

Understanding your Obligations

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Abstract

All mine workers, coal mine workers, other persons and persons generally at a mine in Queensland have an obligation to comply with the Queensland mining safety and health Acts and the procedures that are part of the safety and health management system for the mine. This obligation further includes a requirement to comply with the relevant Regulation. Despite these obligations, it is very difficult to comply with something that you have little or no understanding of.

The legislation is the cornerstone of mine safety and health. Many have touted the Queensland mining legislation, however, its value and effectiveness is dramatically reduced when people don't understand it or fail to fulfil their obligations.

Failing to know, understand or fulfil your obligations potentially puts you and other mine workers at risk. If you don't know your obligations can you be sure that you are fulfilling them?

Author's note. Compliance is a relatively immature stage of Organisational Maturity, for the effective commitment to and implementation of risk management. Compliance is of course the minimum standard that we are expected to achieve, a safety net if you like. The problem is, there are many examples where operations fail to achieve this minimum standard. In examples where operations are below an acceptable standard, compliance enhances Organisational Maturity.

Introduction

Comparison of international mining safety statistics indicates that the Australian mining industry is arguably one of the safest mining industries in the world. There seems little doubt that the Queensland mining legislation (both Mining and Quarrying and Coal Mining) is considered to be the best mining legislation available.

On the 17th of September 2009 the Honourable Premier Anna Bligh stated in the first session of the 53rd Parliament¹ "Today Queensland has the best mine safety

legislation in the country and one of the best mine safety records in the world. Our goal is to maintain the highest of safety standards.”

Minister for Mines and Energy, Stephen Robertson stated in a media release regarding the 2008-2009 Queensland Mines and Quarries Safety Performance and Health Report that “Queensland has the best mine safety legislation in Australia. It must continue to be enforced, mine by mine, quarry by quarry.”

Former minister for Mines and Energy, Geoff Wilson, stated in the 2007 and 2008 Queensland Mining Industry Health and Safety Conference brochures³: “We have the best legislation on mines safety in Australia, and it must continue to be strongly enforced on the ground - mine by mine, employer by employer, worker by worker.” In the 2008 brochure, Mr Wilson stated: “We have the best mine safety legislation in Australia and the best mine safety record in the world but we cannot afford to rest on our laurels.”

In 2007 the state member for Fitzroy, Mr Jim Pearce stated in regard to the Mining and Other Legislation Amendment Bill⁴: “through tripartite cooperation Queensland had developed some of the best mining safety and health legislation in Australia, if not the world.”

In an evaluation of mine safety legislation in Queensland, Professor Neil Gunningham, from the National Research Centre for Occupational Health and Safety Regulation, Australian National University⁵ stated: “In terms of legislative reform, the mining industry, led by Queensland (and followed by New South Wales) has come a long way. From being decades behind mainstream OHS legislation, mining sector legislation has shifted to a point where, in some respects at least, it is substantially ahead. Indeed, the Queensland (and New South Wales) legislation satisfies almost all the key criteria set out in the National Mine Safety Framework Implementation Plan, as key features of a desirable legislative framework.

In the 2007 DVD “Make Safety Their Monument”⁶ CFMEU secretary Greg Betts stated that “Queensland mine workers have the best mining legislation that workers can have”.

In April 2010 after another fatal accident in a Western Australia mine the Chamber of Minerals and Energy chief executive Mr. Reg Howard Smith stated that five reports into mine safety in Western Australia in the past seven years have recommended a move towards a risk based regulatory model⁷.

The above statements and sentiments from politicians, academics and workers representatives unanimously support the assertion that Queensland has the best mining legislation available to the industry.

Obligations

One of the ways that the legislation aims to achieve the objects of the legislation (Objects of the Act) is by imposing safety and health obligations on persons who operate mines (including exploration activities) or who may affect the safety or health of others at mines⁸. There are many other ways, but outside the scope of this discussion.

In the old days, under previous legislation, the responsibility for the safety of persons at mines rested largely with the appointment of persons with Certificates of Competency issued by the Board of Examiners (commonly referred to as Statutory Positions).

In the Warden's Report into the accident at Moura No.2 Mine in 1994⁹ the Warden made comment about the review of the mining legislation: "The concept 'duty of care' is sound and should be promulgated by any new legislation. It rightly puts onus on every person in the work environment to take reasonable care to ensure their own safety and health and to not endanger the safety and health of others. However, the concept does not lead naturally to the conclusion that all persons are (or can be) equally responsible for safety, even for their personal safety. Responsibility implies authority and those with highest authority inevitably have the greatest responsibility, both to form rules and to ensure that they are complied with." This duty of care referred to in the Warden's Report is currently known as Obligations under the existing Queensland mining legislation.

The legislation places obligations on some persons specifically and others generally. Although the section numbers are different, the obligations in the mining and quarrying and coal mining legislation are essentially identical. The following persons have specific obligations at Queensland mines:

- a) a holder;
- b) a mine operator;
- c) a site senior executive;
- d) a contractor;
- e) a designer, manufacturer, importer or supplier of plant for use at a coal mine;
- f) an erector or installer of plant at a coal mine;
- g) a manufacturer, importer or supplier of substances for use at a mine;
- h) a person who supplies a service at a mine.

In addition to these specific obligations, the legislation places general obligations on:

- a) all mine workers and
- b) persons generally

The first obligation of all mine workers and persons generally is:

To comply with this Act and procedures applying to the worker or person that are part of a safety and health management system for the mine.

The basic premise of this presentation is that: "It is a bit hard to fulfil your obligations if you don't know what they are."

Do you know your Obligations?

