

Queensland Mining Industry Health and Safety Conference

Safety and Health Legislation – Five Year Review – The Good, the Bad and the Ugly

8 August 2006

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Have the objects of the Act been achieved?

- » Key objects of the legislation.
- » Has the legislation met the objects?
- » What does the case law tell us?
- » How can these lessons be applied?

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Have the powers granted to the Regulator and ISHR's been used in the manner intended?

- » What are the powers of the Inspectorate and Industry Safety and health Representatives?
- » How have these powers been used?
- » What does the case law tell us?
- » What should be changed and what should be encouraged?

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The way forward and the need for clarity

- » Enforceable undertakings - a viable option for change?
- » The need for clarity in the obligation and defence provisions.
- » How WorkChoices will affect safety at mines .
- » The need for more transparent consultation processes.
- » Injury management, medical assessments and fitness for duty – do the regulations improve safety?

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The Legislation

Workplace health and safety in Queensland coal mines is governed by

- » *Coal Mining Safety and Health Act 1999* ("the Act")
- » *Coal Mining Safety and Health Regulation 2001* ("the Regulations")
- » *Mining and Quarrying Safety and Health Act 1999*
- » *Mining and Quarrying Safety and Health Regulation 2001*

The Legislation has been significantly amended since its enactment.

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Coal Mining Safety and Health Act 1999

- » Was proclaimed on 29 October 1999
- » Recognised that modern safety management focuses on creating a concept of on-site ownership of safety and health issues, brought about by the introduction of duty of care principles.
- » Was a recommendation of the Moura Inquiry that duty of care principles be included in coal mining legislation.

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Objects of the Act

- » To protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations.
- » To require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level.

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Achieving the objects of the Act

The objects of the Act are to be achieved by:

- » Imposing safety and health obligations
- » Providing for safety and health management systems
- » Making regulations and recognised standards
- » Establishing a safety and health advisory council
- » Providing for safety and health representatives

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Achieving the objects of the Act (cont.)

- » Providing for inspectors and other officers
- » Providing a way for competencies to be assessed and recognised
- » Requiring management structures
- » Providing for an appropriate level of coal mines rescue capability
- » Preparedness for emergencies

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Have the objects of the Act been achieved?

Have the following been achieved?

- » Safety is and has been regarded paramount
- » Injury and risk to safety and health has been kept at a minimum
- » Entities or persons who are not willing to make efforts to make their place of work safe have been reprimanded
- » There has been effective collaboration between all stakeholders
- » An appropriate enforcement framework is in operation
- » The legislation and enforcement accurately reflect the considered views of all stakeholders

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What does the case law tell us?

- » *Smyth v State of Queensland & Ors* [2005] QSC 175
- » *CFMEU v State of Queensland & Anor* [2004] QSC 181
- » *Edwards v North Goonyella Coal Mines Pty Ltd* [2005] QSC 242
- » *Macpherson v Rio Tinto Coal Australia Pty Ltd* [2005] QSC 120

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Powers granted to the Regulators and Industry Safety and Health Representatives

Powers of inspectors

An inspector has the power to

- » enter a coal mine or other places in certain circumstances
- » Seize evidence
- » Search any part of the coal mine or other place
- » Inspect, measure, test, photograph or film
- » Take a thing or sample at the coal mine for analysis for testing

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Powers granted to the Regulators and Industry Safety and Health Representatives (cont.)

- » Copy documents
- » Take equipment and materials into or onto the coal mine
- » Require a person to give reasonable help to exercise his or her power
- » Require a person to answer reasonable questions

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Powers of Industry Safety and Health Representatives

ISHR's have the power to:

- » Make inquiries about the operation of coal mines relevant to the safety or health of coal mine workers
- » Enter any part of a coal mine at any time to carry out the representative's functions on reasonable notice to the SSE or the SSE's representative
- » Examine any document relevant to safety and health if the representative has reason to believe the documents contain information relating to processes at place at a coal mine to achieve acceptable level of risk to coal mine workers

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Powers of Industry Safety and Health Representatives

- » Copy safety and health management system documents
- » Require the person in control of the coal mine to give reasonable help in the exercise of power
- » Issue a direction under s167 to suspend operation for an unacceptable level of risk

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The way forward and the need for clarity

Are enforceable undertakings a viable option for change?

