

Obligation holders under the *Coal Mine Safety and Health Act 1999* and the *Mining Quarrying Safety and Health Act 1999*: who really carries the burden of responsibility?

Matthew Smith, Partner

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1.0 Introduction

In the recently released Ombudsman Report into the *Regulation of Mine Safety in Queensland: A Review of the Queensland Mines Inspectorate*, it was estimated that the overall economic contribution of mining to the state economy is \$2 billion annually.¹

While mining is one of Australia's most important industries, it is also an industry that presents many hazards and risks that require careful management in ensuring workers are protected and productivity gains are made. This was also recognised in the Ombudsman Report which stated that "*Mining is...an industry that presents unique, and sometimes extreme, risks...Mining is subject to specific hazards that need particular measures to effectively identify and manage them...*"

Mine safety regulation has existed in Queensland since 1881 when the Inspectorate of Mines was first established.² Currently, in Queensland mine safety is regulated by two legislative regimes:

- » the *Coal Mining Safety and Health Act 1999* (CMSH Act) and its associated regulation; and
- » the *Mining and Quarrying Safety and Health Act 1999* (MQSH Act) and its associated regulation.

The CMSH Act deals solely with coal mines, while the MQSH Act covers all other forms of mining operations. Both regimes commenced on 16 March 2001 and operate parallel to the *Workplace Health and Safety Act 1995* which specifically excludes mines.

The most notable feature of the two current Acts is that (with limited exceptions), they do not prescribe specific safety measures or procedures that mine operators must implement. In effect, the Acts do not provide a 'checklist' of requirements that mines can comply with, but rather these Acts are based on the principle of 'acceptable level of risk'. This principle recognises that risk cannot be entirely removed from mining activities, but that it can be managed to an 'acceptable level'.

It is important to remember that whilst both an operator and an SSE have a key role to play in managing risk at a mine site there are a number of other significant obligation holders who play an equally important role in managing risk and assisting in achieving better safety and health outcomes.

¹ Ombudsman Report, p. 5.

² *Mines Regulation Act 1881*.

This paper will identify the responsibilities of those persons who have obligations under the CSMH Act and the MQSH Act and will consider why it is of critical importance for mining industry stakeholders, that compliance with all legislative obligations is achieved.

2.0 Legislative Framework

As mentioned above, mining is an important industry that presents a set of unique hazards and risks.

These risks arise from various elements of the work including the physical demand required, use of heavy and mobile equipment and environmental factors, such as gas, dust and a continually changing work environment.

The CSMH Act and MQSH Act recognises that modern safety management focuses on creating a concept of on-site ownership of safety and health issues, following the introduction of duty of care principles.

Objects of the Acts

The objects of the CSMH Act and the MQSH Act are:

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

The CSMH Act and MQSH Act place an emphasis on control and management of risk through a measure of “acceptable level of risk” and impose an absolute obligation to ensure this.

Achieving the objects

In achieving the objects of the CSMH Act and MQSH Act the Acts impose safety and health obligations on all persons, provide for safety and health management systems and make regulations and recognised standards. The legislation also makes provision for inspectors and other officers to monitor the effectiveness of risk management, require an overarching management structure for mining and quarrying operations as well as the establishment of a safety and health advisory council and a role for safety and health representatives.

In evaluating whether the safety regime created by the CSMH Act and the MQSH Act has been achieved, it is necessary to consider whether:

- » Safety is and has been regarded as paramount in the industry;
- » Injury and risk to safety and health has been kept at a minimum;

- » 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.

In aiming to achieve these objects, it is of critical importance for all mining industry stakeholders to comply with their obligations under the legislation. It is therefore necessary to consider who the relevant stakeholders are, and who really carries the burden of responsibility.

