

25 June 2020

Hon Dr. Sally Talbot MLC
Chair
Standing Committee on Legislation
4 Harvest Terrace
WEST PERTH 6005

Dear Dr. Talbot,

COMMITTEE INQUIRY: WORK HEALTH AND SAFETY BILL

Newmont Australia thanks the Committee for the opportunity to provide a submission on the above Bill. Newmont Australia, part of Newmont Corporation, supports the harmonisation of Western Australia's Workplace Health and Safety Laws, as agreed by Council of Australian Government's in 2008 and as set out in the recommendations of the 2018 Boland review.

Newmont Australia operates two of Australia's largest gold mines, Boddington in Western Australia and Tanami in the Northern Territory, and has exploration activity in all of Australia's mainland states. As a national employer, Newmont Australia believes the harmonisation of Australia's Work and Health safety laws will improve the protection of employees from harm, in line with our global health and safety policy, which includes our commitments to a culture of zero harm, safety leadership and the prevention of fatalities and serious injuries. Newmont does not believe that any fatality at a workplace is acceptable and has adopted a robust companywide Fatality Risk Management program to eliminate the risk of fatalities occurring in our workplaces.

Notwithstanding our general support for the legislation, Newmont Australia shares some concerns raised by industry bodies including the Chamber of Minerals and Energy Western Australia, of which Newmont Australia is a member, regarding the potential effect of the operation of s30B of the Bill, the proposed "simple offence" of industrial manslaughter. In raising this concern, Newmont Australia notes that we do not oppose support the creation of the offence of industrial manslaughter, as set out in s30A of the Bill, and consider this drafting to be appropriate given the seriousness of the offence. However, we would prefer the Bill be amended as below.

Newmont Australia believes that the simple offence set out in s30B raises potential concerns about how employees could defend their actions from a general duty of care or a specific duty. In particular, this section raises concerns, as the use of the broad term "any neglect" in s30B, ss 3, c, i) with regard to a primary or specific duty, could see a wide range of prosecutions under this section for a workplace fatality, that could not have been reasonably foreseen or prevented in accordance with the requirements of Sections 17 and Sections 18 of the Bill, which essentially require organisations to assess and manage risk. Newmont Australia supports the objects of the Bill and acknowledges the role important role of penalties to punish breaches of the legislation, but believes s30b carries the potential for a mischance of justice due to the lack of legal rigour around the provisions. In the case of s30B, these concerns would be alleviated if the role of prosecuting this offence were to be removed from the auspices of the inquiring authority, WorkSafe, with carriage given over to the Director of Public Prosecutions, while the better Court for such significant matters to be heard would be the Magistrates Court rather than the District Court. With regards to the s30A offence, Newmont proposes that this class of offence be best heard by the Supreme Court

rather than the Magistrates Court, as this Court has usual carriage of hearing manslaughter offences under WA's criminal Code.

Another important consideration is the potential for the broad scope of the simple Industrial Manslaughter offence to have a "chilling" effect on the vital culture of continuous improvement in health and safety. Health and safety improvement in our sector has been borne out of the recognition of many businesses that culture is critical to the management of health and safety risks. The industrial manslaughter provisions of the Bill could undo and discourage the fostering of this open and collaborative culture, seeing firms and individuals slow industry collaboration such as the sharing of lessons learned and open dialogue with regulators. While we acknowledge that there is a variation in culture between businesses, and that continuous improvement in workplace health and safety culture is sought by other provisions in the Bill, the legalistic and punitive regime contemplated by s30b offences may have unintended consequences that are detrimental to health and safety in our workplaces.

Newmont Australia appreciates the Committee will bring its full attention and resources to this legislation and we look forward to the Report on the Bill.

If you have any questions on above, please contact Andrew Kennedy, Group Executive Legal, Sustainability and External Relations in the first instance.

Sincerely,

Andrew Kennedy
Group Executive Legal, Sustainability and External Relations