The Act does not provide for enforceable undertakings to be entered into by operators or holders.

Enforceable undertaking

- » Legal agreement in which a person or organisation undertakes to carry out specific activities to improve worker health and safety and deliver benefits to industry and broader community

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The way forward and the need for clarity

- » At present, an organisation can only apply for an enforceable undertaking if it has breached either the *Electrical Safety Act 2002* or the *Workplace Health and Safety Act 1995*
- » If an application for an enforceable undertaking is not accepted, a prosecution will proceed
- » Compliance with an enforceable undertaking will generally cost an organisation more than the fine which they might receive at prosecution

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The way forward and the need for clarity

- » The organisation is required to carry out:
 - substantial education and safety promotion
 - Safety upgrades
 - Audits
 - Training
- » The organisation is committed to future safety standards, including taking steps to ensure that an incident of that nature does not occur again

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How WorkChoices will affect safety at mines

WorkChoices affects OHS issues, including:

- » Industrial action
- » Agreement making

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Other OHS Issues arising from WorkChoices

Additional hours

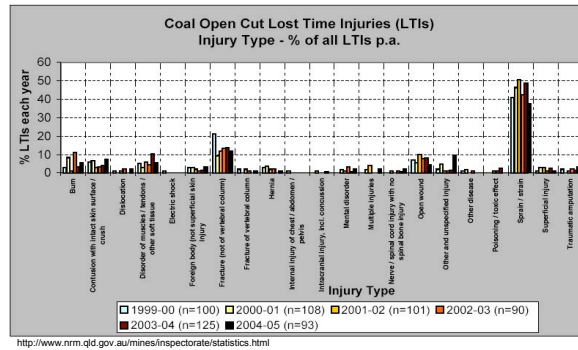
- » Employer may require an employee to work reasonable additional hours
- » Has been argued that extending work hours resulting from individual bargaining may create tired employees who are a workplace health and safety risk

Removal of provisions from agreements

- » Has been argued that negotiating away conditions such as meal breaks, public holiday and annual leave may effect OHS in the workplace

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Injury statistics 1999 - 2005



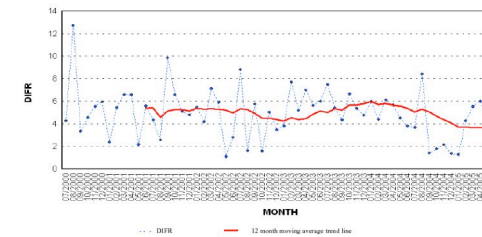
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Injury statistics 2000 - 2005

Disabling Injury Frequency Rates
from 1/07/2000 to 30/06/2005

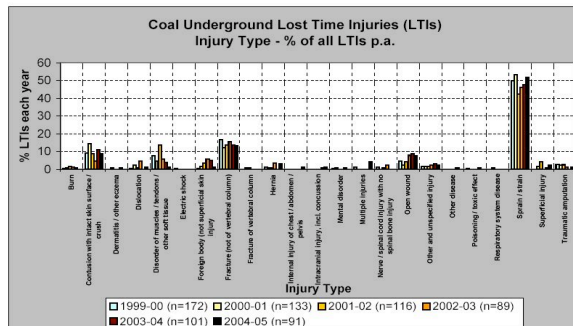
Mine Type: **Coal Open Cut**

Disabling Injury Frequency Rate



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Injury statistics 1999 - 2005



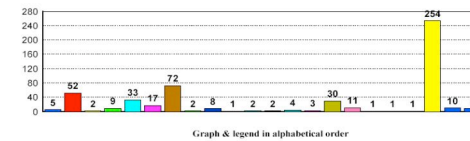
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Injury statistics 2000 - 2005

Lost Time Injuries - Injury Type
from 1/07/2000 to 30/06/2005

Mine Type: **Coal Underground**

LOST TIME INJURIES - INJURY TYPE



Source: <http://www.nrm.qld.gov.au/mines/inspectorate/statistics.html>

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Thank you

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