

**CONFERENCE OF CHIEF INSPECTORS OF MINES**

**NATIONAL MINE SAFETY FRAMEWORK  
IMPLEMENTATION**

**BACKGROUND AND EXPLANATORY NOTES**

**October 2003**

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## Introduction

In March 2002, the Ministerial Council on Mineral and Petroleum Resources agreed to a National Mine Safety Framework — *Realising a Safe and Healthy Mining Industry : the Contribution of Government* — and directed officials to prepare, in consultation with stakeholders, a detailed and practical plan for its implementation.

Nationwide consistency in approach to safety and health in mining offers many benefits, not least enhanced confidence within the industry in addressing statutory requirements and cost-effectiveness in implementing them. At the same time, the Framework's implementation strategy must allow for flexibility within individual jurisdictions in dealing with specific mine safety and health issues and solutions.

Following a period of intensive analysis of the range of issues involved in giving effect to the Framework, the Chief Inspectors of Mines from all jurisdictions have released a discussion paper to stimulate discussion and encourage all of those with an interest in this industry to afford them the benefit of their expertise.

The range of issues addressed in the discussion paper is extensive, and complex. It draws on not only Australian mining-specific sources but a range of relevant but broader national and international references. The purpose of this companion volume is to provide a number of these reference documents to provide further background where it may be required.

Following a period of consultation and in the light of consultation outcomes, the Conference of Chief Inspectors of Mines will refine the implementation plan and present it to the Ministerial Council, through its Standing Committee of Officials, for consideration and eventual promulgation.

The Conference expects the implementation plan's development to be completed by the end of 2003.

## **2 NATIONAL MINE SAFETY FRAMEWORK**

Document released by the Ministerial Council on Mineral and Petroleum Resources in March 2002. The Framework underpins the draft Implementation Plan.

Further information on the Council is available on the website of the Department of Industry, Tourism and Resources, [www.industry.gov.au](http://www.industry.gov.au), on the Mineral Industries page.

# National Mine Safety Framework

## Realising a Safe and Healthy Mining Industry - The Contribution of Government

### Introduction

All stakeholders in the Australian mining industry need to demonstrate their commitment to creating a safe and healthy mining industry. While the primary responsibility for health and safety rests with the industry parties, governments have an important contribution to make in support of realising a safe and healthy mining industry. This paper sets out the framework for a uniform approach to making this contribution.

This framework document has been prepared in consultation with stakeholders in each jurisdiction and represents views from across Australia, New Zealand and Papua New Guinea. It is consistent with the National OHS Improvement Framework, prepared by the National Occupational Health and Safety Commission in 1999 to foster 'learnings' across industries. The document describes the means by which governments should contribute to the application of this general OHS framework to the mining industry.

A uniform approach aims to:

- ensure legislative consistency so that the duties of stakeholders in the industry are clear and unambiguous;
- foster innovation and improvement; and
- remove duplication of effort.

The approach to the role of government set out by this framework challenges all stakeholders to work together to create a safe and healthy mining industry.

### Aim and principles

The primary purpose of government action in OSH is to support a safe and healthy mining industry. To do this, government's contribution should:

- be nationally consistent, both within the mining industry and with other industries;
- encourage action by stakeholders at an enterprise level;
- be based on and foster a best practice approach and a continuous improvement focus that does not inhibit innovation; and
- recognise that responsibility for health and safety at mine sites rests with employers and employees, while ensuring that senior management holds the accountability for leadership.

## **The role of government**

In order to fulfil the above aim and principles, governments have the following roles:

- work within a nationally consistent legislative framework (without inferring a particular structure for administering the framework);
- support OSH competency development in the industry;
- provide support for enterprises and other duty holders to facilitate compliance;
- undertake enforcement activities that support improved performance and meet community expectations for enforcing the law;
- collect and use consistent, reliable and useful data about OSH performance;
- foster regional and, where relevant, national and trans-national consultation between stakeholders to ensure that information flows to promote improvement in industry practices; and
- foster effective research into OSH in mining so that evidence can inform prevention activities.

## **Goals for government in mining**

Arising from the National OHS Improvement Framework and the role of government in mining, the goals for government in mining are to:

- establish a consistent legislative framework, based on a general ‘duty of care’ approach;
- support the development of OSH competencies and competency assessment consistent with national training frameworks;
- develop a cooperative approach to providing advisory information for duty holders to assist them in achieving compliance, recognising different needs (eg small versus large enterprises);
- update and publicise enforcement strategies so that duty holders understand the consequences of noncompliance and these are consistent across jurisdictions;
- establish consistent and reliable OSH performance data collection, analysis and publication systems so that decisions in relation to prevention efforts can be based on valid information;
- establish effective approaches to regional, national and trans-national consultation with stakeholders; and establish open communication and coordination between the jurisdictions to support structured and strategic approaches;
- establish strategies to support effective research into safety and health in the mining industry.

## Strategies to achieve the goals

Achieving the above goals should not involve duplication of effort nor creating another level of government. Primarily, strategies for achieving these goals require information sharing and cooperation between jurisdictions. In order to work towards the above goals, the following strategies should be developed:

### 1. *Legislative framework*

A nationally consistent legislative framework is essential for an efficient, effective and equitable regulatory system for the industry. This does not mean that OSH legislation should be identical in each jurisdiction. Rather, an agreed framework should be established, consistent with the requirements of the International Labor Organisation Convention 176 "Safety and Health in Mines" (ILO C176), with the following key features:

- A general duty of care approach should be taken - covering the range of duty holders, including directors, managers, contractors, employees, manufacturers, designers and suppliers - with any mining specific requirements.
- A systematic approach to mine safety management should be promoted,
- Mechanisms for ensuring effective consultation with employees should be included,
- Major hazards that may be found in the mining industry must be addressed within the legislative framework. The risk management requirements of ILO C176 should be adopted, and an approach to risk management using the Hierarchy of Control and based on the As Low As Reasonably Practicable (ALARP) principles should be promoted. Risk management legislation should require attention to the core risks of the industry, ensuring that high consequence, low probability events are addressed.
- Definitions of different concepts should so far as possible be consistent and the equivalence of different terms should be clear.
- Regulation should allow duty holders to develop the most effective OSH management strategies for their circumstances, supporting enterprises to move beyond regulatory requirements.

### Recommendation

The jurisdictions should agree on a consistent legislative framework, incorporating ILO C176 requirements and these key features.

### 2. *OSH competency development*

OSH is integral to the competence of people in the industry and governments should support the development of competency in OSH. Development and maintenance of OSH competence is the responsibility of the industry, with governments involved in monitoring standards. OSH competency development should be consistent with the industry's national training frameworks, which provide a consistent approach to competency development in the mining industry based on agreed industry Training Packages. The certification of particular occupations by OSH jurisdictions parallels the industry's qualifications framework through the Australian Recognition Framework. In

addressing this apparent duplication, governments need to ensure that standards of OSH competence are maintained without the expense and inefficiencies associated with running two parallel systems.

### **Recommendation**

Consideration should be given to working with the mining industry's training advisory body network to support a uniform competency system that ensures that standards of OSH competence are maintained.

### **3. Compliance support**

All jurisdictions provide advice and support to mine sites so that duty holders are better equipped to comply with their OSH obligations. A cooperative approach is needed to ensure that unnecessary costs and duplications of effort are avoided, and to facilitate the interchange of knowledge and expertise. In particular, coordination between agencies will help to create consistent guidance material that contributes to raising the awareness of duty holders. Consistent strategies for dealing with the diversity of duty holders will help to ensure that particular needs (eg for small operations) are met in an efficient way.

### **Recommendation**

A mechanism for coordination between agencies should be established to support the creation of consistent guidance material that facilitates the exchange of knowledge and expertise, and recognises accepted standards.

### **4. Enforcement**

A consistent approach to enforcement would provide clear and consistent standards for duty holders and support equitable outcomes from governments' contribution to safety and health in the mining industry. This does not necessarily mean that a single enforcement policy should be developed, but that jurisdictions' strategies for enforcement should be aligned and consistent. Jurisdictions currently take an approach that consists of a graduated series of options, with persuasion and verbal directions as the starting point, progressing through written instructions, improvement notices, prohibition notices and finally prosecution as a last resort. This is generally referred to as the *Enforcement Pyramid*.

### **Recommendation**

Strategies for enforcement should be aligned and consistency achieved across jurisdictions.

### **5. Data collection**

A nationally consistent data set is needed to inform of the activities of industry, as well as government. The data set should include:

- outcome data, such as claims data and agreed injury frequency rates;
- lead indicators of systems and culture to provide data relating to the implementation of preventive strategies;
- data relating to critical incidents that do not result in injury;
- data compatible with the Comparative Performance Monitoring data set of the general OSH jurisdictions so that comparisons are possible between jurisdictions and across industries; and

- data addressing the activities of governments, eg in enforcement and compliance support.

### **Recommendation**

Action should be taken to develop such a data set that enables comparisons across jurisdictions and industries.

## **6. Consultation**

Consultation with industry stakeholders is critical to ensure the effectiveness of governments' contribution to OSH in the industry. Given that the legislative accountability lies with each jurisdiction this consultation will continue to be focussed at this level. Where necessary, resources should be directed at a jurisdictional level to strengthen consultative processes. Wherever possible these consultative processes should seek to move towards consistent outcomes.

### **Recommendation**

Continued stakeholder consultation through jurisdictional processes should be encouraged. Consultation processes should seek to achieve consistent cross-jurisdiction outcomes.

## **7. Research**

Governments have an important role in encouraging research, in partnership with industry and research and funding agencies. In particular, government should be involved in helping to set priorities, providing advice to researchers and in establishing research partnerships. Government can contribute to the effective application of research findings by using evidence from research to modify where appropriate their own activities, and to encourage the adoption of findings to prevention activities by duty holders.

### **Recommendation**

Consideration should be given to establishing appropriate mechanisms for governments to support effective research into OSH in the mining industry.

## **Implementation**

The strategies outlined in this framework should be further developed in consultation with stakeholders in each jurisdiction. This should result in an agreed work program for presentation to the *Ministerial Council on Minerals and Petroleum Resources*.

The Conference of Chief Inspectors of Mines should drive this development

# Realising a Safe and Healthy Mining Industry - The Contribution of Government

## Purpose

To support a safe and healthy mining industry, through:

- consistency across jurisdictions;
- encouraging action by stakeholders at an enterprise level;
- using a best practice approach and a continuous improvement focus; and
- recognising that primary responsibility for health and safety at mine sites rests with employers and employees, while ensuring that senior management holds the accountability for leadership.

## Goals

1. A consistent legislative framework, based on 'duty of care'	2. Competency development within the mining industry	3. A cooperative approach to providing support for duty holders in compliance	4. Updated and aligned enforcement strategies	5. Consistent and reliable mining OSH performance data collection, analysis and distribution systems	6. Effective approaches to consultation with stakeholders and coordination between jurisdictions	7. Strategies to encourage effective research into safety and health in the mining industry.
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## Actions

Establish a consistent legislative framework across jurisdictions, incorporating ILO C176 requirements	Consider working with the mining industry's training advisory body network to support uniform competency establishment and assessment systems, recognised by the respective national training authorities..	Establish a mechanism for coordination between agencies to support the creation of consistent guidance.	Align jurisdictions' strategies for enforcement to achieve consistency.	Develop a consistent and reliable OSH data set, in partnership with NOHSC that enables comparison across jurisdictions and industries.	Strengthen and encourage regional, national and transnational consultation mechanisms.	Establish appropriate mechanisms for governments to encourage effective research into OSH in the mining industry.
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### **3. NATIONAL OHS STRATEGY 2002-2012 – A SUMMARY**

This summary of the strategy has been provided by the National Occupational Health and Safety Commission as a brief background to the broader OHS issues that impact on the National Mine Safety Framework.

Copies of the full document and other information relevant to the issues addressed in the discussion paper are available on the Commission's website : [www.nohsc.gov.au](http://www.nohsc.gov.au).

## **National OHS Strategy 2002-2012 – a summary**

On 24 May 2002, the Workplace Relations Ministers' Council (WRMC) endorsed the release by the National Occupational Health & Safety Commission (NOHSC) of the *National OHS Strategy 2002-2012*.

The Strategy is a landmark development signifying the commitment of all Australian governments, the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU), to work cooperatively on national priorities for improving OHS and to achieve minimum national targets for reducing the incidence of workplace deaths and injuries. The Strategy was developed by the members of NOHSC and reflects their agreement to share responsibility for continuously improving Australia's performance in work-related health and safety. The Strategy document and related material is available at:

<http://www.nohsc.gov.au/nationalstrategy>

The Strategy sets out the basis for nationally strategic interventions that are intended, over the coming decade, to foster sustainably safe and healthy work environments and reduce significantly the numbers of people hurt or killed at work.

The Strategy replaces NOHSC's *National OHS Improvement Framework (1999)* with the nine areas for national action identified in the Framework now underpinning the Strategy. The National Mine Safety Framework (March 2002) – *Realising a Safe and Health Mining Industry* was written to be consistent with the National OHS Improvement Framework.

As well as providing the framework for cooperative national action over the next decade, the National OHS Strategy has introduced two key components:

1. National targets for reductions in work-related fatalities and injuries that will enable progress towards the Strategy's vision – *Australian workplaces free from death, injury and disease* – to be monitored and measured; and
2. National priorities for action that provide the focus for programs to address key OHS issues on a national basis so that significant improvement can be realised in the short to medium term.

The national targets are set to be challenging but achievable. They provide goals for organisations, enterprises and employees with which to identify. They also promote greater innovation and activity in developing the most effective and efficient ways to meet the targets. The national targets are to:

- Sustain a significant, continual reduction in the incidence of work-related fatalities with a reduction of at least 20% by 30 June 2012 (and with a reduction of 10% being achieved by 30 June 2007); and
- Reduce the incidence of workplace injury by at least 40% by 30 June 2012 (with a reduction of 20% being achieved by 30 June 2007).

The Strategy invites individual organisations, jurisdictions, industries and enterprises to adopt the national targets as a minimum and to strive to better them.

There are five priority areas initially identified by the Strategy. National action plans to address each priority for 2002-05 have been developed by NOHSC and endorsed by WRMC (November 2002). National efforts will be focused on these five priorities, however, efforts will be underpinned by continued work on the nine areas originally identified by the National Improvement Framework.

The five national priorities and the rationale for the cooperative work being undertaken by NOHSC members, and other OHS stakeholders and industry parties that have so far agreed to take action, are as follows:

