

'The Current State of Prosecutions'

Chris Seymour

Chris.seymour@safetyscenario.com



Why Prosecute?

- Reduce accidents
 - Make companies and individuals take safety seriously
 - Get poorly performing individuals and companies out of the business
- Satisfy public demand to see justice done.
- Maintain public confidence in state institutions

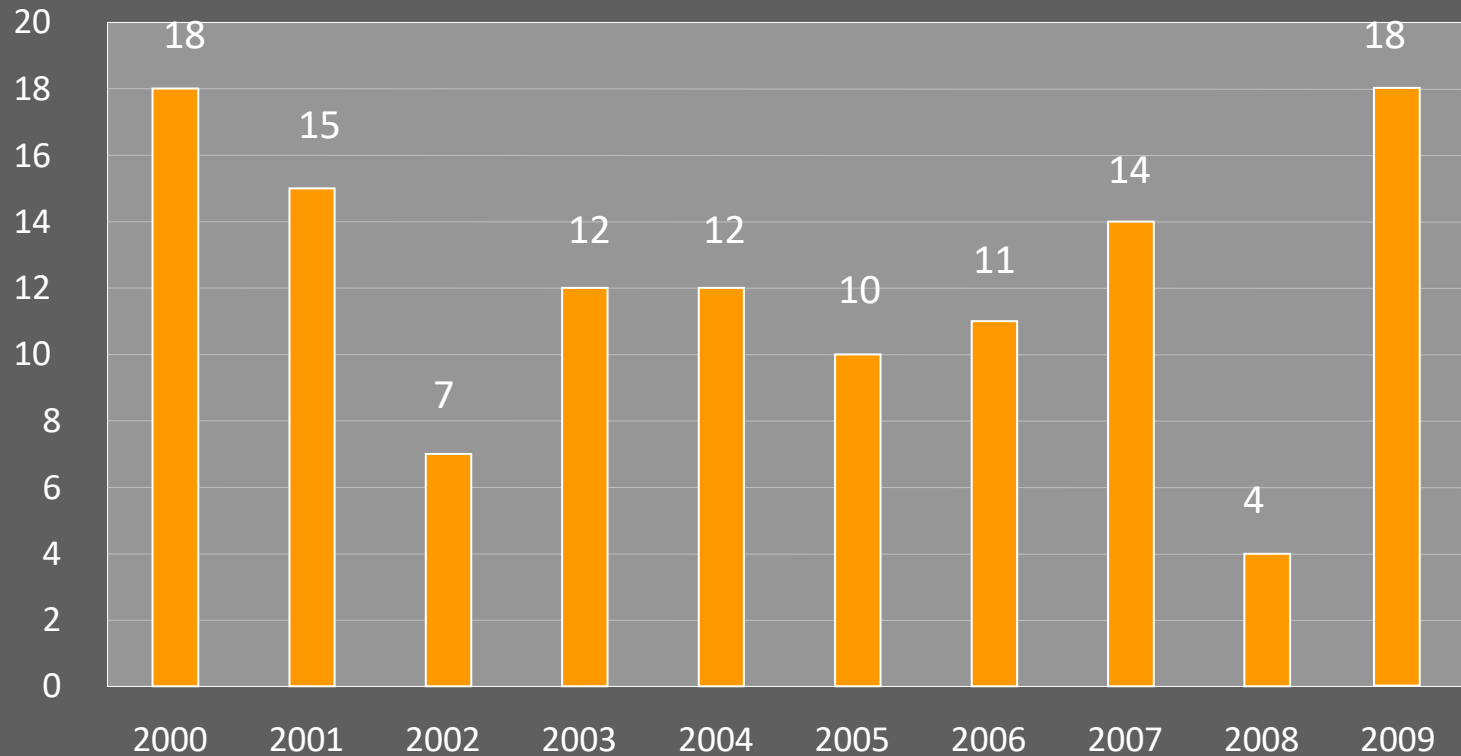


Arguments Against Prosecution

- Interferes with ability to investigate accidents
 - “parachute in the lawyers”
 - True causes may be obscured
 - Adversarial climate is not conducive to objective investigation
- May discourage good people from taking responsible positions
- Causes severe disruption to lives of individuals – who may eventually be acquitted



Fatalities in Australian Mining Operations



** Years run July 1 to June 30

Source: MCA annual and quarterly reports.



Fatalities and Prosecutions by State

In the period 2000 to December 2008

	Fatalities	Incidents resulting in Prosecutions **
Western Australia	42	3
New South Wales	30	29
Queensland	26	11
South Australia	10	2
Tasmania	6	0
Victoria	5	0
Northern Territory	2	0
TOTAL	121	44

** These are cases that have been finalised in 2000 to 2008
Individual incidents may result in multiple prosecutions



Western Australia

- Mining is regulated by the Mines Safety and Inspection Act 1994

Duties of employers

9. (1) An employer must, so far as is practicable, provide and maintain at a mine a working environment in which that employer's employees are not exposed to hazards

Duties of principal employers and managers

13. (1) The principal employer at and the manager of a mine must take such measures as are practicable to ensure that the persons who are at the mine are not exposed to hazards.



