

Interaction with Police and DME on Mine Sites

Queensland Mining Industry Health and Safety
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- Hypothetical incident
 - Who has jurisdiction at an incident scene?
 - Clean Energy Act 2008
 - Would it have made any difference anyway?

Hypothetical

Incident at Black Coal Mine

Facts

- Big Mining Co operate Black Coal mine
- Little Trucking Co have a contract to cart coal on the mine site
- Jim is an employee of Little Trucking Co. He is fatally injured when he is run over by a truck driven by co-worker Dave
- Dave and Steve are the only witnesses to the incident, and both are employees of Little Trucking Co
- No Big Mining Co employees witness the incident

What are the issues?

- Big Mining Co doesn't know where the incident happened
- Big Mining Co can't provide the information to the DME because it doesn't have the information
- Little Trucking Co is refusing to talk to the DME until its lawyers arrive and won't give Big Mining Co any information

Serious accidents and high potential incidents

Interaction of DME and the Police

Who has what powers – serious accidents or high potential incidents

The applicable legislation is either:

Coroners Act 2003 (s16)

*Police Powers and Responsibilities Act 2000
(s601 and s791)*

or

MQSH Act 1999 (s154, s155 and s156)

CMSH Act 1999 (s157, s158 and s159)

Is privilege against self incrimination available under the Coroners Act and PPR Act?

Yes

Under the Coroners Act and the PPR Act

- If police assist the Coroner investigate a death;
- They may require information relevant to that investigation from a person;
- They must inform the person that they do not have to give the information if it would tend to incriminate the person; and
- The person may seek legal advice before giving the information.

Is privilege against self incrimination available under MQSH Act & CMSH Act?

No

But answers may not be used against the person in proceedings under the MQSH Act / CMSH Act

- The Inspector must warn the person of the following:
 - that giving the answer may incriminate; and,
 - the effect of making a claim on admissibility of answer and any information (incl documents)
- Person must claim privilege before answering
- Information must then be given
- Neither the answer nor information obtained as a result of the answer are admissible in proceedings against the person

The internal arrangement between DME and QPS

- There is an arrangement between DME and QPS that QPS will have jurisdictional control of a site if they attend as well as DME Inspectors.
- Under the Qld Police Service Operational Procedures Manual, any site of a fatal accident or an accident causing grievous bodily harm may be a crime scene.
- Until it is clearly established that it is not a crime scene, the QPS Officer in charge will have control of the site.

What does this mean in practice?

The effects of this arrangement are as follows:

- Investigations are conducted as if they are criminal investigations until a crime has been ruled out
- All information gathered by the QPS under their powers may be used as evidence in both criminal and safety prosecution proceedings
- Persons have the ability to refuse to answer questions or provide information
- Information obtained under legal professional privilege does NOT have to be produced to either the QPS or DME

What does this mean in practice?

Tip 1	Legal professional privilege should be established as soon as possible after an incident occurs
Tip 2	It is preferable that interviews are conducted by Inspectors using their powers under the CMSH or MQSH Acts so legal professional privilege can be obtained
Tip 3	Preliminary statements obtained while legal advisors are en route should be taken in a manner which attracts legal professional privilege
Tip 4	Any information provided to the QPS or DME without the privilege should be considered to be evidence
Tip 5	Persons being interviewed should know their rights

Clean Energy Act 2008

The expansion of powers and primary information

Clean Energy Act 2008

The Act amended the CMSHA and the MQSHA to:

- expand the powers of Inspectors and Inspection Officers
- include new provisions for the timely provision of information to the Inspectorate

The amendments came into effect on 21 May 2008

Primary Information

What is it and when must you give it?

Requirement to give “primary information”

The SSE must now provide additional information to the Inspector and Industry Safety and Health Representative / District Workers’ Representative in the event of a notifiable incident – this is called “primary information”.

CMSHA – s198A

MQSHA – s195A

What information must be provided?

For a death, serious accident or high potential incident:

- precise location where it happened
- when it happened
- number of persons involved
- name of the person who died or who was injured
- name of any person who saw the incident or accident or was present when it happened
- if no one was present when the person died or was injured – the name of the person who found the deceased or injured person
- brief description of how the death or incident happened

What if the SSE doesn't know the primary information at the time of notification?

The SSE must:

- Take all reasonable steps to find out the primary information as soon as possible; and
- Give the primary information to the Inspector and Representative as soon as possible after the information becomes known to the SSE.

Penalty for failure to find out and provide the primary information:

Individual	\$3,000
Corporation	\$15,000

Can the SSE refuse to hand over information on the grounds of incrimination?

- SSE cannot refuse to provide primary information or take steps to find out the primary information on the grounds of self-incrimination: CMSHA – s198A(3C), MQSHA – s195A(3C)
- Primary information is not admissible in evidence against the SSE in any criminal proceeding. However, this does not prevent the primary information being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary information: CMSHA – s198A(3D) & (3E), MQSHA – s195A (3D) & (3E)

Requirement to give primary information

An Inspector, Inspection Officer or Authorised Officer can require a person to give primary information about the accident, incident or death during the course of an investigation.

CMSHA – s198A

MQSHA – s195A

Penalty for failure to comply with a requirement to give primary information:

Individual	\$3,000
Corporation	\$15,000

Exceptions

A person cannot refuse to give the officer the primary information or take steps to find out the primary information on the grounds that the giving of the primary information might tend to incriminate the person, unless:

- The person is an involved person; and
- The primary information requested is a brief description of how the accident, incident or death happened.

Who is an Involved Person?

A person who was directly involved in the accident or incident.

Example:

A member of the crew of the deceased or injured person, who was present at the accident or incident.

In the hypothetical situation, this would include Dave and Steve

Use of primary information in criminal proceedings

Primary information is not admissible in evidence against **the person** in any criminal proceeding.

However, this does not prevent the primary information being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary information.

Who is **the person**?

Primary Information

What difference would it have made for the Black Coal Mine incident?

Big Mining Co

- For Big Mining Co
 - the requirement to give primary information would not have made any difference
 - Big Mining Co didn't have the information, therefore it could not have given the information to the DME
 - Even if Big Mining Co had asked Little Trucking Co to give the information, Little Trucking Co was refusing to do so
 - Big Mining Co would have to show the DME that it had taken all reasonable steps to get the information

Little Trucking Co

- For Little Trucking Co:
 - the requirement to give primary information would have made a difference because it did have the information
 - The primary information would have to be given to the DME

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