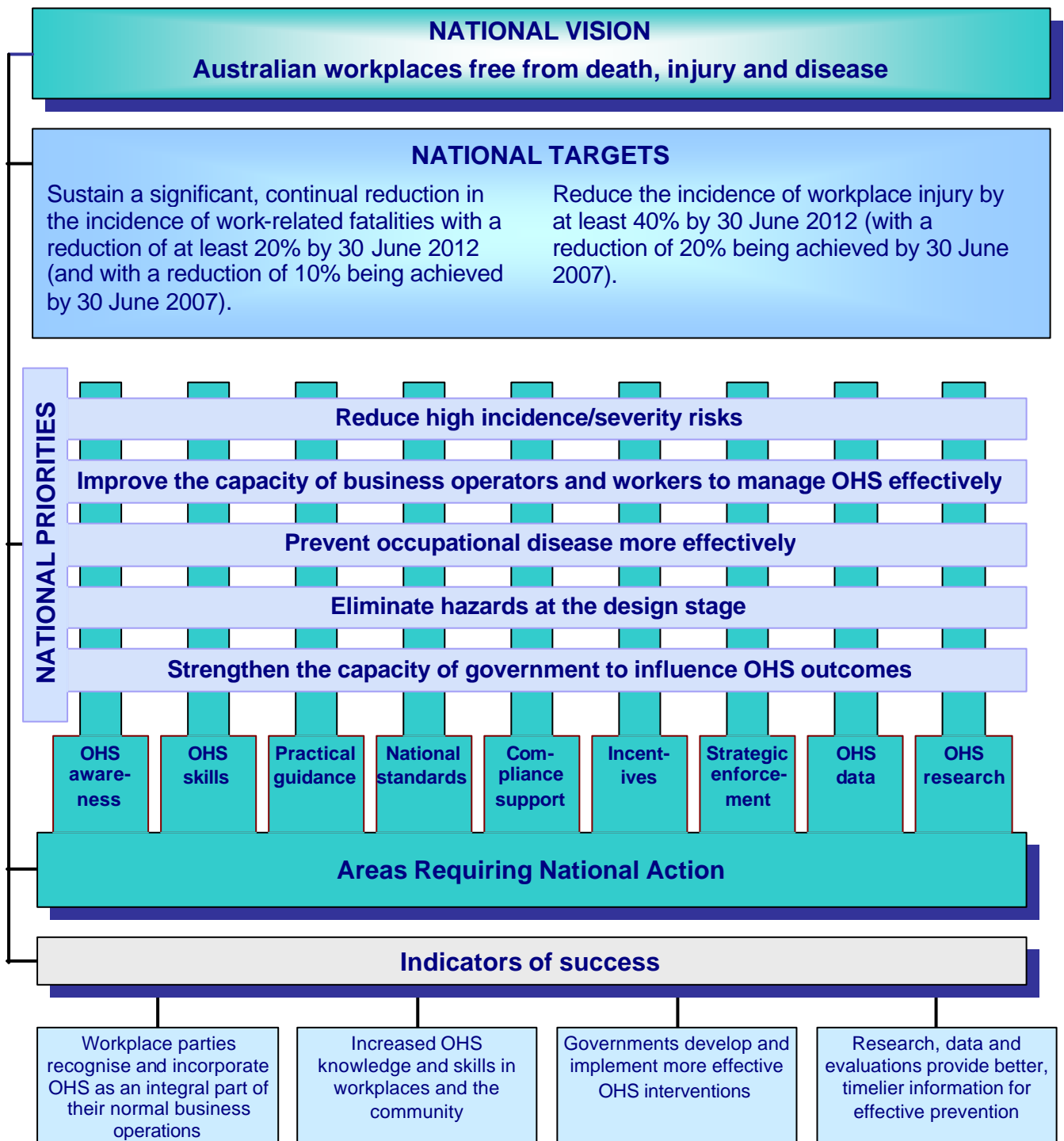
- Reduce high incidence/severity of risks. By targeting industries where the incidence of injury and/or number of deaths is particularly high, as well as the mechanisms of injuries that cause this, significant improvements can be made in Australian OHS performance. Targeted industries for 2003-04 are: health and community services; manufacturing; construction; and transport and storage. The targeted mechanisms of injury are: falls, trips and slips; hitting, or being hit by; and body stressing. National cooperative action is being taken to:
  - improve regulatory frameworks with regard to high risk injuries and industries
  - provide guidance and information, awareness programs and develop OHS skills
  - better target compliance and enforcement programs
  - evaluate best practice interventions
  - engage industry.
- Improve the capacity of business operators and workers to manage OHS effectively. This national priority recognises that before employers and others take action to manage OHS they must be convinced of the benefits they will derive from doing so. Business operators need to understand the case for better OHS management, including how it contributes to improved business outcomes, and be able to take the necessary action. National cooperative action is being taken to:
  - develop motivators/incentives for business operators
  - improve access to information products and systems for both employers and employees
  - adopt systematic management approaches to OHS to maximise the use and usefulness of available data which can lead to improved OHS management systems
  - develop the OHS skills of practitioners, inspectors, researchers, technical areas and professions that may impact directly or indirectly on workplace health and safety
  - integrate OHS into national training packages, the education of professionals, managers and specialists, and school education
- Prevent occupational disease more effectively. Occupational diseases often arise from repeated exposures to a hazard over time and, in the case of diseases of long latency, symptoms may take decades to manifest. These aspects of occupationally related disease create some unique problems both in identifying hazards and assessing the effectiveness of control measures to prevent occupational disease. One of the primary actions for this national priority will be to minimise exposure to known risk factors and to undertake activity designed to bring about healthier work environments in general. National cooperative action is being taken to:

- develop occupational disease targets that address exposure to diseases risk factors
  - improve regulatory frameworks
  - provide guidance and information material, awareness programs, and develop tools and information systems for use by both employers and employees
  - carry out targeted compliance and enforcement programs
  - undertake surveillance of OHS research and data.
- *Eliminate hazards at the design stage.* The design stage is a critical phase where it is possible to design out potential OHS problems, effectively preventing them from ever entering the workplace. Responsibility for safe design falls on a wide range of parties, including those outside of the workplace such as designers, manufacturers, constructors or suppliers. National cooperative action is being taken to:
    - improve regulatory frameworks, enforcement and compliance of design issues
    - develop procurement models and practices, including practical guidance material on safe purchasing for small business
    - influence the education of design professionals to achieve a greater focus on the safe design risk management approach
    - raise awareness of and promote safe design principles
    - incorporate safe design into important OHS management systems and standards.
  - *Strengthen the capacity of government to influence OHS outcomes.* Governments have a leadership role in preventing work-related death, injury and disease in Australia through promoting, legislating and enforcing OHS requirements via a wide range of mechanisms. This national priority aims to sharpen the effectiveness of governments in securing better OHS outcomes and being a user and provider of examples of good OHS practice. National cooperative action is being taken to:
    - ensure government, as an employer and exemplar of OHS practice, provides leadership to Australian business and working communities through the adoption of best-practice management techniques
    - facilitate nationally consistent policy making and regulation between federal, state, territory and local levels of government
    - encourage Commonwealth, State and Territory governments to adopt a whole-of-government procurement model when purchasing goods and services
    - increase awareness and action on OHS issues by government agencies.

The national priorities, and their action plans, will be periodically evaluated by NOHSC to assess ongoing relevance and effectiveness. They will be refined or replaced by new national priorities in light of these assessments over the 10-year course of the Strategy.

All NOHSC members have aligned their business plans and work programs with the National Strategy. Other OHS stakeholders, organisations and enterprises are invited to adopt and contribute to the National Strategy. Several government and industry parties have articulated their commitment to the Strategy and have shaped their approach to improving OHS performance according to the prevention principles and programs established by it.

Figure 1: National OHS Strategy 2002-2012



## 4. INTERNATIONAL LABOUR ORGANISATION CONVENTION 176 : SAFETY AND HEALTH IN MINES, 1995

The implementation plan proposes that Australia works towards ratification of this convention. In turn, this will require the relevant legislation in all jurisdictions to comply with it. The basic principles embodied in the convention are suggested as a suitable model in developing a nationally consistent legislative framework, canvassed in section 1 of the discussion paper.

In broad terms, the status of existing legislation in Australia *vis-à-vis* the convention is as follows:

**New South Wales :** Substantively in compliance; *Mining Legislation Amendment Act 2002* will address outstanding matters.

**Northern Territory :** Broadly in compliance. The main area of non-compliance relates to Article 13 3(a) which requires rights for safety representatives to be prescribed.

**Queensland :** Complies except for a minor issue to be addressed in an amendment of the *Mining and Quarrying Safety and Health Regulation* currently before the Parliament.

**South Australia :** Complies with the majority of requirements, but still unable to meet a small number of requirements relating particularly to Article 5(5), Article 7(d) and Article 10(c).

**Victoria :** Substantially in compliance. Possible minor gaps exist relating to Article 5 and confirmation required relating to some other areas.

**Western Australia :** Complies – there are no barriers to the ratification for WA.

## International Labour Organisation Convention 176 : Safety and Health in Mines, 1995

Convention concerning Safety and Health in Mines (Note: Date of entry into force: 05:06:1998)  
Convention:C176  
Place:Geneva  
Session of the Conference:82  
Date of adoption:22:06:1995  
Subject classification: Industries and Occupations  
Status: Up-to-date instrument. This Convention was adopted after 1985 and is considered up to date.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-Second Session on 6 June 1995, and

Noting the relevant International Labour Conventions and Recommendations and, in particular, the Abolition of Forced Labour Convention, 1957; the Radiation Protection Convention and Recommendation, 1960; the Guarding of Machinery Convention and Recommendation, 1963; the Employment Injury Benefits Convention and Recommendation, 1964; the Minimum Age (Underground Work) Convention and Recommendation, 1965; the Medical Examination of Young Persons (Underground Work) Convention, 1965; the Working Environment (Air Pollution, Noise and Vibration) Convention and Recommendation, 1977; the Occupational Safety and Health Convention and Recommendation, 1981; the Occupational Health Services Convention and Recommendation, 1985; the Asbestos Convention and Recommendation, 1986; the Safety and Health in Construction Convention and Recommendation, 1988; the Chemicals Convention and Recommendation, 1990; and the Prevention of Major Industrial Accidents Convention and Recommendation, 1993, and

Considering that workers have a need for, and a right to, information, training and genuine consultation on and participation in the preparation and implementation of safety and health measures concerning the hazards and risks they face in the mining industry, and

Recognizing that it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations, and

Having regard to the need for cooperation between the International Labour Organization, the World Health Organization, the International Atomic Energy Agency and other relevant institutions and noting the relevant instruments, codes of practice, codes and guidelines issued by these organizations, and

Having decided upon the adoption of certain proposals with regard to safety and health in mines, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-second day of June of the year one thousand nine hundred and ninety-five the following Convention, which may be cited as the Safety and Health in Mines Convention, 1995:

## **Part I. Definitions**

### Article 1

1. For the purpose of this Convention, the term *mine* covers -

(a) surface or underground sites where the following activities, in particular, take place:

(i) exploration for minerals, excluding oil and gas, that involves the mechanical disturbance of the ground;

(ii) extraction of minerals, excluding oil and gas;

(iii) preparation, including crushing, grinding, concentration or washing of the extracted material; and

(b) all machinery, equipment, appliances, plant, buildings and civil engineering structures used in conjunction with the activities referred to in (a) above.

2. For the purpose of this Convention, the term *employer* means any physical or legal person who employs one or more workers in a mine and, as the context requires, the operator, the principal contractor, contractor or subcontractor.

## **Part II. Scope and means of application**

### Article 2

1. This Convention applies to all mines.

2. After consultations with the most representative organizations of employers and workers concerned, the competent authority of a Member which ratifies the Convention:

(a) may exclude certain categories of mines from the application of the Convention, or certain provisions thereof, if the overall protection afforded at these mines under national law and practice is not inferior to that which would result from the full application of the provisions of the Convention;

(b) shall, in the case of exclusion of certain categories of mines pursuant to clause (a) above, make plans for progressively covering all mines.

3. A Member which ratifies the Convention and avails itself of the possibility afforded in paragraph 2(a) above shall indicate, in its reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization, any particular category of mines thus excluded and the reasons for the exclusion.

### Article 3

In the light of national conditions and practice and after consultations with the most representative organizations of employers and workers concerned, the Member shall formulate, carry out and periodically review a coherent policy on safety and health in mines, particularly with regard to the measures to give effect to the provisions of the Convention.

### Article 4

1. The measures for ensuring application of the Convention shall be prescribed by national laws and regulations.
2. Where appropriate, these national laws and regulations shall be supplemented by:
  - (a) technical standards, guidelines or codes of practice; or
  - (b) other means of application consistent with national practice,as identified by the competent authority.

### Article 5

1. National laws and regulations pursuant to Article 4, paragraph 1, shall designate the competent authority that is to monitor and regulate the various aspects of safety and health in mines.
2. Such national laws and regulations shall provide for:
  - (a) the supervision of safety and health in mines;
  - (b) the inspection of mines by inspectors designated for the purpose by the competent authority;
  - (c) the procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, each as defined by national laws or regulations;
  - (d) the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, each as defined by national laws or regulations;
  - (e) the power of the competent authority to suspend or restrict mining activities on safety and health grounds, until the condition giving rise to the suspension or restriction has been corrected; and
  - (f) the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace.

3. Such national laws and regulations shall provide that the manufacture, storage, transport and use of explosives and initiating devices at the mine shall be carried out by or under the direct supervision of competent and authorized persons.

4. Such national laws and regulations shall specify:

(a) requirements relating to mine rescue, first aid and appropriate medical facilities;

(b) an obligation to provide and maintain adequate self-rescue respiratory devices for workers in underground coal mines and, where necessary, in other underground mines;

(c) protective measures to secure abandoned mine workings so as to eliminate or minimize risks to safety and health;

(d) requirements for the safe storage, transportation and disposal of hazardous substances used in the mining process and waste produced at the mine; and

(e) where appropriate, an obligation to supply sufficient sanitary conveniences and facilities to wash, change and eat, and to maintain them in hygienic condition.

5. Such national laws and regulations shall provide that the employer in charge of the mine shall ensure that appropriate plans of workings are prepared before the start of operation and, in the event of any significant modification, that such plans are brought up to date periodically and kept available at the mine site.

### **Part III. Preventive and protective measures at the mine**

#### ***A. Responsibilities of employers***

##### Article 6

In taking preventive and protective measures under this Part of the Convention the employer shall assess the risk and deal with it in the following order of priority:

(a) eliminate the risk;

(b) control the risk at source;

(c) minimize the risk by means that include the design of safe work systems; and

(d) in so far as the risk remains, provide for the use of personal protective equipment,

having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

##### Article 7

Employers shall take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular:

- (a) ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment;
- (b) ensure that the mine is commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned to them without endangering their safety and health or that of other persons;
- (c) take steps to maintain the stability of the ground in areas to which persons have access in the context of their work;
- (d) whenever practicable, provide, from every underground workplace, two exits, each of which is connected to separate means of egress to the surface;
- (e) ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed and to assess their level of exposure;
- (f) ensure adequate ventilation for all underground workings to which access is permitted;
- (g) in respect of zones susceptible to particular hazards, draw up and implement an operating plan and procedures to ensure a safe system of work and the protection of workers;
- (h) take measures and precautions appropriate to the nature of a mine operation to prevent, detect and combat the start and spread of fires and explosions; and
- (i) ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.

#### Article 8

The employer shall prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters.

#### Article 9

Where workers are exposed to physical, chemical or biological hazards the employer shall:

- (a) inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved and relevant preventive and protective measures;
- (b) take appropriate measures to eliminate or minimize the risks resulting from exposure to those hazards;
- (c) where adequate protection against risk of accident or injury to health including exposure to adverse conditions, cannot be ensured by other means, provide and maintain

at no cost to the worker suitable protective equipment, clothing as necessary and other facilities defined by national laws or regulations; and

(d) provide workers who have suffered from an injury or illness at the workplace with first aid, appropriate transportation from the workplace and access to appropriate medical facilities.

#### Article 10

The employer shall ensure that:

(a) adequate training and retraining programmes and comprehensible instructions are provided for workers at no cost to them on safety and health matters as well as on the work assigned;

(b) in accordance with national laws and regulations, adequate supervision and control are provided on each shift to secure the safe operation of the mine;

(c) a system is established so that the names of all persons who are underground can be accurately known at any time, as well as their probable location;

(d) all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken; and

(e) a report, as specified by national laws and regulations, is made to the competent authority on accidents and dangerous occurrences.

#### Article 11

On the basis of general principles of occupational health and in accordance with national laws and regulations, the employer shall ensure the provision of regular health surveillance of workers exposed to occupational health hazards specific to mining.

#### Article 12

Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall coordinate the implementation of all measures concerning the safety and health of workers and shall be held primarily responsible for the safety of the operations. This shall not relieve individual employers from responsibility for the implementation of all measures concerning the safety and health of their workers.

### ***B. Rights and duties of workers and their representatives***

#### Article 13

1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:

(a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;

(b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and the competent authority;

(c) to know and be informed of workplace hazards that may affect their safety or health;

(d) to obtain information relevant to their safety or health, held by the employer or the competent authority;

(e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health; and

(f) to collectively select safety and health representatives.

2. The safety and health representatives referred to in paragraph 1(f) above shall, in accordance with national laws and regulations, have the following rights:

(a) to represent workers on all aspects of workplace safety and health, including where applicable, the exercise of the rights provided in paragraph 1 above;

(b) to:

(i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and

(ii) monitor and investigate safety and health matters;

(c) to have recourse to advisers and independent experts;

(d) to consult with the employer in a timely fashion on safety and health matters, including policies and procedures;

(e) to consult with the competent authority; and

(f) to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.

3. Procedures for the exercise of the rights referred to in paragraphs 1 and 2 above shall be specified:

(a) by national laws and regulations; and

(b) through consultations between employers and workers and their representatives.

4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.

#### Article 14

Under national laws and regulations workers shall have the duty, in accordance with their training:

- (a) to comply with prescribed safety and health measures;
- (b) to take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper care and use of protective clothing, facilities and equipment placed at their disposal for this purpose;
- (c) to report forthwith to their immediate supervisor any situation which they believe could present a risk to their safety or health or that of other persons, and which they cannot properly deal with themselves; and
- (d) to cooperate with the employer to permit compliance with the duties and responsibilities placed on the employer pursuant to the Convention.

#### ***C. Cooperation***

#### Article 15

Measures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines.

### **Part IV. Implementation**

#### Article 16

The Member shall:

- (a) take all necessary measures, including the provision of appropriate penalties and corrective measures, to ensure the effective enforcement of the provisions of the Convention; and
- (b) provide appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide these services with the resources necessary for the accomplishment of their tasks.

### **Part V. Final provisions**

#### Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

### Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

### Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

### Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

### Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

### Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

### Article 24

The English and French versions of the text of this Convention are equally authoritative.