3.0 Who are the obligation holders?

Key obligations are imposed on the operator of a mine under both the CSMH Act and MQSH Act to ensure that risks at a mine are of an acceptable level in ensuring the safety and health of the operator's workers and others. However, there are a number of positions that incorporate some level of responsibility for mine safety. The main obligation holders identified by the CSMH Act and the MQSH Act are:

- » **Mine operator** (usually the owners):
 - > The mine operator is responsible for the implementation of safety policies and practices and is required to appoint a Senior Site Executive to develop and implement a safety and health management system.
- » **Site Senior Executive (SSE):**
 - > The SSE is the most senior person employed at a mine and is responsible for that mine's operations.

The mine operators and SSEs have the following obligations:

Obligation Holder	Obligation
Mine Operators	<ul style="list-style-type: none"> » To ensure the risk to workers while at the mine is at an acceptable level (including providing a safe place of work, safe plant and maintaining plant in a safe state). » To appoint a SSE and ensure they develop and implement a safety and health management system and management structure. » To audit and review the effectiveness and implementation of the safety and health management system.³

³ Section 41 CSMH Act, section 38 MQSH Act.

Senior Site Executive (SSE)	<ul style="list-style-type: none"> » To ensure the risk to persons from operations, plant or substance is at an acceptable level. » Develop and implement a safety and health management system. » Develop, implement and maintain a management structure. » To train workers so that they are competent to perform their duties. » To provide for adequate supervision and control of operations, regular monitoring and assessment of working environment and appropriate inspection.⁴
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Other obligation holders, not as commonly or frequently considered and sometimes “forgotten”, include designers, manufacturers, importers, suppliers, erectors and installers of plant, workers and contractors.⁵

4.0 What are the obligations and responsibilities held?

In considering the obligations and responsibilities held it is necessary to review some of the “forgotten” obligation holders under the legislation.

Obligation Holder	Obligation
Workers	The general obligation on workers is not to expose others to an unacceptable level of risk and to comply with standard work instructions and procedures. ⁶
Contractors	The obligation to ensure, to the extent that they relate to the work undertaken, that the provisions of the Act and any applicable safety and health management system are complied with. ⁷
Executive officer	Obligations are also imposed on “executive officers”, being those concerned in the management of the corporation. The term “Executive officers” is broadly defined in the legislation and has application to varying levels of management. ⁸ Executive officers must ensure corporation complies with the Act. ⁹ Therefore where a corporation is found to have breached its obligations under the Act, so too may have an executive officer subject to the availability of a statutory defence of having exercised reasonable diligence or not being in a position to influence the conduct of the corporation.

⁴ Section 42 CMSH Act, section 39 MQSH Act.

⁵ Section 33 CMSH Act, section 30 MQSH Act.

⁶ Section 39 CMSH Act, section 36 MQSH Act.

⁷ Section 43 CMSH Act, section 40 MQSH Act.

⁸ Schedule 3 CMSH Act, Schedule 2 MQSH Act.

⁹ Section 262 CMSH Act, section 241 MQSH Act.

Contractors

In line with many other industries, the mining sector in Queensland is making increasing use of contractors in all aspects of its operations. This increase can be attributed to the increasing specialist expertise of contractors, need for efficiency and demand pressures in the mining sector. Contractors now account for approximately a third of all workers in the mining industry.¹⁰

While the health and safety obligations of the CMSHA and the MQSHA apply to everyone at a mine site, the increase in the use of contractors has had a significant effect on health and safety.

Contractors too are bound by and have obligations under the relevant Acts. In theory, contractors are very similar to regular employees as they are required to observe the health and safety systems established at the mine at which they happen to be working. However, in practice a cohesive approach between the mine operator's health and safety system, along with the additional systems introduced by a contractor can be difficult to achieve with significant safety considerations 'falling through the cracks' resulting in contractors, and not just mine operators, having been prosecuted by the Queensland Mines Inspectorate (QMI) for breaching legislative obligations.

This may not necessarily be the result of any failure on the part of mine operators, but due to the following factors:

- » Contractors experience a higher turnover of their workforce;
- » Contractors often engage in more risky and hazardous tasks;
- » Subcontractors and labour hire workers are reluctant to express concerns about health and safety for fear of losing their employment;
- » Contractors are sometimes not effectively integrated into the workforce.