In an inquest into a fatal accident at a coal mine the coroner found:

Mr (Name Removed) was the (position removed) for (the Contractor) at (the Mine) at the time of the incident. He was therefore the senior (the Contractor) person on site and had obligations under the (Mine) safety management structure and Safety Management System. He admitted in his evidence that he had not familiarised himself with the contract with (the Mine) nor the Coal Safety and Health Management Act 1999 provisions. He explained that this was due to difficulties he encountered with reading such documents. He had not made higher levels of management aware of this issue. He stated that he had no training in relation to the safety obligations attaching to his position other than the supervisor competencies. He was not provided with a list of his responsibilities under the SMS. This situation combined with (Name Removed) difficulties with formal documents meant he was never in a position to fulfil his obligations effectively.

Further in the Coroner's findings another manager of the contractor stated :

Further, "Mr (Name Removed) was completely unaware (not having read the Act or Regulations) that there was a necessity for the workforce to have been involved in the development of the SOPS".

Another person engaged to provide a service at the coal mine undertook the process of developing procedures for the contractor in contradiction of the process prescribed in the legislation. The Coroner found: "It seems to me that this was not what is envisaged in the legislation. Regulation 10 (Coal Mining Safety and Health Regs) lays down the requirements for the development of SOPs, in effect that a Standard Operating Procedure involves a risk assessment of a task by a cross-section of the workforce involved in that task followed by a drafting of the procedure which would then be submitted for comment and approval and once approved, the workforce would be trained on that procedure. The procedure adopted by Mr (Name Removed) envisaged the risk assessment be carried out after the approval in principal stage which would seem to be non-compliant with the legislation and potentially result in an unsafe or impractical procedure being approved".

It is apparent that the limited knowledge of persons of their obligations and legislative requirements is not limited to the matters considered in the coronial inquest. As a result the 2007-2008 Annual Report of the Board of Examiners included the following observation: "Mine operators are appointing SSEs who in certain cases are not mining professionals or do not have a mining background. The occurrence of non-mining SSEs is of concern because of the weighty statutory responsibilities attached to the appointment. The Board of Examiners is of the opinion that the development of a competency for the position of SSE is essential to the management of risk and

the discharge of safety and health obligations. This matter will be progressed in consultation with the Advisory Councils.” Subsequently, in 2009 a legislation exam was introduced for Site Senior Executives of Coal Mines.

Despite some initial objections, I am of the opinion that, the majority of persons who have completed the exam have seen the benefits that were intended. Some are still yet to see the benefits, but they would have now at least read the legislation.

Despite being negative motivation, persons who fail to fulfil their obligations may be subject to prosecution under the legislation. Often in discussions there is consideration of the threat of prosecution, including the prospect of imprisonment. The reality is this has never occurred. Interestingly, of recent times there have been several prosecutions resulting in fines and convictions against mine operators, site senior executives, contractors and mine workers. In a recent fatal accident a worker was convicted of 2 years imprisonment (suspended). Despite the threat of punishment, our primary objective must be to achieve the objects of the Act (refer to section 6 of the Act). For every one of these prosecutions, a mine worker has suffered a fatal or serious injury, which of course is far worse than any prosecution.

The start point to fulfilling your obligations is knowing them. They are clearly stated in the legislation and should be known by every person who may affect the safety or health of a person at a mine.

It is my view that the knowledge of one’s obligations is symptomatic of one’s knowledge of the legislation in general.

Responsibilities

Obligations and responsibilities are different¹⁰. Obligations are things that are legally bound to be do. Responsibilities are decisions or actions that can be made independently or without further authorisation. Decisions or actions that may be required as part of a job or a role¹⁰.

For the management of mines, the management structure is required to state the responsibilities for each senior person or supervisory position at the mine. These responsibilities are different to your obligations. They should be specific and clearly state the responsibilities of that position at the mine and be directly linked to the mine’s safety and health management system.

If you don’t know your responsibilities you might also be putting mine workers at risk.

Summary

There seems little doubt that the Queensland mining legislation is very good, from a legislation perspective. Amongst other things, it places obligations on persons at mines or who may affect persons at mines or as a result of mining operations to protect the safety and health of persons. The challenge for all of us is knowing, understanding and fulfilling our obligations.

Having good legislation is one thing, ensuring that it is being implemented it is another.

There is evidence that not all persons, know or understand their obligations. This is reflected in coronial inquests and accident reports. Whilst it is not reasonable to suggest that the findings of one inquest is representative of the entire industry, there is other evidence to suggest that more can be done to assist persons to be aware of and fulfil their obligations.

This law has been born from the failures of the past and is structured to prevent repeats of these failures in the future. Whilst compliance is quite low in consideration of Organisational Maturity it represents a higher level of maturity for some organisations.

Challenge yourself. Do you know your obligations? If you don't, what steps are you going to take to ensure you do know them? There aren't very many to remember. Don't make up excuses, just know them. If you know them, you will have a much better chance of fulfilling them. Don't wait until you have to make that fateful phone call to someone's loved ones that their mine worker isn't coming home today. Don't wait for a coroner to ask you if you knew your obligations.

Just know and fulfil your obligations.

Appendix 1

A dream

I have a dream that all mine workers know and fulfil their obligations.

A dream that all persons who may affect the safety of persons at mines know and fulfil their obligations.

A dream that every day that I go to a mine I will come home to the loving arms of my wife and son.

I know that every loved one of every mine worker has the same dream.

I can not stand by and only dream that my dream becomes a reality.

I can not continue to dream that all of you know your obligations.

So like a preacher I preach to you.

You must know your obligations.

You must fulfil your obligations.

When we do this, our dreams will come true.

Being safe at work is not a dream, it is our right.
Don't let this dream be a nightmare.

Mark Parcell

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