#### **Cross references**

[Conventions: C105 Abolition of Forced Labour Convention, 1957](#)

[Conventions: C115 Radiation Protection Convention, 1960](#)

[Conventions: C119 Guarding of Machinery Convention, 1963](#)

[Conventions: C121 Employment Injury Benefits Convention, 1964](#)

[Conventions: C123 Minimum Age \(Underground Work\) Convention, 1965](#)

[Conventions: C124 Medical Examination of Young Persons \(Underground Work\) Convention, 1965](#)

[Conventions: C148 Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977](#)

[Conventions: C155 Occupational Safety and Health Convention, 1981](#)

[Conventions: C161 Occupational Health Services Convention, 1985](#)

[Conventions: C162 Asbestos Convention, 1986](#)

[Conventions: C167 Safety and Health in Construction, 1988](#)

[Conventions: C170 Chemicals Convention, 1990](#)

[Conventions: C174 Prevention of Major Industrial Accidents Convention, 1993](#)

[Recommendations: R114 Radiation Protection Recommendation, 1960](#)

[Recommendations: R118 Guarding of Machinery Recommendation, 1963](#)

[Recommendations: R121 Employment Injury Benefits Recommendation, 1964](#)

[Recommendations: R124 Minimum Age \(Underground Work\) Recommendation, 1965](#)

[Recommendations: R156 Working Environment \(Air Pollution, Noise and Vibration\) Recommendation, 1977](#)

[Recommendations: R164 Occupational Safety and Health Recommendation, 1981](#)

[Recommendations: R171 Occupational Health Services Recommendation, 1985](#)

[Recommendations: R175 Safety and Health in Construction Recommendation, 1988](#)

[Recommendations: R177 Chemicals Recommendation, 1990](#)

[Recommendations: R181 Prevention of Major Industrial Accidents Recommendation, 1993](#)

[Constitution: 22](#)

## **5. NATIONAL TRAINING FRAMEWORK**

Background notes to the training frameworks that will be critical in the transition from statutory certification to competency-based regimes canvassed in section 2 of the discussion paper.

## National Training Framework

The National Training Framework (NTF) was developed to provide quality assurance mechanisms in the provision of a new national system of accredited training for industry.

The NTF is made up of two elements:

- the Australian Quality Training Framework (AQTF) and
- Training Packages.

Under the AQTF, registration of training organisations becomes the critical quality assurance mechanism for the Vocational Education and Training (VET) sector and the pivotal point of mutual recognition of credentials issued by a registered training organisation (RTO) across Australia. (Credentials are the qualifications and statements of attainment in the Australian Qualifications Framework.)

A Training Package is a set of nationally endorsed competency standards and qualifications for recognising and assessing people's skills. A Training Package describes the skills and knowledge needed to perform effectively in the workplace. It does not describe how a person should be trained. Teachers and trainers develop learning strategies – the 'how' – depending on learners' needs, abilities and circumstances.

Each Training Package has three components endorsed by the Australian National Training Authority (ANTA). They are:

- Competency standards
- Qualifications framework
- Assessment guidelines

### *COMPETENCY STANDARDS*

Competency standards describe work outcomes. Each unit of competency describes a specific work activity, the conditions under which it is conducted, the performance criteria and the evidence that may be gathered to determine whether the activity is being performed in a competent manner.

People are considered to be competent when they are able to apply their knowledge and skills to successfully complete work activities in a range of situations and environments, in accordance with the standard of performance expected in the workplace.

Competency is usually seen to comprise four dimensions:

- Task skills – undertaking a specific workplace task(s).

- Task management skills – managing a number of different tasks to complete a whole work activity.
- Contingency management skills – responding to problems and irregularities when undertaking a work activity, such as:
  - Breakdowns
  - Changes in routine
  - Unexpected or atypical results or outcomes
  - Difficult or dissatisfied clients
- Job/role environment skills – dealing with the responsibilities and expectations of the work environment when undertaking a work activity, such as:
  - Working with others
  - Interacting with clients and suppliers
  - Complying with standard operating procedures
  - Observing enterprise policy and procedures

### *QUALIFICATIONS FRAMEWORK*

Individual units of competency may be grouped together to make up a qualification. How this may be done is outlined in the qualifications framework section of the training package. Qualifications range from Certificates I through IV to Diploma and Advanced Diploma from the Australian Qualifications Framework.

### *ASSESSMENT GUIDELINES*

This section sets out the industry's preferred approach to assessment. It includes specific advice on the qualifications needed by assessors, the design of assessment processes and the conduct of assessments.

Training packages developed by the mining industry that are currently available include:

- Coal
- Extractive Industries (quarrying)
- Metalliferous Mining (open cut, underground and processing)

A number of competency elements dealing specifically with risk management and risk assessment have recently been added to the Extractive Industries package, highlighting the importance of these elements in the transition to from statutory certification systems to competency-based regimes.

## **6. CURRENT ENFORCEMENT POLICIES**

A number of jurisdictions have prepared separate documentation on the enforcement policies and practices currently in place, and which are proposed for closer alignment in the Framework. These separate documents are provided below for New South Wales, Queensland, South Australia, Victoria and Western Australia.

## **New South Wales**

### **The Enforcement of Health and Safety Standards in Mines**

#### **Policy Statements and an Organisational Approach to Enforcement, Assessment of Mining Operations, Investigation of Accidents or Incidents and Prosecution**

**January 1999**

## POLICY STATEMENT CONCERNING PROSECUTION

Prosecution will be considered in all instances where a significant breach of legislation is discovered by the NSW Department of Mineral Resources. Significant breaches of legislation will include, but may not be limited to, breaches which:

- cause, or are likely to cause, death, or serious injury or ill health; or
- continue to occur after other representations or interventions by the Department; or
- which interfere with the proper investigation of causes and circumstances surrounding an event.

Where there is a significant breach, and a prima facie case, together with a reasonable prospect of conviction, then the public interest expects that a prosecution will result. With the Occupational Health and Safety Act as the principal health and safety legislation, charges and defendants under that Act will be considered first. This means that actions will most likely be against corporations (as the employer) but that individuals, whether management, contractors or employees who commit significant breaches may also be proceeded against. The Department intends to effectively use prosecution as an integral part of its overall Enforcement Strategy. To do this the Department will:

- (a) prepare, publish and implement prosecution guidelines and keep them under review;
- (b) train and support investigating officers required to prepare and conduct prosecutions including the gathering, assessment and presentation of evidence and relevant law relating to offences, investigation and evidence;
- (c) consider prosecution as a matter of course, and in a fair, consistent and timely manner, where a significant breach of legislation has occurred;
- (d) keep a record of all decisions whether or not to prosecute and of the reasons for such decisions; and
- (e) publish information on prosecutions undertaken, appropriate to the stage that the prosecution has reached at the time of publication while keeping in mind the importance of timely and relevant information being made available to industry for preventative purposes.

A Coutts  
Director General

## **FOREWORD**

This document primarily concerns the enforcement functions of the Department of Mineral Resources relevant to health and safety in mines and addresses related issues.

The Department provides, amongst other things, active encouragement for mines to meet community expectations in relation to the health and safety of people engaged in, or affected by, mining. It expects the mining industry to achieve significantly continuing improvement in safety and health performance and wants to make it clear that unacceptable levels of performance are not allowable.

The importance of the contribution of individuals and organisations across the industry will become greater as there is a move towards higher levels of responsibility within industry itself for safety and health in the workplace. An inevitable consequence of increased flexibility for operations is an increased level of accountability and a changing, less controlling role for the Department with greater involvement by miners and their representatives.

The publication of this policy is the first step in a process of greater awareness and consistent application of strategies and actions by Departmental Officers.

I trust that this document will serve to focus attention on those strategies and actions, while placing a clear expectation on others in the industry to make similar, related progress.

A Coutts  
Director General

1 January 1999

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## INTRODUCTION

The level of safety and the risk to health in mines have improved over time. However, we should never lose awareness that they are still potentially hazardous and unhealthy places.

Parliament has recognised this by enacting statutes to regulate health and safety in the NSW mining industry. The *Occupational Health and Safety Act 1983* is the principal Act with the *Mines Inspection Act 1901* and the *Coal Mines Regulation Act 1982* being associated legislation specific to parts of the industry. Where a conflict arises the Occupational Health and Safety Act prevails.

The Occupational Health and Safety Act creates a general duty of care which requires employers to ensure the health safety and welfare of their employees and others.

Manufacturers and suppliers are to ensure health and safety as regards plant and substances for use at work. Employees, in turn, are to take care of others and co-operate with the employer.

Under the legislation, responsibility for health and safety in mining lies with those closest to the problem and thus best able to solve it, namely with industry itself. The Department of Mineral Resources has the responsibility of administering the legislation. As a result the Department has an important role in protecting and improving the health and safety of mine workers and others affected by mining.

The more important means at the Department's disposal include licensing, approval, certification and assessment processes; education, advice and persuasion; and, the principal subject of this document, enforcement of acceptable health and safety standards in the legislation and other sources.

The legislation is complex. It takes at least two different approaches to promoting health and safety in mining.

The first, exemplified by much of the *Coal Mines Regulation Act*, is to license or certify individual position holders, such as mine managers, and make them responsible for compliance with detailed prescriptive rules.

The second approach, exemplified by the *Mines Inspection General Rule 1994* (made pursuant to the *Mines Inspection Act*) and s.15 of the *Occupational and Health Safety Act*, is to make particular persons, such as the mine manager or the employer, responsible through a broad duty of care for ensuring particular outcomes such as the health, safety and welfare at work of all its employees. The Occupational Health and Safety Act also extends the duty of care to cover non-employees, such as contractors and the general public. The side by side existence of different legal approaches, the particular characteristics of mining workplaces, and the variety of - 2 - Department of Mineral Resources NSW - The Enforcement of Health and Safety Standards in Mines - Revision 1.0 - 1 January 1999 circumstances which face the regulator, call for sophisticated and flexible approaches to enforcing compliance with the legislation.

Different circumstances may require different responses by the Department.

This is why the legislation provides inspectors and other officers of the Department with a wide range of powers and sanctions that they can use to enforce the legislation. They also have wide discretions as to which powers and sanctions they should invoke in particular circumstances and as to how they should use such powers and sanctions.

The power to prosecute is an important and, some would say, the most significant response available to the Department. In appropriate circumstances the Department will prosecute.

However, prosecution is by no means the only response and often it will not be the most effective one. Moreover, for prosecution (and the potential to be prosecuted) to be an effective means for promoting health and safety, it is important that decisions whether or not to prosecute be made on the basis of a careful assessment of known criteria, fairly, consistently and in the context of the Department's wider enforcement approach.

The object of this document is to provide guidance - for the benefit of departmental officers, industry and the wider public - on the principles the Department applies in enforcing the legislation and, in particular, on the principles according to which discretions are exercised, including the discretion as to whether or not to prosecute. These principles provide a foundation on which Departmental procedures and guidelines will be built and lead to consistency.

The separate policy statements within this document are intended to 'stand alone' so that they may be published elsewhere. This approach has led to apparent repetition in certain areas as the policies build on contextual material earlier presented.

The Department intends to keep its policies and practice surrounding enforcement under review and welcomes comment. The Department will appropriately publicise any changes in this area of its stewardship of the Mineral Resources of New South Wales.

## A.1 PURPOSE OF THIS DOCUMENT

*The purpose of this document is to support an open and consistent approach by the Department to the enforcement of health and safety standards in mines through assessment of mining operations, investigation of accidents and incidents, and, where appropriate, prosecution.*

## A.2 THE CONTEXT OF ENFORCEMENT

### **The primary objective - health and safety in mines**

#### A.2.1

One of the Department's primary objectives is to promote the protection of the health and safety of people employed in or affected by mining in New South Wales. The Department's Corporate Plan 1998-2001 objective this way: to ensure that "the mining industry eliminates unsafe work practices and achieves a safe working environment". The Department pursues this primary objective by a number of means (or strategies) which include the various assessment, licensing, approval and certification processes, education, advice, persuasion and enforcement. All these strategies are subservient to the primary objective. The Department seeks to apply all the strategies fairly and impartially.

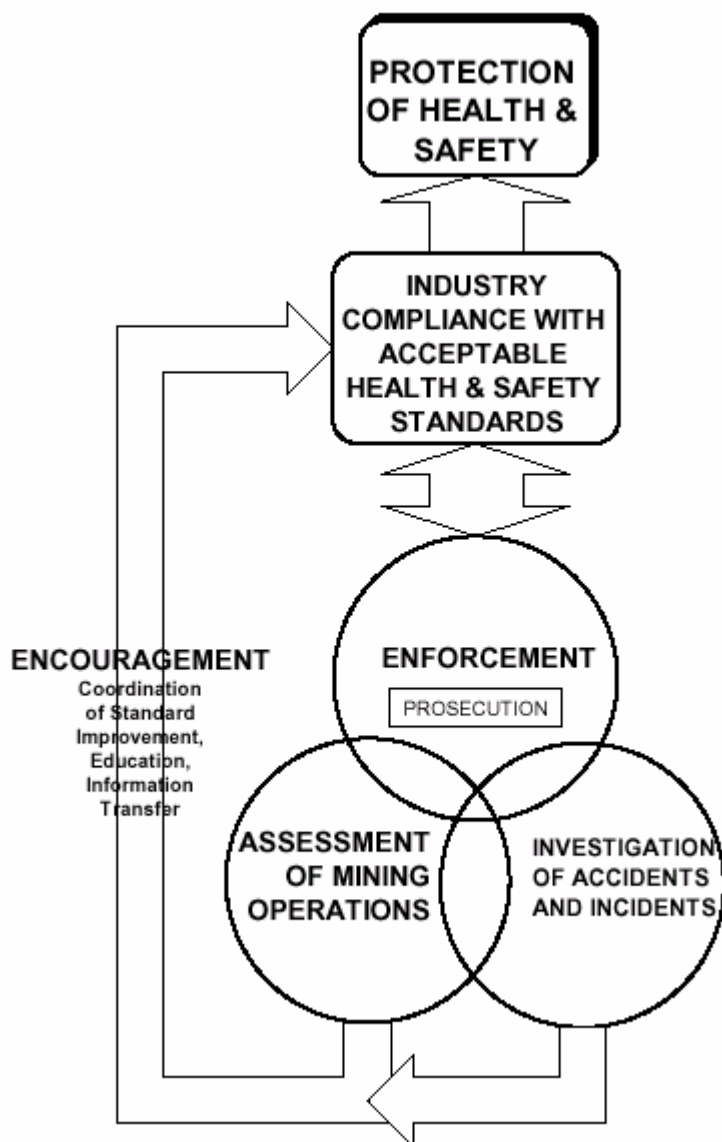
#### A.2.2

In order to achieve the primary health and safety objective and to implement and monitor its work towards that end, the Department seeks to have the mining industry operate in conformity with acceptable standards of health and safety management. These standards are discussed in paragraph A.2.4 below.

### **The conceptual approach to enforcement**

#### A.2.3

The following diagram illustrates the relationship between this outcome and the primary health and safety objective. It also shows the relationship between each of the processes of assessment, investigation and enforcement. The diagram further attempts to note how assessment or investigation can also lead, with or without enforcement, to improved standards and to greater conformity with standards through standard improvement, education and information transfer with industry. These are processes of encouragement. Finally, the diagram illustrates that prosecution is only one means of enforcement.



**Acceptable standards of health and safety management**

A.2.4 Acceptable standards of health and safety management are derived from many sources and expressed in different forms. Some such standards are expressed in the provisions of the legislation.

Additional "quasi-legislative" standards are created by conditions of licences, approvals or notices issued pursuant to legislation. Other sources for acceptable standards may include International Standards Organisation (ISO) standards; International Electrotechnical Commission (IEC) standards; Australian Standards (AS); particular codes, conventions or guidelines; and, in a few instances, broadly accepted industry custom and practice.

A.2.5 Standards can be as large and complex as comprehensive Hazard Management Systems and as narrow and precise as the specification of critical clearances in parts of machinery. Standards are not always clear or accessible. Indeed, in some circumstances, legislation enables Departmental officers to determine what are acceptable standards for particular situations.

A.2.6 The role of the Department is shifting from one of determining standards through to one of coordinating the improvement of standards, towards one of checking the currency and comprehensiveness of industry-set standards - where standards are set by means of a process which takes full and proper advantage of all people who have a direct connection with the issue.

A.2.7 It must remain, however, that where consensus cannot be reached, or where the Department has superior knowledge or data, then it will retain a lead role in standard setting.

### **Elements of a Safe System of Work**

A.2.8 The Department considers that the following elements will always be present in a safe system of work:

- Sufficient numbers of competent people to perform the tasks required;
- An adequate supply of fit for purpose equipment;
- Adequate procedures for the work to be undertaken; and
- Effective management of the overall work environment<sup>1</sup>.

A.2.9 The Department will look for the presence and adequacy of these elements in assessing mining operations and in its investigation of accidents and incidents at mines.

### **Enforcement as a Strategy**

A.2.10 Enforcement of the legislation is one strategy for obtaining or maintaining conformity of mining operations with acceptable standards. Other strategies are listed in paragraph A.2.1 above.

A.2.11 The primary aim of enforcement by the Department is always to achieve this outcome (of conformity to acceptable standards) and ultimately, the primary objective i.e. protection of health and safety. In order to enforce the legislation, the Department assesses and investigates examples of actual practices and compares them with acceptable standards. Whenever the Department detects a failure to comply with acceptable standards, industry should expect an enforcement response from the Department.

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<sup>1</sup> This includes both the physical environment and the management environment such as a safety management system, an example of which may be found in AS/NZS 4804:1997 "Occupational health and safety management systems - General guidelines on principles, systems and supporting techniques".

