

10 March 2020

Our ref: MC-LP

Committee Secretary  
State Development, Natural Resources and Agricultural  
Industry Development Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: 

Dear Committee Secretary

**Mineral and Energy Resources and Other Legislation Amendment Bill 2020**

Thank you for the opportunity to appear before the State Development, Natural Resources and Agricultural Industry Development Committee (**Committee**) at the public hearing for the inquiry into the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (**Bill**) on 3 March 2020.

At the hearing, the Queensland Law Society (**QLS**) was asked a question which, we were permitted to take on notice. By way of email correspondence on 5 March 2020, the Committee confirmed the question as follows:

*"Is there current legislation to prosecute criminal negligence by corporate mining executives?"*

In answering the question, we note that "corporate mining executive" is not a term used or defined in the Resources Safety Acts<sup>1</sup> or, from our brief review, in other work health and safety legislation or in any other legislation that relates to this sector. We also note that the Resources Safety Acts that are amended by this Bill include the *Petroleum and Gas (Production and Safety) Act 2004*.

In answering the question, we have therefore interpreted it to be whether legislation currently exists to capture those persons described in the definition of "senior officer" of this Bill. This definition states that:

**senior officer**, of an employer for a coal mine, means—

- (a) if the employer is a corporation—an executive officer of the corporation; or
- (b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions

<sup>1</sup> *Coal Mining Safety and Health Act 1999 (CMSHA)*, the *Mining and Quarrying Safety and Health Act 1999 (MQSHA)* and the *Petroleum and Gas (Production and Safety) Act 2004 (P&G Act)* (collectively, 'the Resources Safety Acts')



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The answer to the Committee's question is, yes. Our submission of 26 February 2020 set out that any individual can be charged under section 300 – *Unlawful homicide* or section 328 – *Negligent acts causing harm* of the *Criminal Code 1899 (Criminal Code)* if their conduct satisfies the elements of those offences. There is no restriction on who can be charged with these offences. A senior officer of a mining company could be charged. What is necessary is a breach of the duty owed by the relevant person.

Similarly, sections 290 and 289 of the Code provide as follows:

### **290 - Duty to do certain acts**

*When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is the person's duty to do that act: and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.*

### **289 Duty of persons in charge of dangerous things**

*It is the duty of every person who has in the person's charge or under the person's control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health, of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger, and the person is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.*

Both of these provisions deem the person who fails in their duty to have caused the resulting consequences to life and health. Where death results, section 293 provides that "any person who causes the death of another, directly or indirectly, by any means whatever is deemed to have killed that person." Section 291 provides that killing a person is unlawful, unless authorised, justified or excused. Section 300 provides that an unlawful killing is a crime. Section 303 provides that an unlawful killing, which is not murder, is manslaughter. Section 310 provides that the maximum penalty for manslaughter is imprisonment for life.

In this way, the Criminal Code will hold responsible a senior officer of a mining enterprise whose dereliction of duty has caused a death.

The Resources Safety Acts also create duties that are owed by senior officers.

For example, section 34 of the CMSHA provides, "A person on whom a safety and health obligation is imposed must discharge the obligation." A penalty is imposed for contravention of this section. For example, if the contravention committed by an officer of a corporation caused multiple deaths, a maximum penalty of 6,000 penalty units or three years imprisonment could be applied.<sup>2</sup> Please see attached section 34 of the CMSHA.

Section 33 of the Act outlines who a "safety and health obligation" is imposed on. Subsection (1) provides that coal mine workers or other persons at coal mines or persons who may affect safety and health at coal mines or as a result of coal mining operations, have obligations under division 2 (safety and health obligations).

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<sup>2</sup> CMSHA, s 34(a)(ii).

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Subsection (2) provides that the following persons also have safety and health obligations:

- (a) a holder;
- (b) a coal mine operator;
- (c) a site senior executive;
- (d) a contractor;
- (e) a designer, manufacturer, importer or supplier of plant for use at a coal mine;
- (f) an erector or installer of plant at a coal mine;
- (g) a manufacturer, importer or supplier of substances for use at a coal mine;
- (h) a person who supplies a service at a coal mine.

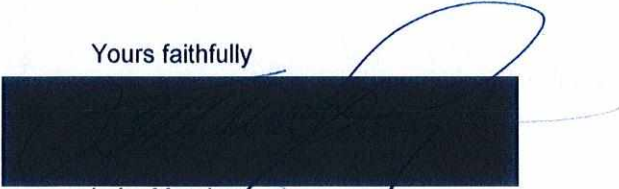
Relevantly, section 33(3) provides that if a corporation has an obligation under this act, an officer of the corporation has obligations that are also deemed "safety and health obligations".

Similar provisions exist under sections 30 and 31 of the MQSHA.

If a senior officer breaches any of these duties owed by that person and that causes the death of a person, then that senior officer will be exposed to a charge under the CMSHA or another of the Resources Safety Acts (where applicable) and/or in the alternative, under one or more of the sections of the Criminal Code outlined above.

If you have any queries regarding the contents of this letter, please do not hesitate to contact the Legal Policy team by phone on 07 3842 5930 or email to [policy@qls.com.au](mailto:policy@qls.com.au).

Yours faithfully



Luke Murphy  
President



- (b) ~~a coal mine operator;~~
  - (c) ~~a site senior executive;~~
  - (d) ~~a contractor;~~
  - (e) ~~a designer, manufacturer, importer or supplier of plant for use at a coal mine;~~
  - (f) ~~an erector or installer of plant at a coal mine;~~
  - (g) ~~a manufacturer, importer or supplier of substances for use at a coal mine;~~
  - (h) ~~a person who supplies a service at a coal mine.~~
- (3) ~~If a corporation has an obligation under this Act, an officer of the corporation has obligations under division 3A (also *safety and health obligations*).~~

### 34 Discharge of obligations

A person on whom a safety and health obligation is imposed must discharge the obligation.

Maximum penalty—

- (a) if the contravention caused multiple deaths—
  - (i) for an offence committed by a corporation—30,000 penalty units; or
  - (ii) for an offence committed by an officer of a corporation—6,000 penalty units or 3 years imprisonment; or
  - (iii) otherwise—3,000 penalty units or 3 years imprisonment; or
- (b) if the contravention caused death or grievous bodily harm—
  - (i) for an offence committed by a corporation—15,000 penalty units; or
  - (ii) for an offence committed by an officer of a corporation—3,000 penalty units or 2 years imprisonment; or

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- (iii) otherwise—1,500 penalty units or 2 years imprisonment; or
- (c) if the contravention caused bodily harm—
  - (i) for an offence committed by a corporation—7,500 penalty units; or
  - (ii) for an offence committed by an officer of a corporation—1,500 penalty units or 1 year's imprisonment; or
  - (iii) otherwise—750 penalty units or 1 year's imprisonment; or
- (d) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—
  - (i) for an offence committed by a corporation—7,500 penalty units; or
  - (ii) for an offence committed by an officer of a corporation—1,500 penalty units or 1 year's imprisonment; or
  - (iii) otherwise—750 penalty units or 1 year's imprisonment; or
- (e) otherwise—
  - (i) for an offence committed by a corporation—5,000 penalty units; or
  - (ii) for an offence committed by an officer of a corporation—1,000 penalty units or 6 months imprisonment; or
  - (iii) otherwise—500 penalty units or 6 months imprisonment.

**35 ~~Person may owe obligations in more than 1 capacity~~**

~~A person on whom a safety and health obligation is imposed may be subject to more than 1 safety and health obligation.~~

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