Bill reflects the recommendation from the abovementioned review and seeks to create the WHS offence of industrial manslaughter, with maximum penalties of 'imprisonment for life' for individuals and 65,000 penalty units (currently equating to \$10,205,000) for bodies corporate for reckless or negligent conduct breaching the health and safety duty and causing the death of an individual.

The MCA NT opposes the introduction of an industrial manslaughter offence into the Act. Industrial manslaughter is arguably inconsistent with accepted principles of criminal law that recklessness is questionably a higher standard than negligence. Essentially, the inclusion of a negligence offence appears to propose that the criminal standard at which an offence may be committed be lowered. The MCA NT does not consider this to be appropriate.

Regulation must balance accountability with the imperative to promptly share safety lessons and knowledge in order to improve WHS standards at workplaces and prevent further incidents.

The MCA NT supports firm but fair and consistent legislation that promotes healthier, safer workplaces while ensuring appropriate responses where serious offences are proven. On their own, industrial manslaughter laws are unlikely to contribute to general or specific deterrence or improvements in health and safety outcomes.

The MCA NT does not consider that the Bill incorporates the evidence to substantiate its introduction.

The MCA welcomes detailed debate on whether the inclusion of the offence assists in meeting the underlying policy intentions of improving standards in work health and safety.

Prior to the industrial manslaughter offence being introduced in the Act, the MCA NT recommends that the following issues be considered and resolved:

- The criminal standard to which duty holders are held: The standard should reflect the seriousness of the offence. The highest criminal standard, which is generally accepted to be recklessness, should apply to the offence. If a lower standard is to apply the drafting of the offence must make it clear that the standard of criminal negligence applies. This means that there is an unjustifiable failure to meet the standard that a reasonable person would have exercised in the circumstances and that the relevant conduct involved a high risk of death.
- How an offence of gross negligence will interact with state and territory laws: In particular because offences of 'gross negligence' and 'recklessness' are not consistent across all jurisdictions, clarity must be provided as to how jurisdictional variations will be managed.
- Making all available defences under existing criminal laws available to the offence: For example, existing manslaughter offences do not occur when the act or omission is not malicious or where the person had a lawful excuse. Such defences should apply to industrial manslaughter offences.

<sup>1</sup> Department of Justice, [Best practice review of workplace health and safety in the Northern Territory](#), Northern Territory Government, viewed 10 October 2019.

- Aligning the rights and privileges for other criminal offences with the industrial manslaughter offence: Duty holders and, in particular, individuals should be afforded a right to silence and a privilege against self-incrimination. Consideration should also be given to a broad derivative use immunity so that information obtained under a compelled power for one purpose cannot be used against individuals in industrial manslaughter proceedings.
- Penalties: Courts should be granted the discretion to impose either financial penalties or a term of imprisonment as opposed to allowing only for imprisonment of individuals.
- Prosecution: Industrial manslaughter offences should be prosecuted by the relevant public prosecutions department as opposed to health and safety regulators.
- Limitation periods: The period for any industrial manslaughter offence should be aligned with the existing limitation period in section 232 of the Model WHS Act.

Such protections will go some way to addressing the concerns of industry with the inclusion of an industrial manslaughter offence, notwithstanding the absence of any deterrent benefit from the introduction of the offence in the ACT or Queensland to date. These include the potential for the offence to have an adverse impact on the ability for industry to attract and retain suitable candidates to leadership roles.

The Australian minerals industry is committed to continuous improvement in all areas of health and safety and follows a best practice risk-based approach to managing risks of exposure to the workplace. The number one value and commitment of the Australian minerals industry is the safety and health of its workforce, where everyone goes to work and returns home safely.

The MCA NT will continue to advocate for continuous improvement, where all parties work together in support of a safety culture based on trust and openness, not an oppressed version that inhibits opportunity to learn and improve.

Yours sincerely

**DREW WAGNER**  
**MCA NT EXECUTIVE DIRECTOR**