Common Health and Safety Legislation for the Coal Mining Industry - A Company Perspective

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Introduction

Shell Coal Australia operates both open cut and underground mines in New South Wales and Queensland. The techniques and methods of mining are virtually identical in both states.
These mines operate under different legislative regimes and bear different costs for meeting differing legislative requirements. Competition takes place however in the same export markets.
We look at ourselves in a corporate sense as coal miners in Australia and regularly move personnel, equipment and ideas between mines in the two States.
In these circumstances the issue of common Health and Safety legislation has particular interest for Shell Coal Australia.

Discussion

Why is there different State legislation and does it work?

In discussing the issue of common Health and Safety legislation for the Coal Mining Industry it is worth reviewing why *non* common legislation now exists.
Coal was discovered near Newcastle in 1791. First exports were made in 1801. There was no legislation in place to control coal mining until 1854 when legislation based on the British example was introduced. This legislation went with Queensland during Separation in 1859 and for a brief period it can be said common legislation did exist. Almost immediately however Queensland fell behind when the New South Wales Legislation was amended in 1962. Until 1925 the Queensland Act combined Coal and Metal mines and was in comparison to both existing British and New South Wales Coal Acts a limited affair (Mackie 1991).
Major changes have been made to both sets of legislation as a result of a sobering list of mine disasters and subsequent Royal Commissions or Mining Inquiries. These responses and improvements have not been aligned and legislative changes in each state have been made independently of each other. A good example is the oil flame safety lamp which is largely unused in Queensland as a result of the 1986 Moura Inquiry but still persists in New South Wales. It is a sad but historical fact that changes to legislation as a result of a mine disaster usually only occur in the state in which the disaster occurred. Put more cynically 'when it is close to home'. This is despite the good intentions of all mining people to ensure the lessons travel across the border. Legislation is simply too slow and requires too much effort to change in substantial ways without (usually) the nearby impetus of an unfortunate mining disaster.
To confuse the matter further additional legislation such as the Occupational Health and Safety Act has an 'umbrella role' in New South Wales but specifically does not apply to coal mines in Queensland.
Nobody would argue the present legislation situation has not served the industry well in controlling the major risks in coal mining. It does have serious limitations however and is far from being an ideal instrument to control a national export industry whose safety record must continue to improve.

'Self Regulation' versus Prescriptive Legislation

There is a clear notional thrust in each State to review legislation along the lines of 'self regulation' although what this actually means in practice is still open to debate.
Most of the debate is about the capacity of mine management to manage mines safely and the role of regulators to police this management.

For a start let us abandon the myth that self regulation is easier for mine management. Self regulation is governed by objectives and goals. It requires a high degree of managerial maturity because it defines clear lines of responsibility and accountability. It also usually means more involvement from all levels of the organisation. In practice it means more effort but ensures more results.

Prescriptive laws operate not unlike the tax system where companies would wish to pay the minimum required. Effort is spent in seeking clarification of rules and in approval processes with government officials. It does not encourage creative solutions or continuous improvement.

Self Regulation is not about powerless regulators, indeed the contrary. The regulating authority has to have highly competent and experienced staff resourced to audit mine safety plans.

Would we lose 'the lessons of history'?

A common criticism of the duty of care approach to legislation is of the loss of 'the lessons of history'. This implies prescriptive legislation is the home or safety deposit box for the lessons often learnt through tragedy.

Legislation is not the appropriate home for such lessons. As discussed above there is no guarantee the lesson will make it over the state border. The lesson will also only be recorded by way of punitive action designed to stop it occurring again but usually omitting the complexities involved in the original case. It is also likely controls will be put in place based on current technology or practice and will leave no room for future superior technology to provide a possibly safer outcome.

A well-educated industry management supported by a well-resourced regulatory structure is the best method of ensuring 'the lessons of history' are not lost.

Common Legislation or a Common Approach?

History has shown the difficulties in obtaining inter state agreement on many issues. Examples are a common railway gauge and more recently gun control legislation. Faced with this history it is almost impossible to believe inter-state agreement could be obtained on coal mine health and safety legislation of any detail. There are simply too many items open to debate.

Alignment between the states will only be achieved on the basis of simple, principled legislation of the duty of care type. This would be a significant achievement that would allow a common language and culture towards health and safety to develop.

Conclusion

Common coal mine health and safety legislation of the duty of care type would benefit the industry in many ways:

- We interact between the states in numerous joint ventures, we transfer people and expertise between the states so a common health and safety culture and language is beneficial to us all.
- The use of contractors who move between the states and who are responsible for delivering the same levels of safety performance.
- Whether we like it or not society will judge us by an industry record, if one of us fails then we are all damaged.

Such legislation would provide a framework for improving safety standards and results in a vital national industry.