As identified in the Ombudsman Report, there is little evidence available on the extent to which the increasing use of contractors may be affecting overall mine safety in Queensland. However, a survey of recent mine safety prosecutions in the neighbouring state of NSW has revealed that issues relating to the safety practices of contractors constituted the largest single category leading to prosecution.¹¹

¹⁰ Neil Gunningham, *Mine Safety: Law Regulation Policy* 2007, p. 225 as cited in the Ombudsman Report, p.62.

¹¹ Freeman, *Observations on Mine Safety Management from Review of Major OHS Prosecutions and Investigations*, p.7

5.0 How do the obligation holders meet those responsibilities?

As referred to earlier in this paper when discussing the background to the legislation, the CSMH Act and the MQSH Act impose an absolute obligation to ensure that risks are controlled and managed through a measure of an “acceptable level of risk”. The absolute obligation is subject to defences of following a relevant regulation, ministerial notice or industry code of practice. Where none of these exist the obligation is discharged only if all reasonable precautions and proper diligence has been exercised.

Obligation holders therefore meet these responsibilities by focussing on risk management strategies and processes and requiring risk management procedures to be developed in consultation with the mine workers. Developing effective and appropriate risk management procedures involves ensuring that risks to a person, of any identified hazard, are at an acceptable level, or as low as reasonably achievable. In assessing whether risk is within acceptable limits and as low as reasonably achievable regard must be had to the likelihood of injury or illness to a person arising out of the risk, and the severity of the injury or illness.

Further if the CSMH Regulation or the MQSH Regulation prescribe a way of achieving an acceptable level of risk, a person may discharge the person’s safety and health obligation in relation to the risk only by following the prescribed way.¹² If no regulation has been made or no recognised standard made prescribing or stating a way to discharge the person’s safety and health obligation in relation to a risk, the person may choose an appropriate way to discharge the person’s safety and health obligation in relation to the risk. However, the person discharges the person’s safety and health obligation in relation to the risk only if the person takes reasonable precautions, and exercises proper due diligence, to ensure the obligation is discharged.¹³

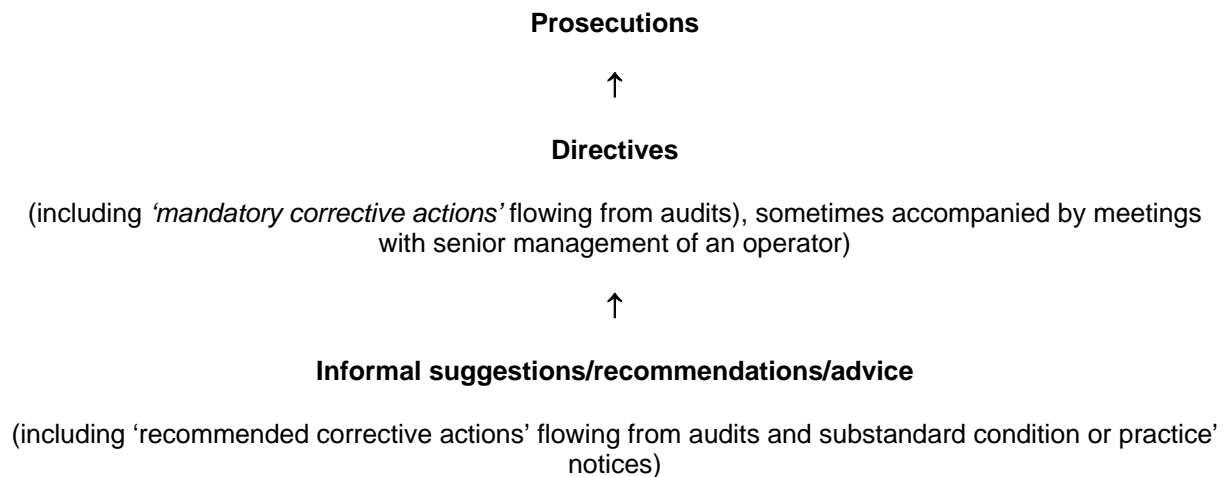
¹² Section 37 CSMH Act, section 34 MQSH Act.