Western Australia

- There have been very few prosecutions since 2002
 - At Mt Keith following fatal accident in January 2002 where a truck ran off a ramp after a slope failure on a ramp. The operating company pleaded guilty to a breach of section 9 and was fined \$40,000.
 - At Boodarie Iron plant following an explosion in May 2004 which killed one man and severely burned two others. The operator was fined \$200,000



Queensland

- Queensland has been more aggressive at pursuing prosecutions than Western Australia.
- Queensland Mining is regulated by:
 - Mining and Quarrying Safety and Health Act 1999, and
 - Coal Mining Safety and Health Act 1999



Queensland Prosecutions 2000 - present

- Prosecutions concluded as a result of 11 incidents of which five involved fatalities.
- 7 Mining Companies
- 2 Contractors
- 12 Individuals (7 mine managers, 2 company directors, 3 others)



Queensland Outcomes

- Companies –
 - 1 not guilty
 - 1 settled out of court paid \$536,000
 - 5 pleaded guilty – fines up to \$30,000
- Contractors
 - Both Plead guilty fines of \$30,000 and \$44,000
- Individuals
 - 2 charges dismissed
 - 10 pleaded guilty fines up to \$4,400



NSW Prosecutions

- Mostly based on sections 8 (1) and 8(2) of the NSW Occupational Health and Safety Act 2000
 - **8 Duties of employers**
 - (1) Employees. An employer must ensure the health, safety and welfare at work of all the employees of the employer.
 - (2) Others at workplace. An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.



New South Wales Prosecutions

- Prosecutions concluded over 29 incidents (20 involved fatalities)
- 26 Mining Companies
 - 20 involved fatalities
- 9 Contractors
 - 5 involved fatalities
- 17 Individuals



New South Wales Prosecutions

- Average time from incident to settlement 59 months.
- Average penalty \$145,000



New South Wales Outcomes

- Mining Companies
 - 23 Guilty (of which 2 after appeal)
 - Fines of \$42,000 to \$1.46 million
 - 3 Charges dismissed (one still being appealed by DPI)
- Contractors
 - All 9 guilty
 - Fines of \$55,000 to \$180,000



Individual Outcomes

- No one jailed !
- Seven Mine Managers (all except 1 involved fatalities)
 - 3 guilty fined \$4,000 to \$42,000
 - 3 Guilty but No Conviction Recorded
 - 1 Not guilty but DPI is appealing
- Two Directors
 - One guilty but no conviction recorded
 - One not guilty but under appeal
- One Deputy (Foreman)
 - Guilty – allowed unsafe working fined \$1,750



Individual Outcomes Gretley

- Mine Manager – guilty fined \$42,000
- Former Mine Manager
 - Not guilty – too far removed from events
- Mine Surveyor
 - Guilty but reversed on appeal because he was not in decision making role
- Five Undermanagers
 - Not guilty – not part of decision making



Gretley Timeline

- 1887 Young Wallsend Mine opens
- 1910 Plan of workings prepared – later copied at GME
- 1915 Young Wallsend mine closes
- 1970 Gretley Mine opens
- 1993 Gretley seeks approval for extension. Old maps from Young Wallsend Mine supplied by NSW DPI.
- October 1994 New Mine Manager appointed
- September 1995 New Surveyor appointed
- November 1996 Break through. Four men are drowned in inrush of water.



Gretley Timeline

- July 1998 Inquiry recommends prosecutions
- Dec 1999 52 charges laid against companies and 8 individuals
- Aug 2003 Trial starts. Companies offer to plead guilty if individual charges are dropped. No response from prosecutor.
- Nov 2003 Companies challenge legality of prosecutions. Law changed
- August 2004 Companies and three individuals found guilty
- November 2004 Companies fined \$1.46 million. Individual fines \$30,000 to \$42,000
- December 2006 Appeal upholds fines on Companies and Mine Manager. Charges dismissed against Surveyor and Former Mine Manager



Impact of Prosecutions

- Companies
 - Time consuming, embarrassing but otherwise not severe
- Contractors
 - Can be very serious – no regard is given in assessing penalties of the ability to pay. Many contractors are small and on tight margins
- Individuals
 - Devastating – many individuals cannot work again. Even if acquitted they have faced huge legal bills. The courts have recognised this in many cases by not imposing penalties



Impact of Prosecutions

In the Gretley appeal, one of the judges stated

Public monies have, in my opinion, been unduly wasted, the defendants have been put to incredible cost which, ultimately, impacts on the economy of the State, the resources of this State and the resources of this Court have been wasted. *In addition, it is fundamental that the criminal law must be administered in an appropriate fashion. The legislature has chosen to emphasise the importance of occupational health and safety matters by creating absolute offences. If the prosecution of offences is undertaken in an arbitrary, capricious and irresponsible fashion, the laws themselves are brought into disrepute for reasons that are obvious. This is especially so in the area of occupational health and safety prosecutions*

Emphasis added



Conclusion

- There are vast differences in the way prosecutions have been handled in the different states.
- Prosecution of companies serves a role.
- Prosecution of individuals acts to poison relations and result in lengthy legal proceedings. It should be reserved for only the most egregious cases.



How to Minimise the Risk of Prosecution

Not many “natural” people have been prosecuted for mining offences – but their number is growing.

1. Read the relevant requirements and be aware of your obligations
2. Ensure that people you assign to jobs are competent to do them.
3. Its not enough to give instructions on safety – you must follow up.
4. Its not enough to “do” risk assessments you must make sure that the control measures are implemented.
5. Its not enough to write and approve Standard Work Procedures – you must make sure they are followed.
6. “Its not what you expect that happens – its what you inspect”.
7. Many of the requirements really come down to effective leadership



'The Current State of Prosecutions'

Chris Seymour

Chris.seymour@safetyscenario.com

