

"But I'm not the SSE..." – Mine Worker Safety Obligations

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1. OVERVIEW

The *Coal Mining Safety and Health Act 1999* (Qld) and the *Mining and Quarrying Safety and Health Act 1999* (Qld) (**Legislation**) impose important obligations on mine workers to ensure their own safety and health and the safety and health of others. This is sometimes forgotten due to the focus on the specific obligations of statutory position holders.

The only way to achieve an acceptable level of risk at a mine is for each person at the mine to carry out their work (within the framework of the safety and health management system (**SHMS**)) so that they do not expose themselves, or another person, to more than an acceptable level of risk. Doing so requires cooperation between all personnel at a mine.

2. MINE WORKER / COAL MINE WORKER OBLIGATIONS

Every person at a mine has the mine worker obligation, regardless of whether they have another role at the mine. Any further obligations as a statutory position holder apply in addition to the mine worker obligation.

The primary obligations on mine workers can be summarised as follows:

- (a) comply with the Legislation and the SHMS for the mine;
- (b) give health and safety information to other persons which is necessary to allow those persons to:
 - (i) comply with their duties under the Legislation; and
 - (ii) to work safely;
- (c) to the extent of their responsibilities and duties, work in such a way so as not to expose themselves or anyone else to more than an acceptable level of risk and to take any other reasonable and necessary action to ensure that persons are not exposed to more than an acceptable level of risk;
- (d) to the extent of their involvement, participate in and conform to risk management practices at the mine;

- (e) comply with instructions for safety and health;
- (f) be fit for work; and
- (g) not take wilful or reckless action which may affect the health and safety of others.

It is clear from these obligations that all mine workers, to the extent of their role and responsibilities, are key to ensuring health and safety while at the mine.

3. **MAXIMUM PENALTIES**

The maximum penalties for breaching these obligations vary depending upon the objective seriousness of the consequences of a contravention. Maximum penalties are:

- (a) if the contravention caused multiple deaths—\$220,000 or 3 years imprisonment; or
- (b) if the contravention caused death or grievous bodily harm—\$110,000 or 2 years imprisonment; or
- (c) if the contravention caused bodily harm—\$82,500 or 1 year's imprisonment; or
- (d) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—\$82,500 or 1 year's imprisonment; or
- (e) otherwise—\$55,000 or 6 months imprisonment.

In addition to these maximum penalties, persons found guilty of an offence may have a conviction recorded against their name and may be required to pay investigation and Court costs.

4. **PROSECUTIONS**

In Queensland there have been a number of prosecutions of workers under the Legislation since its commencement in 2001. The fines imposed on workers have ranged from \$1,000 to \$15,000 with Court and investigation costs being imposed as well. In at least one case a term of imprisonment has been imposed (8 months, although it was wholly suspended).

Key principles to emerge from the cases include the following:

- (a) mine workers have been prosecuted, even where the SSE and mine operator are not prosecuted;

- (b) in other cases, multiple mine workers have been prosecuted including the mine workers who contributed to an incident and other mine workers along the supervisory chain;
- (c) in most cases there is an obvious breach of the primary mine worker obligations under the Legislation;
- (d) prosecutions tend to occur when the gravity or consequence of the breach is significant (e.g. what the worker did was so concerning that a prosecution is justified and a person has suffered a serious injury as a result or a person could have suffered a serious injury);
- (e) general deterrence to other mine workers is a factor in deciding to prosecute;
- (f) it is common for a Magistrate to not record a conviction against a mine worker where it is a first offence.

5. **COMPLIANCE TIPS**

There are a range of things that mine workers need to do to comply with their obligations under the Legislation. Some key points include:

- (a) understand and comply with their obligations under the SHMS;
- (b) report safety and health information to persons who need to know it;
- (c) be proactive in managing the hazards and risks involved in their work and the work they control;
- (d) speak up: if you see someone else behaving unsafely, do something about it;
- (e) properly participate in risk management processes and do not "tick and flick";
- (f) comply with directions for safety and health; and
- (g) do not work unless you are fit for work.