¹³ Section 38 CSMH Act, section 35 MQSH Act.

6.0 What are the potential ramifications if there is a failure by an obligation holder to discharge their responsibilities fully?

There are various potential ramifications for failures by obligation holders to discharge their responsibilities. The ramifications range from low level measures such as informal recommendations and advice to the issuing of directives and prosecutions resulting in fines and/ or imprisonment.

In terms of actual enforcement actions, the current hierarchy of QMI's actions is depicted in the Ombudsman report as follows:¹⁴



While generally the mine operator and SSE are seen as the responsible parties in a failure to discharge their duties in relation to mine safety, it is not always the case. Since the introduction of the CSMH Act and MQSH Act there have been ten prosecutions instigated by the QMI. Out of those prosecutions individual mine workers were named as defendants in four cases and contractors were named as defendants in two cases.¹⁵

This evidences a clear intention by the Inspectorate to acknowledge that despite all the responsibilities of a mine operator individuals also hold a level of influence and responsibility for which they can be held accountable.

The legislation requires persons to account for their responsibilities and discharge their obligations where they persons on whom safety and health obligations are imposed.¹⁶ A failure of an individual obligation holder to do so could result in penalties being imposed.¹⁷

¹⁴ Ombudsman report, p.75.

¹⁵ Ombudsman report, p.96.

¹⁶ Section 34 CSMH Act, section 31 MQSH Act

¹⁷ Section 34 CSMH Act, section 31 MQSH Act.

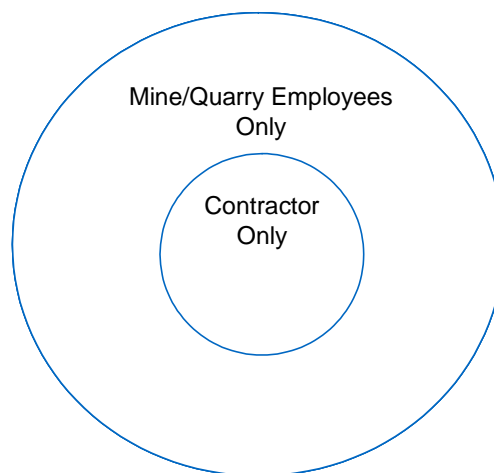
For an individual		
If the contravention caused	Maximum fine	Maximum imprisonment
Multiple deaths	\$150,000	3 years
Grievous bodily harm	\$75,000	2 years
Bodily harm	\$56,250	1 year
Exposure to a substance likely to cause death or grievous bodily harm	\$56,250	1 year
Otherwise	\$37,500	6 months

For a corporation	
If the contravention caused	Maximum fine
Multiple deaths	\$750,000
Grievous bodily harm	\$375,000
Bodily harm	\$281,250
Exposure to a substance likely to cause death or grievous bodily harm	\$281,250
Otherwise	\$187,500

7.0 How can operators and SSEs better ensure that employee and contractors comply with their obligations under the CSMH Act and MQSH Act?

In considering how mine operators and SSEs can better ensure that employees and contractors comply with their obligations under the CSMH Act and the MQSH Act, the different scenarios involving contractors and employees should be considered to obtain a better understanding of these issues.