### **A.3 THE RANGE OR HIERARCHY OF ENFORCEMENT RESPONSES**

A.3.1 Possible responses by the Department to an apparent failure to comply with acceptable standards may include, in roughly ascending order of severity:

- (a) giving advice;
- (b) expressing concern orally;
- (c) issuing an instruction;
- (d) giving a direction;
- (e) issuing a written notice of concern;
- (f) issuing an improvement notice;
- (g) issuing a prohibition notice (a “stop work” order);
- (h) reviewing and/or upholding a notice;
- (i) a formal warning;
- (j) seeking a court order;
- (k) prosecution.

Responses at the earlier end of the spectrum have the advantage of immediacy. Responses outside the spectrum are also possible although they go beyond dedicated health and safety legislation. These responses are toward questioning a lease holder’s ‘right to mine’ through review of licences.

A.3.2 The appropriate response will depend on the particular circumstances, the relevant legislative provisions and the appropriate exercise of discretions. The broad range of sanctions available allows the Department to tailor responses to particular circumstances including the nature of the breach, the actual or possible consequences of the breach and the relative immediacy of any danger. Responses may be directed to the mining company, to the mine manager, to particular mine workers, or to a combination of these persons. A failure to respond (within a given time frame) or an inadequate response to an intervention by a Departmental officer will lead to a more serious sanction being applied.

### **A.4 THE RESPONSIBILITY OF INDUSTRY**

A.4.1 This document is principally about enforcement by the Department. It should be emphasised, however, that primary responsibility for ensuring conformity with acceptable standards rests upon industry itself: upon mining companies, mine management, the mining workforce, and manufactures and suppliers of plant and substances. This is clearly stated in the legislation.

A.4.2 Mines should have clearly understood and accepted processes of ‘self-enforcement’ through means such as compliance programs<sup>2</sup>. The Department's enforcement role, as the responsible regulator, is to take steps to ascertain whether or not industry is complying and to take appropriate external enforcement action where it is not.

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<sup>2</sup> An example of this approach is Australian Standard AS 3806 - 1998 “Compliance programs”.

## A.5 ASSESSMENT AND INVESTIGATION

A.5.1 The Department's enforcement role is closely linked with the Department's other roles of assessment of safety and health standards of mining operations and investigation of accidents or incidents occurring at mines.

A.5.2 “Assessment” is the set of surveillance activities intended to detect deviations from acceptable health and safety standards. Investigation, on the other hand, is the collection and analysis of information about the causes and circumstances of accidents or incidents at mines.

A.5.3 Amongst other things, “assessment” may include actual physical inspection, audits, site surveys, verification of safety systems or inquiries. It may in some circumstances be carried out by persons other than Departmental officers. For example, industry self reporting to the Department of internal audits or other activities may be considered a form of assessment as might audits conducted by accredited third parties . Likewise, investigations may be carried out by industry itself or a third party, and reported to the Department although this would be restricted to less serious events at mines.

These arrangements must, of course, also be the subject of an appropriate level of control as to completeness and objectivity.

A.5.4 Both assessment and investigation support enforcement. However, they are not synonymous with enforcement and they may also serve other purposes. Thus assessments may be carried out for the purpose simply of gathering information<sup>3</sup> and investigations may occur in response to representations or complaints by the work force or the general public.

A.5.5 Information obtained in an investigation may be used in a number of contexts, including: an inquest; a prosecution or other legal proceedings; other investigations or inquiries; or, outside the legal arena, for the improvement of standards and practices.

## A.6 CONCLUSION

The set of policies which follow are intended as a guide for industry and the wider public on how the Department seeks to attain the objective of health and safety and compliance by industry with acceptable standards. The policies re-state and build upon many of the principles outlined so far.

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<sup>3</sup> Examples of this in the coal area have been inspections conducted across industry to ascertain the status of conveyor systems, explosion barriers or remote control equipment and to provide information on which subsequent interventions were developed.

## **B. ENFORCEMENT**

### **B.1 OUTCOME SOUGHT**

*The principal outcome sought is the compliance by industry with acceptable standards for the management of health and safety.*

### **B.2 PRINCIPLES**

The Department adopts the following principles in relation to its enforcement strategy:

- (a) Enforcement is a means of achieving the ultimate objectives of protecting the health and safety of the mining workforce and those who may be affected by mining.
- (b) Enforcement is a means to achieving the outcome of having all in the mining industry comply with acceptable standards for the management of health and safety.
- (c) "Acceptable standards" include not only those standards required by legislation but also standards derived from a broader body of codes, standards and guidelines.
- (d) The Department has an important role, as regulator, in the coordination of the development of, and the review and promulgation of acceptable standards.
- (e) Primary responsibility for compliance with acceptable standards lies with industry; the role of the Department is to obtain compliance and take enforcement action in cases of non-compliance.
- (f) Sanctions, applied from the wide range of available responses, should be applied consistently, fairly, be commensurate with the seriousness of a situation and should escalate where previous responses have not been complied with.
- (g) Every instance of non-compliance detected should result in a timely and effective response from the Department.
- (h) In the first instance, subject to the seriousness of a situation, a cooperative response would usually be preferred.
- (i) There should be records maintained of non-compliance with acceptable standards detected by the Department and resulting enforcement action by the Department.
- (j) There should always be follow-up action on the part of the Department to ascertain whether requirements imposed or requested have been complied with.
- (k) Records should be kept of the follow up action and its results.
- (l) Information should be published and available to the public about detected non compliance, enforcement action, follow up action and the results of such actions.

- (m) Prosecution is an integral part of the Department's overall enforcement strategy.
- (n) The assessment and investigation activities of the Department support the Department's enforcement strategy.
- (o) Enforcement activities should be carried out by persons trained in, and competent for, particular tasks and in accordance with established procedures.

### **B.3 ENFORCEMENT POLICY**

The Department will:

- (a) develop and maintain a strategy for the enforcement of acceptable health and safety standards in industry ("an Enforcement Strategy");
- (b) improve and promulgate acceptable health and safety standards;
- (c) consider response in every instance where non-compliance with the relevant standards becomes known;
- (d) respond in a fair and consistent manner, taking into account the seriousness of the non-compliance or the imminence of danger, in a cooperative manner where appropriate;
- (e) respond in an escalating fashion where previous responses have themselves not met with satisfactory responses;
- (f) make a high level response where the severity or imminence of danger warrants such action;
- (g) maintain records of non-compliances detected and of the Department's responses; follow up to ascertain remedial actions taken by industry; maintain records of the remedial action (or inaction) and of the Department's follow up of the action (or inaction);
- (h) prosecute as appropriate as a part of the enforcement strategy;
- (i) develop and maintain mining operation assessment and investigation programs in support of the enforcement strategy;
- (j) develop and maintain the competency of its officers and operating procedures to effectively administer the enforcement strategy.

## C. INVESTIGATION

### C.1 OUTCOME SOUGHT

*The principal outcome sought is the effective collection, analysis and presentation of relevant information about the causes and circumstances of accidents or incidents in a manner which best supports the Department's enforcement strategy and provides information for enhancement of industry standards.*

**C.2 PRINCIPLES** The Department accepts the following principles in relation to investigation:

- (a) The investigation of events provides an important opportunity to find information about what went wrong or might go wrong with a view to preventing the occurrence of similar or related events in the future.
- (b) Information from an investigation may be obtained and used for a variety of purposes<sup>4</sup>; the information should be collected and presented in a form which best serves the purpose, or purposes, for which it is being obtained or for which it is expected to be used.
- (c) Investigations should be conducted impartially, diligently, and in a timely manner.
- (d) All investigations should establish the causes and circumstances<sup>5</sup> of the event under investigation.
- (e) All investigations should result in a report which should include whether, in the investigator's opinion, there have been any breaches of legislation.
- (f) The Department's overall investigative response to an event should be principally determined by the seriousness of the event and the anticipated safety benefit that might result from the investigation.
- (g) Investigation of more serious events should, wherever practicable, be undertaken by a team rather than an individual.
- (h) Early and effective response to notification of an event requiring investigation should be made, with particular emphases on the preservation of physical evidence and the timely collection of initial oral evidence.
- (i) The continuing response to an investigation should be planned and conducted to best capture and ultimately present all available relevant information.

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<sup>4</sup> These include: for a Coroner; for legal proceedings; input for other investigations or inquires beyond the immediate incident; and, outside the legal arena, information so that practices and standards can be improved to prevent a recurrence of similar events.

<sup>5</sup> The terms "causes" and "circumstances" should be interpreted broadly so that matters beyond the immediate event are taken into account where they may be relevant to that event, for example as a contributory cause.

- (j) The integrity of evidence collected during the course of an investigation should be assured.
- (k) Where appropriate, the confidentiality or sensitivity of information collected during the course of an investigation should be respected.
- (l) Records of the results of investigations should be kept.
- (m) The results of investigations should be published.
- (n) Relevant information arising from investigations should be made available to industry in a form which will help prevent the occurrence of events similar to the one investigated.
- (o) Investigation activities should be carried out by persons appropriately trained and competent for particular tasks and in accordance with established procedures.

### **C.3 INVESTIGATION POLICY**

The Department will:

- (a) maintain an up to date Investigation Program in support of the Enforcement Strategy;
- (b) investigate in a planned way with an overall view to obtaining information which will assist in prevention in the future, and in a way which best serves the purpose(s) for which information from an investigation is likely to be used;
- (c) investigate with impartiality, diligence, and in a timely manner;
- (d) discover through investigation the causes and circumstances of events and the occurrence of direct or indirect breaches of legislation;
- (e) respond in an investigative sense to an event in a way consistent with the seriousness of the event and the likelihood of there being benefit from that response;
- (f) respond to events to be investigated in a manner which preserves, respects and maintains the integrity of evidence and other relevant information;
- (g) make available relevant information from investigations to industry, unions and the public in the interests of future prevention, unless there is some overriding requirement for confidentiality<sup>6</sup> in which case reasons for non-disclosure will be made available to relevant parties;
- (h) develop and maintain the general competency of officers and currency of procedures to effectively administer the Investigation Program;

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<sup>6</sup> For example a pending prosecution which would justify deferring public dissemination of information.

- (i) develop and maintain a core group of specialist officers to support aspects of the Investigation Program requiring additional expertise, rigour, resources and/or independence; and
- (j) have the core group of specialist officers under the strategic control of the Director General and reporting on the Investigation Program to the Director General<sup>7</sup>.

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<sup>7</sup> While strategic direction and reporting will be to the Director General, day to day operating arrangements for the group will be through Departmental line management.

## D. INDUSTRY ASSESSMENT

### D.1 OUTCOME SOUGHT

*The principal outcome sought is to carry out effective surveillance of industry in order to detect non compliance with acceptable health and safety standards and to best provide information for the improvement of industry standards.*

**D.2 PRINCIPLES** The Department accepts the following principles in relation to industry assessment:

- (a) "Assessment" includes a range of industry surveillance activities including physical site inspections, audits, site surveys and examinations.
- (b) The range of assessment activities should be planned, on a prioritised and structured basis, with the number one priority being the minimisation with a view to elimination of risk to the mining workforce and general public. The degree of response should be weighted to the imminence of danger.
- (c) Risk to the mining workforce should be assessed giving significant weight to the management of Major Hazards and the maintenance of Emergency Preparedness in industry.
- (d) The assessment regime should include a sufficient pattern of announced, un-announced and back shift inspections to detect non compliance with acceptable standards at any site and on shifts other than day shifts. An expectation should be created that a mine may be visited at any time.
- (e) Where practicable, Departmental expertise should be spread across industry sectors by the conduct of cross-sector assessments.
- (f) A report of the results of any assessment, including any concerns arising from the assessment, should be provided to the site concerned as soon as practicable and in such a form that it may be examined by the workforce.
- (g) A report of the results of any assessment, including any concerns arising from the assessment, should be prepared and maintained within the Department.
- (h) A response to the assessment report is expected from the relevant company.
- (i) All reports requiring remedial actions should be followed up.
- (j) Records should be kept of company responses to assessment reports, of remedial action (or inaction), of follow up action by the Department and of the results of such follow up action.
- (k) All such records should be accessible to the company, the workforce and the public, unless and overriding factor, such as consideration of prosecution, requires that open access be deferred or restricted.

- (l) assessment activities should be regularly reviewed in the light of such records.

### **D.3 INDUSTRY ASSESSMENT POLICY**

The Department will:

- (a) develop and maintain an up to date Industry Assessment Program in support of the Enforcement Strategy;
- (b) include in the Industry Assessment Program a range of activities to provide effective surveillance of industry;
- (c) plan on a prioritised basis the activities of the Industry Assessment Program;
- (d) provide a report to assessed sites on the results of the assessment and maintain records of all assessment reports, of the results of all assessments, of company responses to assessment reports, of remedial action or inaction, of follow up action by the Department and of the results of such follow up action;
- (e) provide company, workforce and public access to such records and publish information about outcomes while maintaining necessary confidentiality.

## **E. PROSECUTION**

### ***E.1 OUTCOME SOUGHT***

*The principal outcome sought is the effective use of prosecution as an integral part of the Department's Enforcement Strategy.*

### **E.2 PRINCIPLES**

The Department of Mineral Resources accepts the following principles in relation to prosecution:

- (a) Prosecution is an important part of the overall Enforcement Strategy both as an actual response in some cases and in order that industry may have a perception of the possibility of prosecution sufficient to act as a deterrent to bolster the efficacy of other responses and sanctions.
- (b) The Department will use the most effective means of promoting compliance with acceptable standards — which will not be prosecution in all cases.
- (c) Prosecution is only one of a wide range of responses available to the Department and that full range of responses should be used to best effect in the Department's overall enforcement strategy.
- (d) Prosecution should be considered in all instances where a significant breach of legislation is discovered by the Department. Significant breaches of legislation will include, but may not be limited to:
  - breaches causing, or likely to cause, death, or serious injury or ill health; or
  - breaches continuing to occur after other representations or interventions by the Department; or
  - breaches which impede or interfere with the proper investigation of causes and circumstances surrounding an event.
- (e) The Department should maintain arrangements and procedures to enable possible prosecutions to be considered in a fair, consistent and timely fashion, including the formalising of processes of considering recommendations for prosecution.
- (f) Reasons for the decision to prosecute or not to prosecute should be recorded and made available to relevant parties at an appropriate time; and
- (g) No prosecution should be commenced without the concurrence of the Director General acting on the advice of officers of the Department.

### E.3 PROSECUTION POLICY

The Department will:

- (a) prepare, publish and implement prosecution guidelines and keep them under review;
- (b) train and maintain investigating officers in the general skills, and specialist officers in particular skills, required to prepare and conduct prosecutions including the gathering, assessment and presentation of evidence and relevant law relating to offences, investigation and evidence;
- (c) consider prosecution as a matter of course, and in a fair, consistent and timely manner, where a significant breach<sup>8</sup> of legislation has occurred (d) keep a record of decisions whether or not to prosecute and of the reasons for those decisions, and make the reasons available to relevant parties at an appropriate time; and (e) publish information on prosecutions undertaken, appropriate to the stage that the prosecution has reached at the time of publication while keeping in mind the importance of timely and relevant information being made available to industry for preventative purposes.

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<sup>8</sup> Those breaches considered significant are outlined in the previous section on Principles, E.2.

## F. PROSECUTION GUIDELINES

### F.1 PURPOSE OF GUIDELINES

*The purpose of these guidelines is to identify:*

- (a) the basis on which the Department will make a decision to prosecute;*
- (b) the factors to be taken into account in deciding which persons<sup>9</sup> are the appropriate defendants;*
- (c) the factors to be taken into account in deciding which charges to lay;*

*The Guidelines are not law but a means to support the policy of the Department and will provide guidance in applying the policy*

### F.2 PROSECUTION: THE CONTEXT

The Department's decision whether or not to prosecute a particular breach of the legislation will always be made in the context of the Department's health and safety objective<sup>10</sup> and standards compliance outcome<sup>11</sup> as well as the Department's enforcement policy. Thus consideration will usually be given to the availability, efficacy and appropriateness of other sanctions.

### F.3 EVIDENCE

Before prosecution can properly be considered there must be both

- (a) a prima facie case<sup>12</sup>; and
- (b) a reasonable prospect of conviction<sup>13</sup>.

### F.4 THE DECISION TO PROSECUTE

F.4.1 It has never been the case that all suspected offences are automatically the subject of prosecution. The following quotation clarifies the important principles in the decision whether or not to prosecute and provides guidance on how that decision will be reached.

“The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution.

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made.

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<sup>9</sup> In this context a ‘person’ may include a corporation, employer, manager, or individual

<sup>10</sup> The protection of the health and safety of those in, and affected by, mining.

<sup>11</sup> Compliance by the industry with acceptable health and safety standards.

<sup>12</sup> In a technical legal sense, prosecution evidence sufficient, in the absence of any other evidence, to prove each element of the offence.

<sup>13</sup> This factor requires an exercise of judgement in the light of what is known about possible defences, evidence to support a defendant's case and the anticipated course of proceedings.

A wrong decision to prosecute or, conversely a wrong decision not to prosecute, both tend to undermine confidence of the community in the criminal justice system.

It follows that the objectives previously stated - especially fairness and consistency - are of particular importance. However, fairness need not mean weakness and consistency need not mean rigidity. The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.”<sup>14</sup>

F.4.2 In addition to the two evidence based criteria for prosecution identified above there is another criterion, described generally as ‘the public interest’ which is made up of a number of factors. These factors are not a means through which individuals or corporations will not be appropriately brought to account. They are not excuses not to prosecute, nor are they to circumvent the Judiciary exercising its proper function.

## F.5 PUBLIC INTEREST FACTORS

F.5.1 The factors which should properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. Often some factors will militate against prosecution, while others will operate in favour of prosecution. The decision maker(s)<sup>15</sup> must give the various factors appropriate weight. Generally speaking the more serious an offence, and the more serious its actual or potential consequences, the more likely it will be that the public interest will lead to prosecution.

F.5.2 With this in mind the normal public expectation would be that where a significant breach has occurred, and a prima facie case and reasonable prospect of conviction exist, then a prosecution should follow. In these circumstances the public interest factors, when properly applied, are most likely to lead to the same conclusion.

F.5.3 Factors which arise for consideration in determining whether the public interest supports a prosecution include:

- (a) the relative seriousness or triviality of the alleged offence;
- (b) the actual or potential harm or danger caused to the health or safety of any persons by the alleged offence;
- (c) the extent to which such harm or danger was reasonably foreseeable;
- (d) any mitigating or aggravating circumstances;
- (e) the degree of culpability of the alleged offender in relation to the offence;
- (f) the availability, efficacy and appropriateness of any alternatives to prosecution within the context of the enforcement strategy;

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<sup>14</sup> Prosecution Policy of the Commonwealth. Guidelines for the making of decisions in the prosecution process. Commonwealth Director of Public Prosecutions. 1996 Reprint.

<sup>15</sup> In order that the important decisions around prosecution can be properly made the Department will convene a high level group with external oversight at appropriate times.

- (g) whether or not the alleged offender has been dealt with previously by non-prosecutorial means and, if they have, how the alleged offender has responded on each occasion;
- (h) whether the breach is a continuing or second offence;
- (i) the prevalence of the alleged offence or type of offence and the need for deterrence, both specific (of the alleged offender) and general (of others associated with the site and in the industry generally);
- (j) the length of time since the alleged offence;
- (k) the age, physical or mental health or special infirmity of the alleged offenders or witnesses;
- (l) the length and expense of a Court hearing;
- (m) the likely outcome in the event of a conviction having regard to the sentencing options available to the court;
- (n) any precedent which may be set by not instituting proceedings;
- (o) whether the consequences of any conviction would be unduly harsh or oppressive;
- (p) whether prosecution proceedings are to be instituted against others arising out of the same incident by the Department or by another agency.

F.5.4 A decision whether or not to prosecute must not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the alleged offender or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party;
- (d) possible industrial advantage or disadvantage to any group or party in industry;  
or
- (e) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

## **F.6 SELECTING THE APPROPRIATE DEFENDANT AND THE APPROPRIATE CHARGES**

### **General Principles**

F.6.1 One incident may be the result of or connected with a number of offences which may in turn arise pursuant to one or more pieces of legislation. Such offences may have been committed by one or more of a number of persons which may include, for example, the mining company, directors of the company, the mine manager or other statutory officer, or other company employees. Once a decision has been made to prosecute, the choice of offences and defendant will always be made in the public interest and in the context of the enforcement policy.

F.6.2 This choice will proceed in the order of the implied standing and the content of the available statutes as follows.

### **Occupational Health and Safety Act**

F.6.3 This is the principal piece of legislation under which the Department's policy will operate. It places the onus on an employer to ensure the health and safety of people at the workplace. In most cases employers are corporations. There is potential for liability under this Act to be sheeted home to directors of corporations and other people connected with the management of corporations.

### **Mines Inspection Act and Coal Mines Regulation Act**

F.6.4 These two statutes relate specifically to safety and health issues in mines. They are "associated occupational health and safety legislation" for the purposes of the Occupational Health and Safety Act.

Generally these Acts put an onus on mine managers to take specific steps aimed at workplace safety with part of the overall responsibility flowing to others through requirements to comply with such things as managers' Rules and Schemes or safety programs. They also create specific and general offences.

### **The Choice of Defendant**

F.6.5 The Department takes the view that 'ownership' of the obligation to provide a safe workplace lies with mine owners and begins at the top. This is consistent with the relevant legislation. Accordingly, potential prosecutions will, in the first instance, be considered in light of the Occupational Health and Safety Act.

F.6.6 The circumstances of an alleged offence may nevertheless call for an examination of whether a prosecution should be brought against identified individuals, whether management, contractors or employees, either because of a connection with the management or running of a mine, or because a specific offence under the associated legislation merits being brought to account.

# **Queensland**

## **Compliance Policy**

**Coal Mining Safety and Health Act 1999**  
**Coal Mining Safety and Health Regulation 2001**  
**Mining and Quarrying Safety and Health Act 1999**  
**Mining and Quarrying Safety and Health Regulation 2001**

Principles and Procedures for Assessing Compliance and  
Determining Response to Non-Compliance

**November 2001**

## FOREWORD

For almost a decade the Queensland mining and quarrying industries have focused attention and devoted considerable effort towards improving safety and health standards. With many companies adopting a target of zero fatalities and zero serious injuries, considerable progress has been made. To achieve and maintain acceptable safety and health standards requires considerable effort; to then lift these standards even further requires that this effort is relentless.

Mining is one of Queensland's most important industries providing significant export revenue to the state and the nation. Mining is the life-blood of many important regional centres and without it many regional centres could not survive in their present form.

We all recognise and accept that there is a strong moral obligation to ensure the health and safety of those who work to produce the wealth that is so important to our state and nation. In addition to meeting these obligations, we must also acknowledge and ensure that we are seen to be meeting these obligations.

In August 1994 an explosion at Moura No 2 Mine in Central Queensland led to the loss of eleven lives. This was the fourth major mining accident in Queensland in 25 years, three of which directly affected the township of Moura. This situation was completely unacceptable and the resulting major inquiry recommended a number of reforms, including the completion of the development of new mining legislation.

In March this year the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act came into force. These Acts are acknowledged as modern, progressive and effective hazardous industry safety and health legislation. The efforts and input of many parties, including mining companies, unions and the Mines Inspectorate in the development of this legislation are acknowledged.

This Compliance Policy, which I have the pleasure of introducing, has the purpose of ensuring that this legislation is administered in a consistent, transparent and effective manner. It ensures the safety and health obligations we all owe to the people in the mining industry who produce the wealth are met, and are demonstrated to be met.

STEPHEN ROBERTSON MP  
Minister for Natural Resources and Mines

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## 1. OVERVIEW

This policy is part of the Department of Natural Resources and Mines' compliance strategy and complements the Department's auditing and inspection role.

The policy is intended to ensure an unbiased, consistent treatment of non-compliance with the requirements of mining safety and health legislation.

The objective of the mining safety and health legislation is to protect the safety and health of mine and quarry workers and those who are affected by the activities of these industries. The Department's safety and health mission is to ensure that the objective of legislation is achieved. Associated with this mission is the need to preserve public confidence in the administration of the legislation. This requires the Department to enforce the legislation in a consistent and impartial manner and, where appropriate, hold people accountable for their failure to meet the requirements of legislation.

The Department's initial emphasis is on co-operation with stakeholders, including giving advice and encouragement to achieve required health and safety standards. This approach also includes the concept of staged escalation to deal appropriately with people or companies who fail or neglect to fulfil their safety or health obligations. The approach does not preclude prosecution as an initial response where, for example, situations involve gross negligence.

A Review Committee is proposed as part of the process for ensuring that an appropriate response is made to any major non-compliance. This Review Committee is designed to provide the Statutory Chief Inspectors with a second opinion on the appropriateness of recommended responses to breaches of legislation that may involve the potential for prosecution. Where people empowered by legislation recommend a prosecution to the Statutory Chief Inspector this compliance policy requires, where serious breaches of compliance are involved, the Statutory Chief Inspector to obtain an opinion from a Review Committee on the appropriateness of a recommendation. The Review Committee cannot and does not remove the power granted to the Statutory Chief Inspectors by the legislation to initiate a prosecution where he/she considers this appropriate or, alternatively, decides not to proceed with a prosecution where he/she considers prosecution is not appropriate.

## 2. COMPLIANCE POLICY

### 2.1 Introduction

People involved with the mining industry have legal obligations to comply with the requirements of safety and health legislation. For those involved with the coal mining industry this is the Coal Mining Safety and Health Act 1999; and for those involved with the metalliferous mining and quarrying industries it is the Mining and Quarrying Safety and Health Act 1999. The Department has the function, through the inspectorates established by each piece of legislation, to enforce the legislation and, if unsafe practices or conditions are detected, to ensure timely corrective or remedial action is being taken.

This policy is designed to assist in establishing methods for the treatment of non-compliance which are logical, consistent, transparent and appropriate.

In addition to assisting the Department to carry out its function effectively and efficiently, the policy, by establishing clear guidelines for treating non-compliance, is designed to preserve public confidence in the administration of safety and health legislation in the mining and quarrying industries.

The policy contains:

1. A statement of the objectives of the policy and the principles to be applied in the event of the discovery of non-compliance with safety and health obligations.
2. A guideline to assist in determining:
  - actions to be taken to ensure risk associated with non-compliance is contained
  - the appropriate action to be taken against people or companies who fail to comply with legislation requirements.
3. Procedures to be followed when a recommendation is made regarding the prosecution of a person or company as a result of a non-compliance with safety and health legislation.

## 2.2 Dictionary

**Appropriate action** is the action taken or recommended against a person or company not fulfilling legislative safety and health obligations. The appropriate action varies in accordance with the circumstance and significance of the non-compliance.

**Chief Inspector of Mines** is the person appointed to manage the mining inspectorate.

**Complaint** is a representation by a mine worker to an inspector of a breach of the safety and health legislation; to be distinguished from the complaint laid by a Statutory Chief Inspector in the Industrial Magistrates Court to commence a prosecution.

**Directive** is a communication made to a mine operator or site senior executive by an inspector or inspection officer requiring a safety or health-related action to be taken.

**High Potential Incident of Especial Significance** is a high potential incident that is so serious that it warrants a major investigation.

**Non-compliance** is a failure to meet the legal requirements of the Coal Mining Safety and Health Act and Regulation or the Mining and Quarrying Safety and Health Act and Regulation.

**Officer** includes inspectors, inspection officers, industry safety and health representatives and district workers representatives.

**People involved with the mining industry** includes all people with obligations under the mining Acts for safety and health and includes holders of mining tenements, mine operators, workers, contractors, visitors to mines, etc.

**Review Committee** is a committee appointed by the Chief Inspector of Mines to provide an opinion on the appropriateness of a proposed action in response to a serious breach of safety and health legislation.

**Serious Accident and High Potential Incidents** are categories of accidents and incidents and are defined in the mining safety and health legislation.

**Serious Accident of Especial Significance** is a serious accident that results in grievous bodily injury.

**Statutory Chief Inspector** is a person appointed under either the Coal Mining Safety and Health Act 1999 or the Mining and Quarrying Safety and Health Act 1999 as Chief Inspector.

### 2.3 Objectives

The objectives of this compliance policy are to:

1. Assist officers and others to ensure that where non-compliance is detected that associated risk is effectively and appropriately managed.
2. Assist officers and others to take consistent and appropriate actions against people or companies who fail to meet their obligations under the mining safety and health legislation.
3. Ensure that recommendations relating to prosecutions (including recommendations not to prosecute) are assessed in a fair and equitable way that will protect people and companies who meet their safety and health obligations while holding accountable those people and companies that do not.
4. Provide a document that will reassure the general public that the Department is administering the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act in a manner that meets the objectives of the legislation and is in the public interest.

### 3. COMPLIANCE PRINCIPLES

#### 3.1 Principles

The following principles form the basis of the compliance policy and should be applied by officers carrying out their legislative functions:

1. The principal means of meeting safety and health obligations is through compliance with legislation, or with directives issued under provisions of the legislation
2. Safety and health obligations may also be met by following standards arising from the legislation; for example recognised standards or guidelines issued pursuant to the legislation
3. Responsibility for compliance with legislation is with industry
4. The Department, through the mines inspectorate, is to monitor compliance and enforce the legislation. Monitoring compliance will include issuing directives to manage risk when risk is found to be at an unacceptable level; enforcing legislation may include initiating prosecutions against people or companies for failing to meet safety and health obligations
5. The Department has the role, as regulator, in the improvement, review and promulgation of standards issued pursuant to the legislation
6. Investigations into non-compliance and determination of corrective measures will be carried out in an unbiased manner that promotes and preserves confidence in the integrity and professional competence of the Department's officers
7. Corrective measures are to be used consistently, be commensurate with the seriousness of a situation and escalate where previous measures have been ineffective
8. In the first instance, subject to the seriousness of a situation, a co-operative response is preferred.

#### 3.2 Application

The Department will:

1. Administer the legislation in accordance with the principles and procedures of the compliance policy
2. Develop, improve and promulgate recognised standards and guidelines
3. Respond to detected non-compliance in a timely and effective manner. Corrective action measures and directives will be followed up where possible to a pre-planned timetable and as expeditiously as the circumstances of the situation warrant
4. Grade responses to the seriousness of the non-compliance
5. Maintain records of serious non-compliance detected together with the resulting measures undertaken.

## **4. ASSESSMENT - RESPONSE GUIDELINES**

### **4.1 Acceptable risk and appropriate actions**

Responsibility for compliance with legislation is with industry; however, where non-compliance is detected an officer may have to use the powers provided by legislation to ensure that the necessary action is taken to achieve an acceptable level of risk. In addition the officer may have to decide what action, if any, he/she should recommend be taken against the person or company who is in non-compliance.

Corrective measures are to be used consistently, be commensurate with the seriousness of a situation and escalate where previous measures have been ineffective.

In directing what should be done to control the risk and deciding what action should be taken against those responsible for the non-compliance, the officer should follow this principle.

To help officers follow the above principle the Response Guidelines 1 and 2, shown in Part 6, are provided.

Section 6.1 shows the actions available to ensure the risk resulting from non-compliance is contained.

Section 6.2 gives guidance as to what aspects should be considered in determining the appropriate action against those responsible where a non-compliance is detected.

### **4.2 Achieving an acceptable level of risk**

When non-compliance is detected, and before being able to decide the appropriate action to ensure that an acceptable level of risk is achieved, it is necessary to assess the level of risk.

The seriousness of the situation and the immediacy of the problems to be resolved will determine how the process is carried out. Some situations may be so serious that immediate action is appropriate and an inspector may simply use the guideline to confirm an already implemented response. Section 6.1 of Part 6 Diagrams and assessment procedures suggests action that may be taken.

For complex situations it may be advisable to go through a team-based risk assessment process.

Risk assessment is not a substitute for competent judgement based on experience and knowledge; it is a tool to guide those with the necessary experience and knowledge to a sound decision.

### **4.3 Determining an appropriate action to take against people responsible for non-compliance.**

Having determined the level of risk created as a result of non-compliance and taken the necessary actions to achieve an acceptable level of risk, the next task is to determine the appropriate action to be taken against the people responsible for the non-compliance.

Factors to be considered in determining what this action should be are shown in Section 6.2 of the Response Guideline and include consequences of the non-compliance as well as the circumstances surrounding the non-compliance.

The response depends on the factors involved and maybe any one of a number or, as suggested in Step 2 of the guideline, a combination of responses.

Options include:

- verbal expression of concern
- entry in the mine record
- senior company accountability meeting at NR&M head office
- recommendation for prosecution.

## 5. PROCEDURES FOR ASSESSING RECOMMENDATIONS

### 5.1 Procedures

Provisions for recommending and initiating a prosecution are laid down in the Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999. Under the legislation only the Chief Inspectors defined in each piece of legislation (referred to as Statutory Chief Inspectors in this policy) or a person authorised by the Minister (or Attorney-General) can initiate a prosecution. However, a number of people can recommend to the Statutory Chief Inspectors that prosecutions be initiated.

This part outlines procedures that are to be followed for assessing recommendations to prosecute.

Recommendations fall into one of three groups:

1. Procedure 1 addresses recommendations by Investigation Teams, or from inspectors investigating a single fatality. The legislation requires the inspectorate to investigate and report on all fatal accidents. To meet this requirement the Department will allocate inspectors to determine the nature and cause of the accident and detect any associated non-compliance. The level of resources used will be appropriate for the significance and complexity of the accident and could vary from a single inspector to an investigation team; the investigation will determine measures to prevent reoccurrence and suggest what administrative response should be made to any non-compliance found. Investigation Teams may also be established to investigate serious accidents or high potential incidents where it is considered they are of especial significance
2. Procedure 2 addresses recommendations made by inspectors, other than recommendations associated with investigating a fatality. Not all recommendations to prosecute will be associated with fatal or serious injuries or high potential incidents. Some may be the result of continually and deliberately neglecting to meet requirements of the legislation and these will generally come from inspectors
3. Procedure 3 addresses recommendations by people authorised by the legislation to make recommendations. The legislation specifically authorises a number of people in addition to inspectors to recommend that prosecutions be initiated. These people are site senior executives, industry safety and health representatives (coal mining legislation) and district workers' representatives (mining and quarrying legislation).