Scenario 1: Contractor with exclusive possession of an area

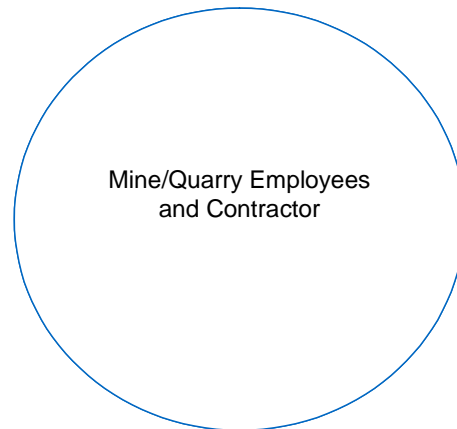


The scenario depicted above involves the engagement of a contractor to provide a particular service where mine or quarry employees do not have the specialised knowledge or expertise – i.e. an air conditioning contractor. In this scenario, the contractor is working on a defined task on-site.

Obligation

As the mine or quarry does not have the specialised knowledge or expertise in relation to the particular task, the mine or quarry is heavily reliant on the skills and experience of the contractor to manage the specific health and safety requirements relating to the task. The mine or quarry can and must, however, ensure that the contractor is operating in accordance with mine's health and safety system and any additional acceptable health and safety standards.

Scenario 2: A site where contractors work in a shared area with mine/quarry employees

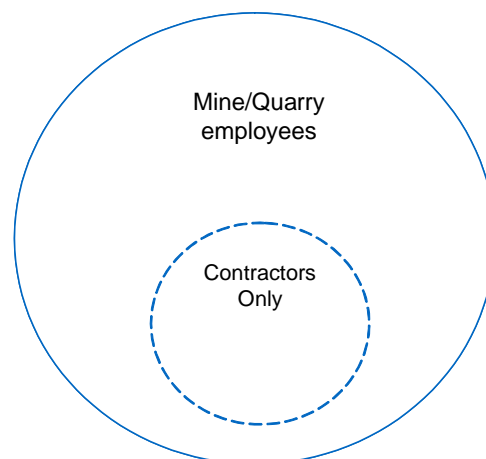


The scenario depicted above involves the engagement of a contractor – i.e. a labour hire agency for the supply of temporary staff, with similar or lesser skills than those held by the mine or quarry employees. In this scenario the contractor would be working with mine or quarry employees in a shared arrangement. Such contractors may lack familiarity with the broader environment and site generally or may not have been performing a task as long as some mine or quarry employees.

Obligation

The mine or quarry can and must manage health and safety with regard to the task. The Mine or quarry is expected to treat such contractors as they would their own employees, ensure compliance with the mine's health and safety system and provide the appropriate instructions, training and supervision.

Scenario 3: An integrated site where contractors work in both exclusive and shared areas.



The scenario depicted above involves the engagement of a contractor with a certain skill where mine or quarry employees do not have the specialised knowledge or expertise – i.e. where a contractor provides all maintenance at a particular site. The contractor may work in a defined area on-site, away from the mine or quarry employees. Equally the contractor may also work with mine or quarry employees, for example, on the same piece of plant.

In such circumstances, there would have to be a clear and documented understanding between the parties of the respective health and safety obligations, roles and responsibilities at the site.

Obligation

The mine or quarry can and must manage health and safety with regard to the tasks being undertaken by their employees and must also monitor health and safety with regard to the tasks undertaken by the contractor by monitoring and ensuring that the contractor is operating in accordance with the mine's health and safety system and any additional acceptable health and safety standards.

Employees

To better ensure that employees comply with their obligations under the CSMH Act and the MQSH Act, mine operators and SSEs need to:

- » adequately supervise employees on each shift;
- » regularly monitor and assess employees work procedures; and
- » ensure employees are adequately trained so that they are aware of their obligations and are competent to perform their duties.

Contractors

In considering how operators and SSEs can better ensure that contractors comply with their obligations under the CSMH Act and MQSH Act, the situation in NSW may provide useful assistance.

In NSW the *Coal Mine Health and Safety Act* (CMHS Act) sets out the requirements that the Operator must meet with regard to Contractors at their coal operation.