### 5.2 Procedure 1: Investigation Team's recommendation and the recommendation from an inspector investigating a fatal accident.

The procedure to be followed is shown in Section 6.3: Procedure 1. The procedure commences with a fatal accident or another type of serious accident or high potential incident of especial significance (trigger events). Whether a fatal accident is

investigated by an investigation team or by an inspector(s) from the local area would depend on the complexity of the accident.

The investigation of the occurrence includes taking statements, collecting evidence, analysing events and preparing a report to be forwarded to the Statutory Chief Inspector. On receiving the report the Statutory Chief Inspector will make the report available to the Executive Director Safety and Health Division through the Chief Inspector of Mines and to the Review Committee. Where the incident involves a fatal injury the Statutory Chief Inspector will forward a copy of the report to the Coroner. Refer to flow chart.

Legal advice should be obtained if further legal action is a possibility; the flow chart shows this being obtained by the Statutory Chief Inspector prior to consideration by the Review Committee. This advice should be provided to the Review Committee, together with the report of the investigation.

On receiving the report, the Review Committee is to consider all the issues and provide a written opinion on the actions recommended in response to any non-compliance. On receiving the opinion of the Review Committee, the Statutory Chief Inspector must decide whether further action is justified. On arriving at a decision, the Statutory Chief Inspector must inform the Chief Inspector of Mines, the inspectors involved in the investigation and the Minister through the Director-General and the Executive Director Safety and Health.

If the decision is to proceed to prosecution, the Statutory Chief Inspector is to prepare a budget estimate for the cost of the proceedings. He/she must inform the Director-General of this possible expenditure so that funds may be made available to undertake the prosecution.

The Statutory Chief Inspector charged with initiating the prosecution completes the procedure and obtains any necessary legal assistance. He/she liaises with the Coroner, where a fatal accident is involved, and initiates the prosecution in the Industrial Magistrates Court. It is necessary to communicate with the Coroner to ensure proceedings under the safety and health legislation do not conflict with proceedings in the Coroner's Court.

### **5.3 Procedure 2: Inspector's recommendation - where the recommendation is not associated with an investigation by an Investigation Team or an investigation into a fatal accident**

The procedure to be followed is shown in Section 6.4: Procedure 2. The procedure commences with an inspector reaching the conclusion that a person or organisation has failed in a significant way to meet the requirements of the legislation (trigger) and recommending a prosecution. After due process, the procedure ends either with rejection of the inspector's recommendation or, where endorsed, with the initiation of legal proceedings.

A recommendation for prosecution should be based on a perceived failure to meet safety and health obligations or some other significant legislative requirement and the evidence of such a breach.

Initially, the inspector should obtain sufficient information to apply the Response Guideline 2. The inspector must forward a report to the Statutory Chief Inspector providing the justification for the recommendation and establishing that all other avenues had been exhausted.

On receiving an inspector's recommendation the Statutory Chief Inspector is to inform the Executive Director Safety and Health Division through the Chief Inspector of Mines of the recommendation.

On receiving the report the Statutory Chief Inspector must decide whether further action is justified. On arriving at a decision the Statutory Chief Inspector must inform the inspector making the recommendation and the Chief Inspector of Mines who will inform the Executive Director Safety and Health. If the decision is to prosecute, the Statutory Chief Inspector is to inform the Minister through the Director-General and the Executive Director Safety and Health of this intention.

In the event of a decision to prosecute the Statutory Chief Inspector is to prepare a budget estimate for the cost of the proceedings. He/she must inform the Director-General of this possible expenditure so that funds may be made available to undertake the prosecution.

The procedure is completed by the Statutory Chief Inspector obtaining any necessary legal assistance and initiating the prosecution in the Industrial Magistrates Court.

#### **5.4 Procedure 3: Recommendation for prosecution by a person (other than an inspector) authorised by legislation as being able to recommend prosecutions**

The procedure to be followed is shown in Section 6.5:Procedure 3. The procedure commences with a recommendation to the Statutory Chief Inspector from an authorised person based on an incident or series of incidents (trigger events). It ends after due process, either with the recommendation being rejected or, where endorsed, with the initiation of legal proceedings.

The provision in the legislation that authorises certain people to recommend prosecutions is intended to allow the re-examination of significant non-compliance or ongoing breaches of legislative requirements. It is not intended to bypass inspectors and facilitate people making submissions directly to a Statutory Chief Inspector. Allegations should be first directed to the inspectors in the regions. Authorised people should follow due process of allowing an inspector to investigate a complaint and only recommend prosecutions following the completion of an inspector's investigation and in situations where they do not agree with the decision made by an inspector not to recommend prosecution.

A person who is authorised to do so and is considering recommending a prosecution should, prior to making the recommendation, obtain sufficient information to apply the Response Guideline 2 (Section 6.2) and then decide whether there is sufficient justification for recommending a prosecution. The person making the recommendation must forward the recommendation in writing to the Statutory Chief Inspector outlining

the grounds for making the recommendation and include any information that supports the recommendation.

The recommendation should address the subject of non-compliance, be specific on the nature of the non-compliance and include evidence of the non-compliance. The Statutory Chief Inspector, on receiving the recommendation, should inform the inspector in the relevant region and, through the Chief Inspector of Mines, the Executive Director Safety and Health, the Director-General and the Minister.

Where the recommendation is not associated with a fatal accident, serious injury or high potential incident of especial significance, the Statutory Chief Inspector may decide, based on the information provided with the recommendation, whether further action is warranted. When this decision is that further action is not warranted, the Statutory Chief Inspector must inform the person making the recommendation, the inspector in the relevant region and the Executive Director Safety and Health through the Chief Inspector of Mines of his/her decision and the reasons for the decision.

Where the recommendation is associated with a fatal accident, serious injury or high potential incident of especial significance, the Statutory Chief Inspector will forward the recommendation to a Review Committee for an opinion.

The Statutory Chief Inspector should obtain legal advice prior to consideration of the issue by the Review Committee, and this advice, together with the report of any further investigation, should be provided to the Review Committee. After appraising the recommendation and associated information, the Review Committee will provide a written opinion to the Statutory Chief Inspector on whether they consider that sufficient grounds exist for a prosecution.

On receiving the Review Committee's opinion the Statutory Chief Inspector is to decide whether further action is justified. The Statutory Chief Inspector's decision and opinion of the Review Committee should be forwarded to departmental officers as above, and the Minister through the Director-General. Where the Statutory Chief Inspector decides not to proceed further the person recommending the prosecution is to be advised of the decision and the reasons for the decision.

If the decision is that a prosecution is to proceed, the Statutory Chief Inspector is to prepare a budget estimate for the cost of the proceedings and inform the Chief Executive (Director-General) and Minister of this possible expenditure so that funds may be made available to undertake the prosecution.

Where a decision is made to proceed, the Statutory Chief Inspector charged with initiating the prosecution completes the procedure by obtaining any necessary legal assistance, and initiating the prosecution in the Industrial Magistrates Court.

## **5.5 Investigation Teams and Review Committees**

The function and organisation of the Investigation Team and nature of the investigation report is shown in Appendix 1: Investigation Team. The function and organisation of the Review Committee is shown in Appendix 2: Review Committee.

Where the recommendations are associated with investigations into fatal accidents or serious injuries or high potential incidents of especial significance, part of the assessment process will involve a review of recommendations by a Review Committee. This will be applicable in Procedure 1 and where the recommendations are associated with a fatal accident or a high potential incident or serious injury of especial significance in Procedure 3. The Review Committee will provide a written opinion on the suitability of the response recommended by an Investigation Team and on recommendations to prosecute made by people (other than inspectors) authorised to make such recommendations. Further descriptions of the procedures involving Investigation Teams and Review Committees are given in Sections 6.3 and 6.5.

## **5.6 Initiation of prosecutions**

The Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999 limit the power to initiate prosecution to the respective Chief Inspector defined in the Act (Statutory Chief Inspector) and people authorised by the Minister or Attorney-General to initiate prosecutions. The Statutory Chief Inspector's power can be delegated to an inspector in accordance with the provisions in the legislation; however, the delegation should be made in writing, be made on a case-by-case basis and be subject to the agreement of the Chief Inspector of Mines.

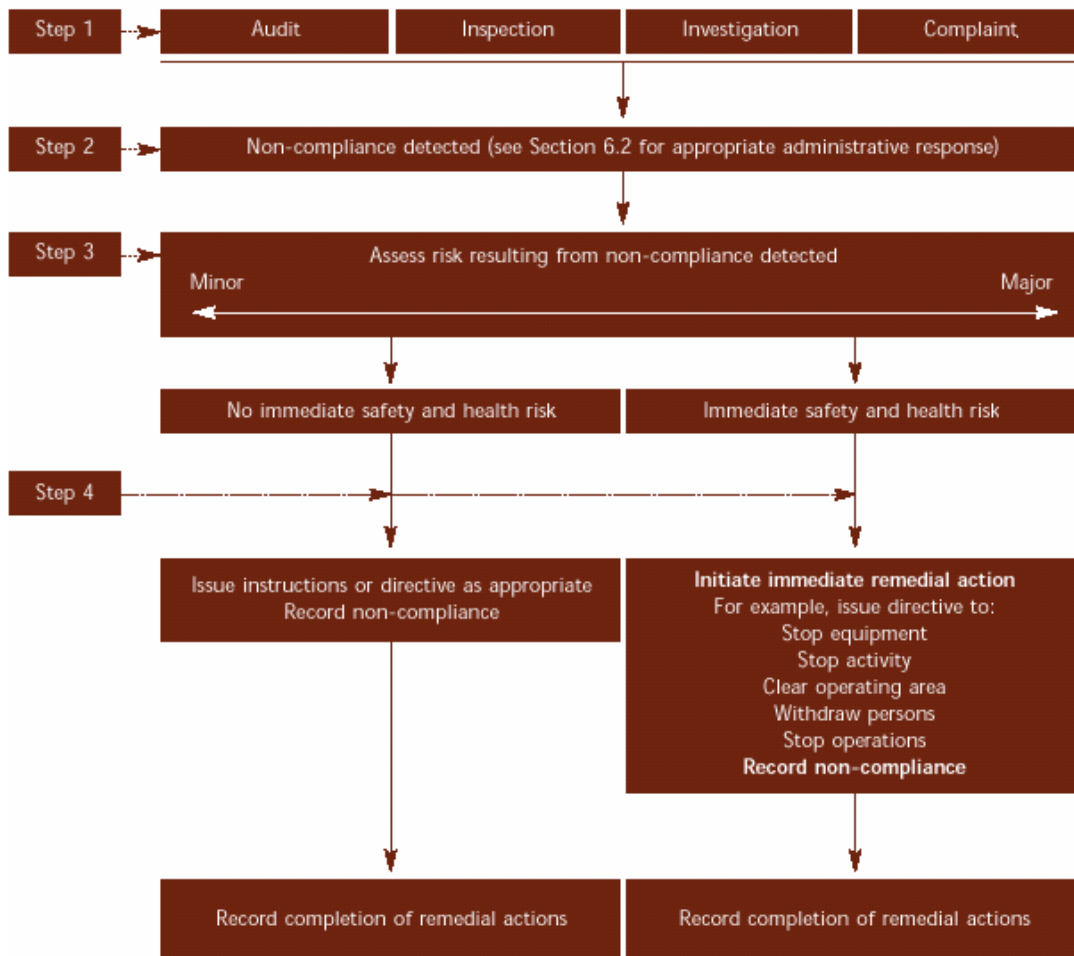
A prosecution starts when a complaint is lodged in the Industrial Magistrates Court. Particular attention needs to be paid with prosecutions involving fatalities; close liaison should be maintained with the Coroner.

Consideration should also be given to the possibility of a Board of Inquiry and legal advice taken if the Minister is considering using powers under the mining safety and health legislation to establish such a body.

The Industrial Magistrates Court is under the control of an Industrial Magistrate who is a judicial officer, usually a magistrate acting in the capacity of an Industrial Magistrate. Appeal from this court is to the Industrial Court under the control of a judge. This is not to be confused with Industrial Commission that deals with industrial issues. The issues brought before an Industrial Magistrate are quasi-criminal, not industrial.

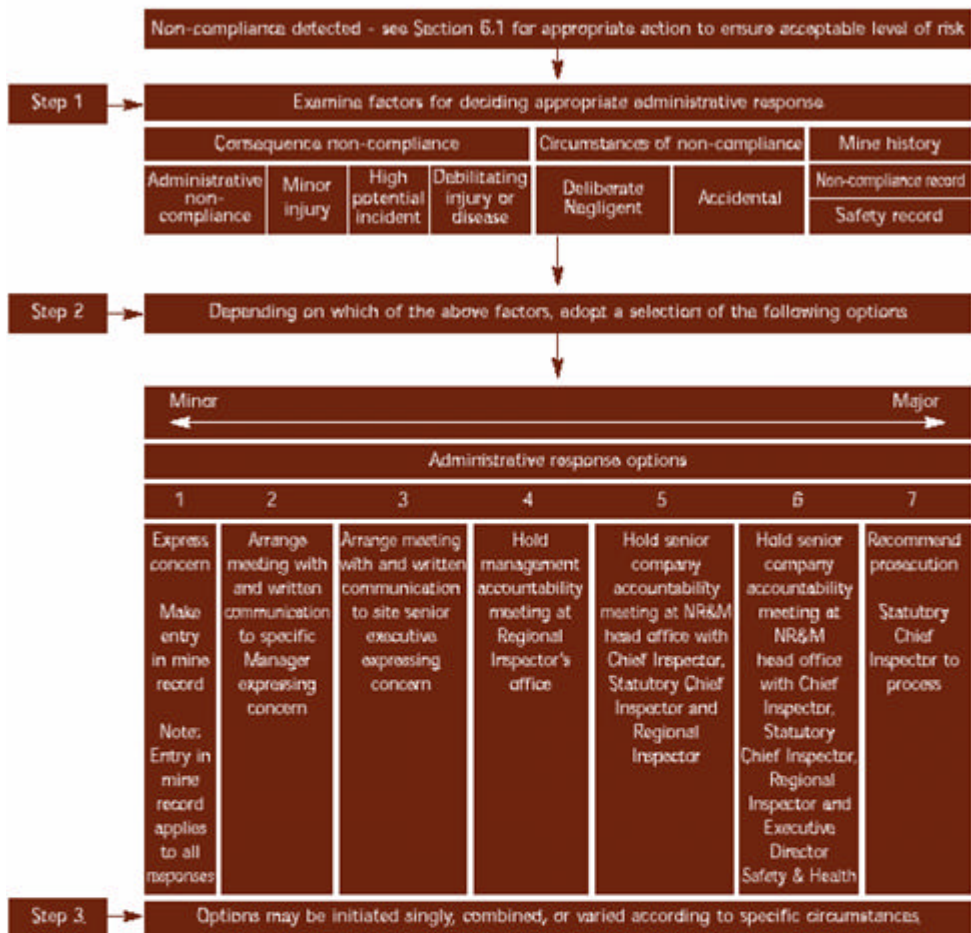
6. DIAGRAMS AND ASSESSMENT PROCEDURES.