In summary, the CMHS Act (NSW) provides that prior to a Contractor commencing work, an Operator must ensure that:

- » The Contractor has been provided, and is familiar with, the relevant parts of the Coal Operations Health and Safety Management Plan (HSMP) and the Contractor Management Plan (CMP). This could form part of the Contractors induction to the site;
- » The Contractors arrangements for Health and Safety Management are consistent with the Operator's HSMP;

- » The Contractor has provided a Safe Work Method Statement (SWMS);
- » The SWMS provided by a Contractor prior to each job commencing must as a minimum:
 - > Describe how the work is to be carried out;
 - > Identify the work activities assessed as having safety and health risks;
 - > Identify the safety and health risks;
 - > Describe the control measures that will be applied to the work activity;
- » The Contractor has provided a coal operation with a specific Occupational Health and Safety Management Plan (OHSMP);
- » The SWMS provided by the Contractor meets the requirements as set out at (d) above;
- » The Contractor is directed to comply with their SWMS, the CMHS Act and its associated Regulations;
- » The activities of the Contractor are monitored to the extent necessary to ensure compliance with the SWMS, the CMHS Act, its associated Regulations;
- » Contractors are directed to modify activities where they are not compliant;
- » If a risk to the health or safety of a person arises because of the non-compliance, the Contractor is directed to stop work immediately and not to resume work until the SWMS or those requirements, or both, are complied with, unless an immediate cessation of work is likely to increase the risk to health or safety, in which event the Contractors must be directed to stop work as soon as it is safe to do so.

While these obligations are NSW specific and not required by the Queensland CSMH Act and the MQSH Act, they may provide guidance for operators and SSEs in developing a strategy to better ensure that contractors comply with their obligations. Ideally such strategies would be implemented and monitored by the relevant person in the mine management structure with responsibilities for the supervision of contractors. This would allow them to comfortably fit with the duties required under the position of 'Contractor Supervisor', in line with the declaration¹⁸ of former Chief Inspector of Coal Mines, Brian Lyne. The declaration requires that the 'Contractor Supervisor' monitor, as a minimum:

- » safety performance in the tasks undertaken;
- » plant and equipment being used is "fit for purpose";

¹⁸ Declaration of Senior Position in the mine management structure at coal mines- supervision of contractors, April 2007.

- » employees are familiar with the relevant parts of the mine safety management system that affect them personally;
- » employees regularly use and are sufficiently competent in the use of on-site risk assessment procedures before undertaking new or significantly changed tasks, and
- » employees are clearly aware of their role in relation to emergency response and reporting of incidents.

Adopting initiatives of the kind required under the NSW legislation will progress the Contract Supervisor's fulfilment of the minimum duties as well as compliance with the specific legislative obligations required by all coal mining stakeholders and may provide assistance in achieving the objects and fulfilling the obligations set out under MQSH Act.

Further, a system of reporting results of audits and findings via regular communication will assist both the contractor and mine operator build upon its health and safety regime and identify any areas where improvement is required.

8.0 What critical responsibilities are held by inspectors, inspection officers, authorised officers, industry safety and health representatives, district workers' representatives and site safety and health representatives?

The following is an examination of the critical responsibilities by inspectors, inspection officers, authorised officers district workers' representatives and site safety and health representatives held to ensure compliance with legislation and its enforcement. Persons holding these roles have a broad variety of powers which assist in maintaining the public confidence in the relevant legislative schemes, identifying occasions of non-compliance and addressing that non-compliance through means of deterrence and punishment as well as satisfying public concern for safety at mine sites and the need for effective health and safety strategies to be employed in the industry.

Recently the powers of inspectors, inspection officers and authorised officers have been broadened, particularly in relation to their investigative powers.

Inspectors and Inspection Officers

Under the CMSH Act and the MQSH Act inspectors and inspection officers have the following functions:

- » to enforce the legislation;
- » to monitor safety and health performance at mines;
- » to inspect and audit mines to assess whether risk to persons is at an acceptable level;

- » to help persons to achieve the purposes of the legislation by providing advice and information on how the purposes are to be achieved;
- » to check that safety and health management systems and procedures are in place to control risk to persons affected by operations;
- » to provide advice and help that may be required from time to time during emergencies at mines that may affect the safety or health of persons;
- » if unsafe practices or conditions at mines are detected, to ensure timely corrective or remedial action is being taken and, if not, require it to be taken;
- » to investigate serious accidents and high potential incidents at mines;
- » to investigate matters at mining operations that affect the successful management of risk to persons and to investigate complaints about matters relating to safety or health resulting from operations.¹⁹

Further functions of inspectors

Inspectors also have the following additional functions:

- » to advise the Chief Inspector on safety and health at mines;
- » to make recommendations to the Chief Executive about prosecutions under the legislation.²⁰

Authorised officers

Authorised officers have the same functions as inspectors and inspection officers under the legislation,²¹ except that Authorised officers **do not** exercise the following functions:

- » to enforce the legislation;
- » to provide advice and help that may be required from time to time during emergencies at mines that may affect the safety or health of persons;
- » if unsafe practices or conditions at mines are detected, to ensure timely corrective or remedial action is being taken and, if not, require it to be take.

¹⁹ Section 128 CMSH Act, section 125 MQSH Act.

²⁰ Section 129 CMSH Act, section 126 MQSH Act.

²¹ Section 129D CMSH Act, section 126D MQSH Act.

Powers of inspectors, inspection officers and authorised officers

In exercising their functions, inspectors, inspection officers and authorised officers all hold powers:

- » to enter places;
- » to seize evidence;
- » to stop and secure plant;
- » to obtain information and require the production of documents; and
- » for monitoring and enforcing compliance, or for conducting an investigation:
 - > to search any part of the mine or other place;
 - > to inspect, measure, test, photograph or film any part of the mine or other place or anything at the mine or other place;
 - > to take a thing, or a sample of or from a thing, at the mine or other place for analysis or testing;
 - > to copy a document at the mine or other place;
 - > to take into or onto the mine or other place any persons, equipment and materials the officer reasonably requires;
 - > to require a person at the mine or other place, to give the officer reasonable help;
 - > to require a person at the mine or other place, to answer questions to help the officer ascertain whether the legislation is being or has been complied with, or for the purpose of conducting an investigation under the legislation.

Industry safety and health representatives

An industry safety and health representative has the following functions:

- » to inspect coal mines to assess whether the level of risk to the safety and health of coal mine workers is at an acceptable level;
- » to review procedures in place at coal mines to control the risk to safety and health of coal mine workers so that it is at an acceptable level;
- » to detect unsafe practices and conditions at coal mines and to take action to ensure the risk to the safety and health of coal mine workers is at an acceptable level;

- » to participate in investigations into serious accidents and high potential incidents and other matters related to safety or health at coal mines;
- » to investigate complaints from coal mine workers regarding safety or health at coal mines;
- » to help in relation to initiatives to improve safety or health at coal mines.²²

In carrying out their functions, industry safety and health representatives have the following powers:

- » to make inquiries about the operations of coal mines relevant to the safety or health of coal mine workers;
- » to enter any part of a coal mine at any time to carry out the representative's functions, if reasonable notice of the proposed entry is given to the site senior executive or the site senior executive's representative;
- » to examine any documents relevant to safety and health held by persons with obligations under the CSMH Act, if the representative has reason to believe the documents contain information required to assess whether procedures are in place at a coal mine to achieve an acceptable level of risk to coal mine workers;
- » to copy safety and health management system documents, including principal hazard management plans, standard operating procedures and training records;
- » to require the person in control or temporarily in control of a coal mine to give the representative reasonable help in the exercise of the above powers; and
- » to issue directives.²³

District workers' representatives

The functions of district workers' representatives²⁴ are:

- » to help, represent and advise workers on matters relating to safety and health;
- » to inspect mines to assess whether the level of risk to the safety and health of workers is at an acceptable level;
- » to participate in inspections by inspectors and inspection officers;

²² Section 118 CSMH Act.