6.1 Response Guideline 1  
Guide to ensure an acceptable level of risk\*



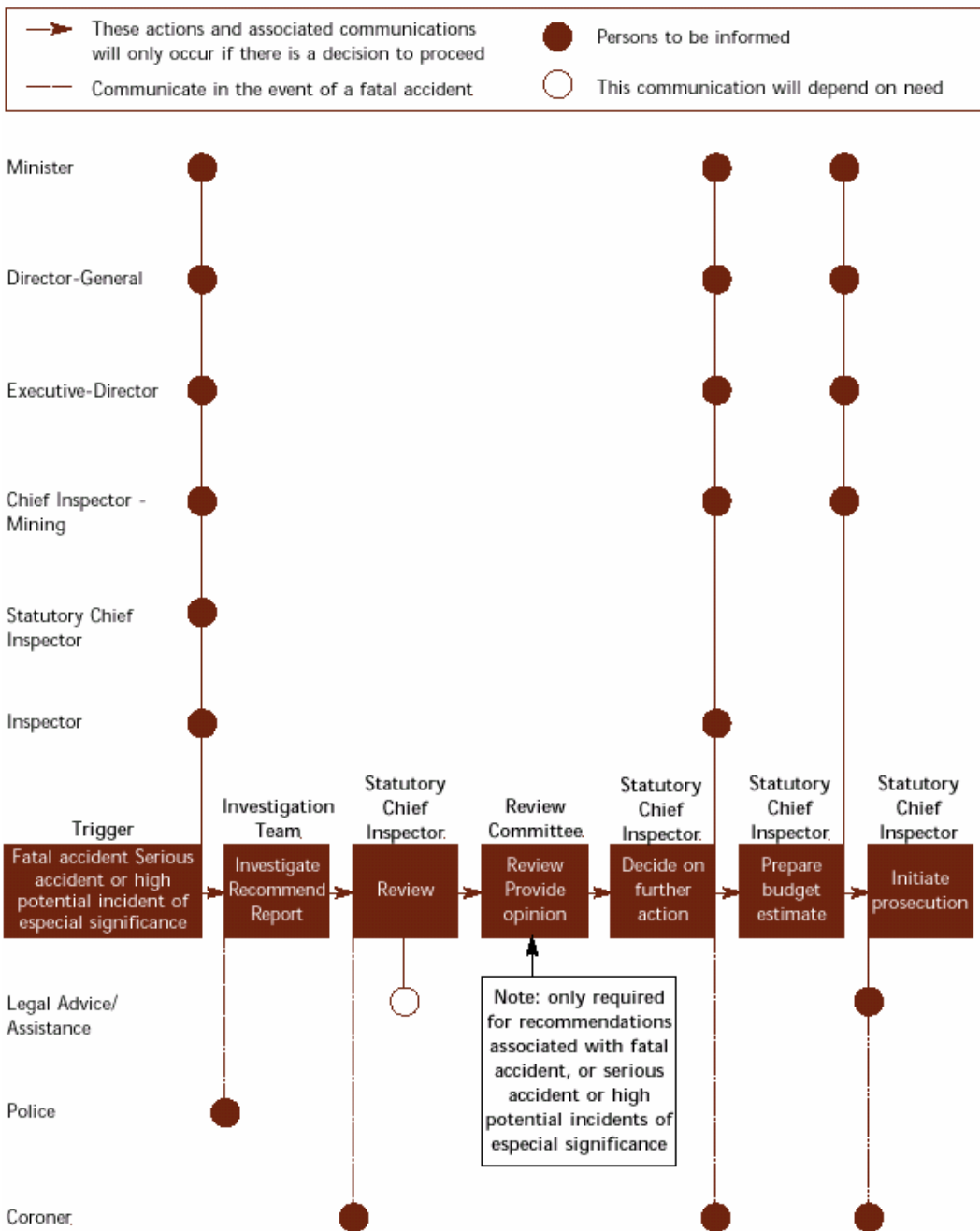
\*Refer to Section 4.2 page 4 for application

6.2 Response Guideline 2  
Guide for determining appropriate administrative action\*



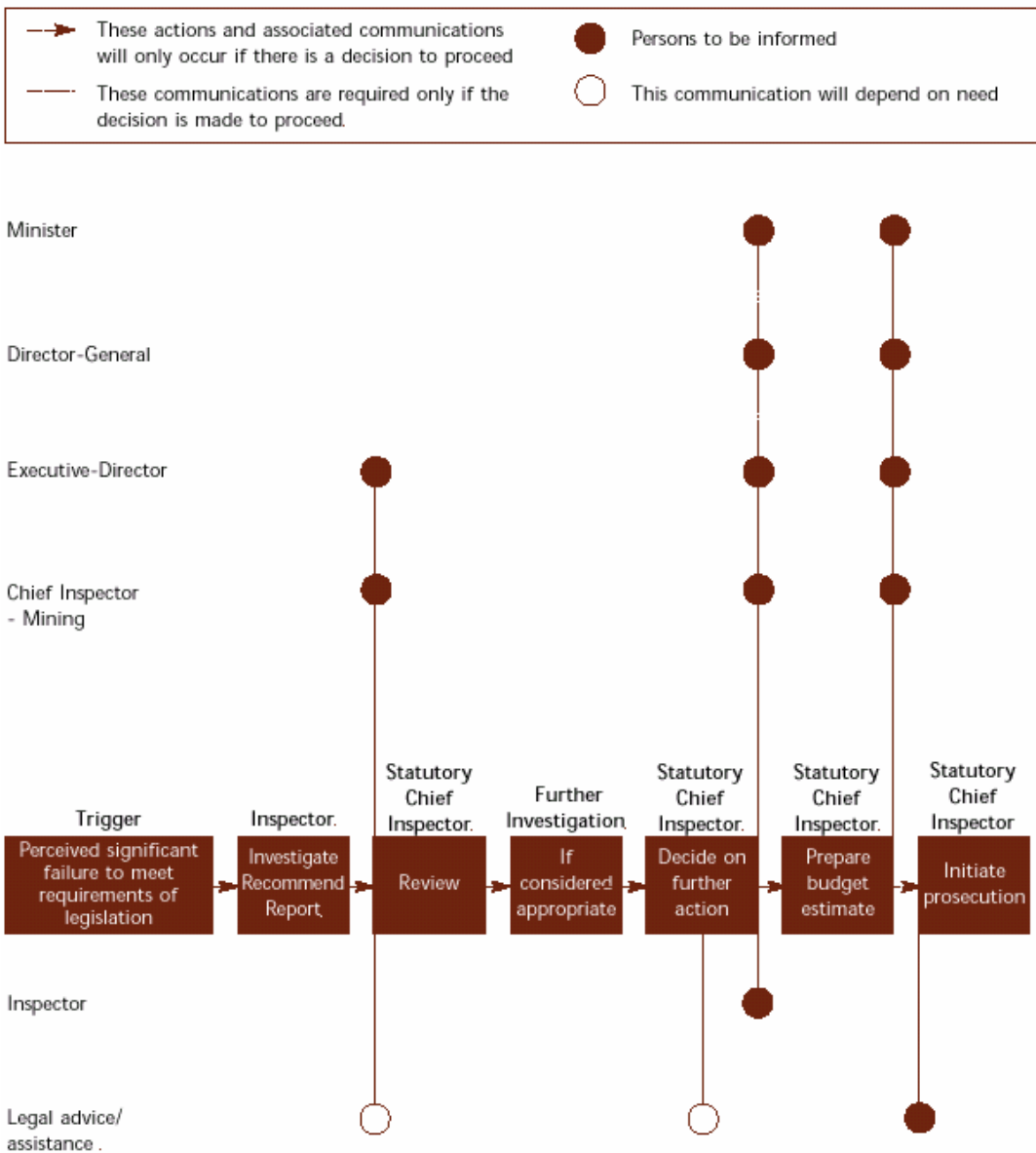
\*Refer to Section 4.3 page 4.

6.3 Procedure 1. Assessing an Investigation Team’s recommended response to non-compliance\*.



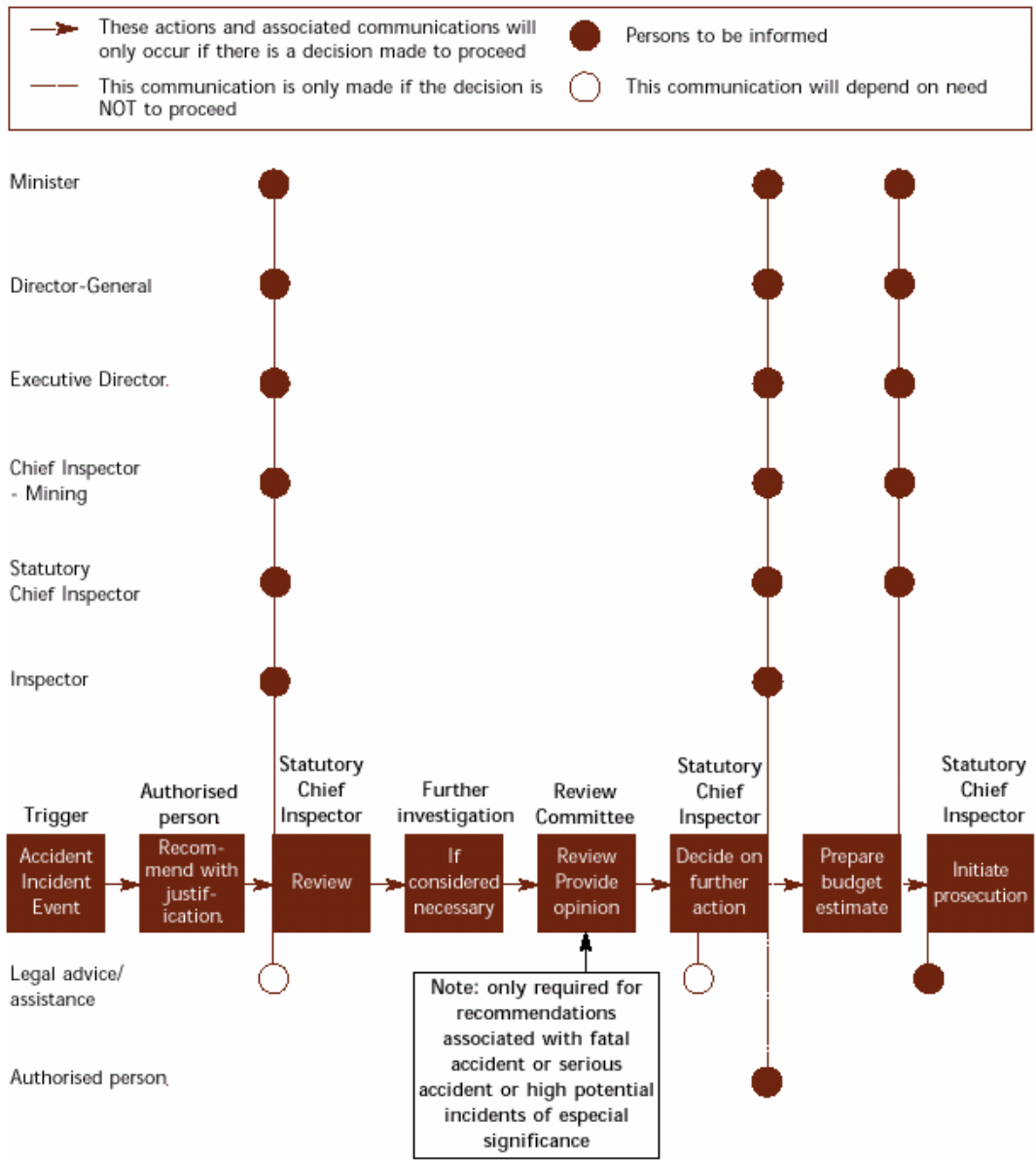
\*Refer to Section 5.2 page 5. This procedure would also be followed where an inspector investigated a fatal accident

6.4 Procedure 2. Assessing an inspector’s recommendation to prosecute\*



\*Refer to Section 5.4 page 6. This process is not associated with an investigation into an accident by an investigation team or by a single inspector investigating a fatal accident

6.5 Procedure 3. Assessing a recommendation for prosecution made by a person (other than an inspector) authorised by legislation to recommend prosecutions\*



\*Refer Section 5.4 page 6

## **APPENDIX 1 : Investigation Team**

### Objectives

Where an Investigation Team is investigating a fatal accident, serious accident or high potential incident of especial significance the objectives of the Investigation Team are to:

1. Ensure that effective and timely actions have been taken by the people or companies involved in the occurrence to restore an acceptable level of risk
2. Take statements from witnesses and other involved people and collect material evidence that may assist in determining nature and cause of the occurrence and establishing any non-compliance that may be associated with the event
3. Determine the nature of the accident or high potential incident and both the immediate causes and underlying causes of the event
4. Recommend remedial measures that will prevent similar events from re-occurring
5. Determine any failures of people or companies to meet the requirements of the Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999
6. Provide a written report to the Statutory Chief Inspector of the investigation including recommendations of what administrative response is appropriate to any non-compliance detected during the course of the investigation.

### Structure of the Investigation Team

The Investigation Team will consist of:

- An inspector from outside the area in which the mine is located
- An inspector who normally inspects the mine.

Depending on the complexity of the matter under investigation the Investigation Team may be supplemented by other inspectors, inspection officers or appropriate experts.

The inspector from outside the area may lead the Investigation Team.

### Report

The report should be in the format contained in the investigation process manual and contain:

1. Description and explanation of the investigation
2. Recommended remedial action to prevent recurrence
3. Where non-compliance has been found, recommend an appropriate administrative response
4. Appendices (see investigation manual for suggested contents).

Where statements have been obtained under compulsion these statements are to be clearly marked to that effect.

## APPENDIX 2 : Review Committee

### Purpose

The purpose of the Review Committee is to provide the Statutory Chief Inspector of Mines with an opinion on the suitability of a recommended administrative response to serious non-compliance associated with fatal accidents or serious accidents or high potential incidents of especial significance.

### Functions

1. Review the recommendations made as part of an investigation into a fatal accident or serious accidents or high potential incident of especial significance.
2. Provide the Statutory Chief Inspector with an opinion on whether the administrative responses recommended by an investigation into such an event are appropriate.
3. Review the recommendation to prosecute made to the Statutory Chief Inspector by a person authorised by legislation to make such a recommendation where the recommendation is associated with a fatal accident or serious accident or high potential incident of especial significance.
4. Provide the Statutory Chief Inspector with an opinion on whether sufficient grounds have been established to warrant a prosecution.

### Structure and working of the Review Committee

The committee will not be a standing committee.

The Chief Inspector of Mines will select and re-establish the committee each time an opinion is required on a recommendation for prosecution or for assistance in determining an appropriate response to non-compliance with legislative requirements.

The committee will consist of:

- Chair - Chief Inspector of Mines
- Participating Secretary - Inspector or Senior Inspector (person not involved in the investigation)
- Members:
  - Person with legal qualifications
  - Professional person with experience in the area under review
  - Government officer involved in health and safety from another jurisdiction; possibly interstate jurisdiction.

### Structure of Report

The report is to be divided into two parts:

1. First part: the reasoning that led to the opinion
2. Second part: a clear statement of opinion of the suitability of the administrative response being reviewed.

**General**

The opinion of the majority of the Review Committee will be considered to be the opinion of the committee.

The committee will have access to all investigation reports and written material available to the Statutory Chief Inspector with the exception of statements obtained under compulsion which are available at the discretion of the Chief Inspector. Deliberations of the committee are to be confidential.

### APPENDIX 3 : Factors influencing decisions to prosecute

A decision to prosecute must consider three factors:

- The case to answer
- The likelihood of conviction
- The public interest.

Situations that could result in a prosecution include:

- Where perceived non-compliance has resulted in a fatal injury or grievous bodily harm
- Where perceived non-compliance has resulted in a situation that may have resulted in a fatal injury or grievous bodily harm
- Where an inspector alleges that a person has repeated the same offence
- Where an inspector alleges a person has been advised of the legislation but fails to comply
- Where a person has failed to meet the requirements of a directive issued under the provisions of the legislation.

Factors that have to be considered in determining if there is a case to answer include:

- Whether evidence indicates that elements of the offence are proved beyond reasonable doubt
- Whether the conclusions drawn from the investigation are logical and supported by the facts.

Likelihood of conviction

- Where there is no or very little chance of conviction it is not in the interest of any party to pursue a prosecution under the safety and health legislation.

Public interest

Public interest is satisfied when the public is satisfied with the decision or outcome. Factors to be considered would include:

- Maintenance of public confidence in the legislation
- Punishment and deterrence
- Circumstances of the alleged non-compliance
- Trivial or technical nature of the alleged breach
- Age, physical or mental health of the alleged offender
- Alleged offenders previous history regarding safety and health obligations

- Time elapsed since the alleged breach
- Public concern
- Co-operation of the alleged offender in the prosecution of others
- Impact on safety and health strategies
- Relationship of victim to the alleged offender
- Penalty already imposed or loss suffered by the alleged offender.

These factors are sometime at odds with each other and a balanced view has to be taken; to arrive at a balanced decision on whether a prosecution should be initiated the Department would seek appropriate advice.

## **REFERENCE DOCUMENTS**

Coal Mining Safety and Health Act 1999

Coal Mining Safety and Health Regulation 2001

Mining and Quarrying Safety and Health Act 1999

Mining and Quarrying Safety and Health Regulation 2001

Investigation Process Manual: Complaints, Incidents,  
Accidents and Fatalities

# **South Australia**

## **Enforcement Policy**

### **Occupational Health, Safety and Welfare Act 1986**

**July 2000**

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## **ENFORCEMENT POLICY**

### **Occupational Health, Safety and Welfare Act 1986**

#### **1. FOREWORD**

Workplace Services is the business unit of the Department for Administrative and Information Services responsible for enforcement of the Occupational Health, Safety and Welfare Act 1986.

Workplace Services recognises that enforcement and prosecution activities play an important role in the enhancement of workplace and public safety. The role of the enforcement process must be considered as complementing a range of strategies which, together, are designed to improve the State's workplace and public safety performance.

Workplace Services is committed to promoting improvements through education and industry specific support whilst recognising that resorting to legal enforcement powers will inevitably be necessary under some circumstances. The Department will be assisted in this process through close consultation with our clients and stakeholders to determine expectations and outcome criteria.

Fundamental to this approach is the recognition that consistency, appropriateness and transparency in investigation and prosecution issues are the highest priorities whilst recognising that the decision about enforcement activities in any particular case will depend upon a number of variables. In total, these must ultimately demonstrate a just and fair treatment for all those with whom the Department deals.