²³ Section 119 CSMH Act.

²⁴ Note that the election and provision of district worker's representatives is found only under the MQSH Act, but is equivalent to industry safety and health representatives under the CMHS Act.

- » to participate in investigations into serious accidents and high potential incidents and other matters related to safety or health at mines;
- » to investigate complaints from workers regarding safety or health at mines;
- » to help in relation to initiatives to improve safety or health at mines.

The powers of district workers' representatives in conducting their functions are:

- » generally the same as those afforded to the Industry Safety and Health Representative under the CMSH Act.²⁵

Site Safety and Health Representatives

Site Safety and Health Representatives have the following functions:

- » to inspect the coal mine to assess whether the level of risk to coal mine workers is at an acceptable level under the CMSH Act²⁶;
- » to inspect parts of the operations and participate in inspections and investigations conducted by the SSE or a supervisor, inspector, inspection officer or authorised officer²⁷;
- » to review procedures in place at the mine to control the risk to mine workers so that it is at an acceptable level;
- » to review the circumstances of injuries, illnesses and high potential incidents under the MQSH Act²⁸;
- » to detect unsafe practices and conditions at the coal mine and to take action to ensure the risk to coal mine workers is at an acceptable level²⁹;
- » to investigate complaints from coal mine workers at the mine regarding safety or health;
- » to consult with supervisors about corrective and preventive action, and about other safety and health matters and to consult with district workers' representatives, inspectors, advisers and independent experts.³⁰

²⁵ Section 116 MQSH Act.

²⁶ Section 99(1)(a) CMSH Act.

²⁷ Section 92(1)(a) MQSH Act.

²⁸ Section 92(1)(c) MQSH Act.

²⁹ Section 99(1)(c) CMSH Act.

³⁰ Section 92(1)(d) and (e) MQSH Act.

The powers of a Site Safety and Health Representatives are:

- » to enter any area of the mine at any time to carry out their functions, if reasonable notice is given to the SSE or the SSE's representative;
- » to examine any documents relevant to safety and health held by the SSE under the legislation, if the site safety and health representative has reason to believe the documents contain information required to assess whether procedures are in place at the mine to achieve an acceptable level of risk to the workers³¹;
- » They also have a right to stop mining operations where there is a serious danger to the health and safety of workers.³²

9.0 Conclusion

The Ombudsman report recommended that QMI increase its focus on the standard of the health and safety systems of contractors providing services to mine operators, with particular regard to how well those systems are being integrated into those of mine operators.³³ This recommendation was considered necessary for QMI to be able to proactively address this emerging problem with mine safety. However, it must not be forgotten that the mine operator holds the overarching obligations to establish a health and safety management system for the mine that all persons need to comply with and as such contractor systems should not be considered as a substitute to complying with this legislative obligation.

While in the past, the bulk of the effort by the Inspectorate and industry has gone into considering the responsibilities of the operator and the SSE, this may change in the future. With the increase in the number of fatalities and injuries and prosecutions involving contractors and workers, particularly in the neighbouring state of NSW, it is likely that the focus of QMI will increasingly be directed to ensuring contractors and other obligation holders meet their obligations under the legislation. It is critical for all mining industry stakeholders review their systems in line with the relevant legislative obligations to ensure safety is a paramount consideration.

³¹ Section 100 CSMH Act, section 93 MQSH Act.

³² Section 101 CSMH Act, section 94 MQSH Act.

³³ Ombudsman Report, p.63.

Further information

This publication is not legal advice. It is not intended to be comprehensive. You should seek specific professional advice before acting on the basis of anything in this publication. For further information please contact:

Matthew Smith, Partner on p » +61 7 3016 5027, or by e » matthew.smith@sparke.com.au, or

James Hall, Special Counsel on p » +61 7 3016 5054, or by e » james.hall@sparke.com.au

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