Workplace Services, through its staff, is committed to ensure that:

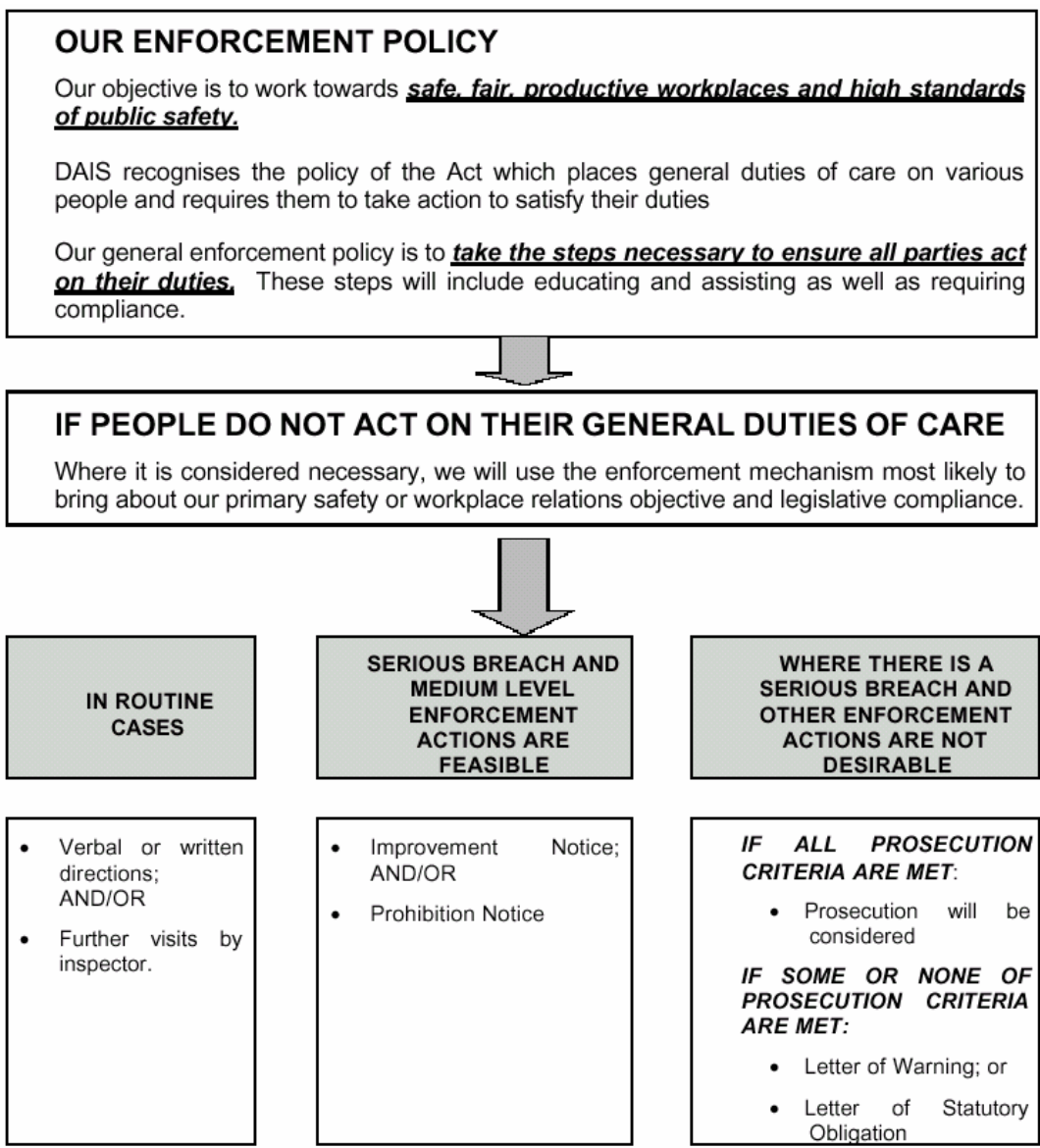
- prosecution cases are dealt with in the shortest possible time
- a decision to prosecute is made as early as possible.
- a decision on whether legal action will be commenced, will be made within six months in 80% of cases.

The pursuit of fairness and consistency will be furthered by this policy, training of our managers and staff, and the simplification of processes ensuring that responsibility for decision making is appropriately delegated and bureaucratic processes eliminated.

Nicholas Wilson  
**DIRECTOR**  
**INDUSTRY SERVICES DIVISION**

## 2. ENFORCEMENT POLICY OVERVIEW

### *Occupational Health, Safety and Welfare Act*



### 3. PURPOSE AND SCOPE OF POLICY

#### 3.1 Purpose

This policy outlines the circumstances in which the Department for Administrative and Information Services, through its Workplace Services group, will take prosecution or other enforcement action for breaches of the Occupational Health, Safety and Welfare Act, which is administered by the agency.

The purpose of the policy is to ensure that, as far as is reasonably possible, enforcement decisions taken by Workplace Services are consistent, equitable and in the public interest.

#### 3.2 Scope of Policy

This policy applies to actions and decisions taken by inspectors and other staff of the Workplace Services in pursuit of the department's objective of ensuring compliance with the Occupational Health, Safety and Welfare Act 1986. The actions and decisions covered by this policy include:

- verbal and written directions
- improvement notices;
- prohibition notices;
- expiation notices, or “on-the-spot fines”, (where the legislation allows); and
- letters of warning and statutory obligation
- decisions to prosecute under the Act or to recommend referral of a matter to the Director of Public Prosecutions for consideration of criminal prosecution.

The policy applies only to the Department's activities under the Occupational Health, Safety and Welfare Act 1986.

#### 4. GENERAL ENFORCEMENT POLICY

DAIS Workplace Services regards all the legislation it is responsible for as important and requiring attention by those who are bound by the laws. Our overarching enforcement objective is to ensure as an outcome of our work *safe, fair, productive workplaces and high standards of public safety*.

In the Second Reading speech for the Bill which created the OHSW Act, the then Minister of Labour succinctly stated the duties on employers and others, together with the role of inspectors and prosecutions:

*“... employers will be required to ensure so far as is reasonably practicable that their workers are, while at work, safe from injury and risks to health. This duty extends to all things under the employer’s control in the workplace. It applies to the use and maintenance of plant and machinery, the environmental conditions under which work is carried out, the substances used and the manner in which work is organised and performed. This general duty of care is limited by what is reasonably practicable. In practice this will mean that account must be taken of the seriousness of a hazard and the availability of methods for removing or minimising it.*

*The duty of workers has also been spelt out in detail. Workers are required to exercise reasonable care to protect the health and safety of themselves and other people. They are also under a duty not to interfere with anything provided in the interests of health and safety. The Bill provides inspectors with comprehensive powers to enable them to adequately enforce the measures contained under the Bill. However, the prime objective of this Bill is to put emphasis on workplace mechanisms which prevent hazards from arising, thus minimising the need for the Act to be enforced by inspectors.”<sup>1</sup>*

Consistent with this statutory intent, the actions Workplace Services take to support compliance with the legislation include:

- the provision of information about the Occupational Health, Safety and Welfare legislation and achieving compliance.
- systematic inspection and auditing of industries and registered equipment or competencies to ensure the requisite standards are being maintained.
- working closely with industry, associations and WorkCover to identify areas of greatest problem and to identify mutually acceptable solutions.

Stronger action, including prosecution may be taken by DAIS Workplace Services where compliance with the legislation cannot be achieved:

- within an acceptable timeframe; or
- where immediate safety or other reasons require; or
- where there has been a demonstrated major breach of the law.

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<sup>1</sup> Second Reading Speech of the Occupational Health, Safety and Welfare Bill, *Hon. Frank Blevins, Minister of Labour*, 17 September 1986

This action may include:

- verbal and written directions;
- improvement notices;
- prohibition notices;
- expiation notices, or “on-the-spot fines”, (where the legislation allows); and
- letters of warning and statutory obligation
- decisions to prosecute.

## 5. THE DECISION TO TAKE ENFORCEMENT ACTION

The decision to take formal enforcement action such as improvement or prohibition notices or prosecution actions, will be taken by an inspector on behalf of DAIS Workplace Services after:

- weighing the circumstances of the particular case;
- assessing the likelihood of remedial action being taken willingly without formal enforcement action; and
- considering the need for confidence that workplaces will be safe.

An overriding consideration for the inspector will be the need to ensure a safe working or public environment.

These considerations will take into account the statement of policy of the SA Director of Public Prosecutions that: *“Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.*

*The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While some public interest factors may militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution, for example the seriousness of the offence and the need for deterrence. In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.”*<sup>2</sup>

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<sup>2</sup> Statement of Prosecution Policy and Guidelines, *Director of Public Prosecutions South Australia*, July 1999, p 9

## 6. ENFORCEMENT ACTION ALTERNATIVES

### 6.1 *Enforcement Pyramid*

Enforcement under the Occupational Health, Safety and Welfare Act is within the context of a series of escalating alternatives, each chosen for successively more serious circumstances.



The alternatives available to inspectors are discussed below (other than information & education). Inspectors choose which alternative should be implemented in accordance with Workplace Services' Investigation and Compliance Manual.

### 6.2 *Verbal Directives*

Where an identified risk or breach can be immediately corrected, or, in the opinion of the Inspector, it is considered to be the most practical method to achieve satisfactory compliance, a verbal directive may be issued. References to the directions are noted in the Inspectors Note Book.

This action should be considered for issues of a less serious nature that are unlikely to lead to further action.

### 6.3 Improvement Notices

An Improvement Notice may be issued to address a breach of legislation identified in a private or public sector agency, which does not constitute an immediate risk to health and safety, but which may develop into a serious situation if the risk is not rectified in the near future.

An improvement notice may be issued pursuant to section 39 of the Occupational Health, Safety and Welfare Act, 1986 where an Inspector is of the opinion that a person;

- is contravening a provision of the Act;
- has contravened a provision of the Act in circumstances that make it likely that the contravention will be repeated
- if a Notice is to be issued,

Inspectors **must ensure** they state the grounds for their opinion of the alleged breach. Under section 42 of the Occupational Health, Safety and Welfare Act, 1986, a person affected by an Improvement Notice may have the notice reviewed by a Review Committee appointed by the Industrial Relations Court.

### 6.4 Prohibition Notices

A Prohibition Notice may be issued to address a serious breach of legislation, identified in a private or public sector agency, where an Inspector is of the opinion that there is an immediate risk to the health and safety of a person at work. The inspector may issue the Notice “to the person apparently in control of the activity from which the risk arises”<sup>3</sup>, prohibiting the carrying on of the activity until the Inspector is satisfied that adequate measures have been taken to avert, eliminate or minimise the risk.

Under section 42 of the Occupational Health, Safety and Welfare Act, 1986, a person affected by a Prohibition Notice may have the notice reviewed by a Review Committee appointed by the Industrial Relations Court.

### 6.5 Prosecution

The Occupational Health, Safety and Welfare Act 1986 prescribes penalties for the breach of many sections and establishes a process for prosecution of offences against the Act.

Section 58(1) provides that:

*“(1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.”*

Proceedings for an offence against the Act may only be brought by the Minister or by an inspector<sup>4</sup>. Proceedings must be commenced within 2 years after the date on which the offence is alleged to have been committed<sup>5</sup>.

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<sup>3</sup> Occupational Health, Safety and Welfare Act 1986, s40(1)

<sup>4</sup> Occupational Health, Safety and Welfare Act 1986, s58(6)

<sup>5</sup> Occupational Health, Safety and Welfare Act 1986, s58(7)

Proceedings are heard summarily by the Industrial Relations Court.

Investigations which may lead to a prosecution are managed by Workplace Services' Prosecution Standing Committee, which is chaired by the Director, Industry Services and comprises representatives from:

- Workplace Services' management
- Inspectors
- WorkCover
- The Crown Solicitor's Office

## 7. DECISIONS TO PROSECUTE

### 7.1 General Policy

The general policy of the DAIS Workplace Services is that prosecutions will apply to serious and exceptional cases where less formal enforcement actions are not desirable. Because the department's resources to initiate prosecution action are limited, investigations chosen for prosecution will generally meet each of 3 criteria:

- The breach is a serious one in which alternative enforcement action is inappropriate; AND
- There is a prima facie case with a reasonable prospect of success; AND
- A prosecution is considered to be in the public interest.

Each of these criteria is briefly explained in the sections below.

### 7.2 A Serious Breach

A decision to prosecute will be considered whenever there is a serious breach of the Act. Circumstances where this might apply include:

- where a breach of the law either has resulted, or could have resulted, in a fatality or serious injury;
- the failure to comply with an improvement, prohibition or expiation notice;
- where a person or organisation has repeated the same offence;
- cases of discrimination against an employee for any action in relation to occupational safety and health or pursuing their rights under workplace relations law;
- breaches of legislated consultative provisions of the Act; or
- hindrance or obstruction of an inspector.

### 7.3 A Prima Facie Case

Whether there is a prima facie case and a reasonable prospect of success are legal issues which will be highly dependent on the facts of particular cases. Paramount in Workplace Services' consideration will be the standard of proof required of a prosecutor:- that is, the facts of the matter must be capable of being proven **beyond reasonable doubt**.

Each case considered for prosecution is assessed by Workplace Services as meeting these criteria and then referred to the Crown Solicitor for advice on these specific points. As part of this assessment, it may be that the case is referred back for the collection of additional evidence before a final determination that the case does or does not meet this criterion. Detailed consideration will be given to the availability and expected reliability of witnesses to prove the case.

Workplace Services does not proceed with a prosecution if the Crown Solicitor's advises the case does not demonstrate a prima facie case or can not be proven beyond reasonable doubt.

#### ***7.4 The Public Interest***

Whether or not a prosecution is considered to be in the public interest, is determined on well settled principles. Even though a case may be capable of being proven to a Court beyond reasonable doubt, there will often be factors peculiar to the case which lead to the conclusion that a prosecution should not be commenced. These may include one or more of the following:-

- the breach being a trivial one;
- the validated performance of the guilty person or organisation;
- the remorse shown and subsequent action by the guilty person or organisation (although the mere existence of remorse is not of itself a ground to drop a prosecution);
- compassionate reasons.

Examples of how these factors have been taken into account in the past include:

- the decision not to prosecute a farmer who's child was killed as a result of his actions whilst at work; in this case, Workplace Services determined that the personal tragedy suffered by the farmer amounted to a sufficient penalty; and
- the decision not to prosecute a large process manufacturing company for injuries sustained in an acid spill because the foreseeability of the incident was low; replacement of the defective equipment had already been programmed; and the company's rehabilitation program for the injured worker was first class.

In such cases, where the instigation of a prosecution is not considered appropriate, the department may either determine that no further action is required or that a letter of warning or statutory obligation is warranted (see below).

#### ***7.5 Letters of Warning and Letters of Statutory Obligation***

In the event that a prima facie case has been established that there has been a serious breach of legislation but the prosecution criteria outlined above have not ALL been met, it may still be appropriate for the breach to be drawn to the attention of the person or organisation committing the breach.

In such cases, Workplace Services may communicate this through either a letter of warning or a letter of statutory obligation.

### ***7.5.1 Letter of Statutory Obligation***

A Letter of Statutory Obligation is issued when an Inspector and Team/Regional Manager consider that a person or organisation should have their attention drawn to their statutory obligations under the legislation. This may be because of a deficiency in, eg a safety matter in their workplace that could have resulted in a more serious outcome. These cases are reserved for situations where there is insufficient evidence to prove a breach. Letters of Statutory Obligation are signed by the Manager and are sent by Registered Post.

Copies of these letters must be placed on the relevant office file and will be taken into account in considering action by Workplace Services in future actions.

### ***7.5.2 Letter of Warning***


A Letter of Warning is issued where there is sufficient evidence to support prosecution action after a breach of the legislation has been detected, but the department determines prosecution is not warranted because of extenuating circumstances. These might include the view that the organisation was the victim of someone else's actions, even though it was the organisation's responsibility.

A Letter of Warning places on record the fact that a warning has been issued and a subsequent offence of a similar nature may result in prosecution. A Letter of Warning is signed by the Team or Regional Manager and are sent by Registered Post. The letter requires an acknowledgment by the recipient, detailing corrective action taken to prevent a re-occurrence.

Copies of Letters of Warning are placed on the relevant office file.

### 8. EXAMPLES OF ENFORCEMENT ACTIVITY

#### 8.1 Sample of Improvement Notice – Hard Copy only



— EXAMPLE —  
OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT 1986

---

◆ IMPROVEMENT NOTICE ◆

I, Joseph Bloggs being an Inspector appointed under the Occupational Health, Safety and Welfare Act 1986, am of the opinion that (name of person\* to whom this Notice is addressed and locality):  
Mr William SMIFF Managing Director, ACMIE Co., 123 Fictitious Street, HAZARDVILLE NORTH.

is contravening a provision of this Act/~~has contravened a provision of this Act~~ in circumstances that make it likely that the contravention will be repeated (delete where not applicable)  
 \*NOTE: see definition of person overleaf.

Notice delivered to:  
William SMIFF.

---

The grounds for my opinion are:  
First Aid Facilities, in the form of Basic First Aid Kits, have not been provided in the Main Manufacturing Area and the area designated as the First Aid Room.

---


The provision(s) of the Act in respect of which the above opinion is held is/are Section 19 of the Occupational Health, Safety and Welfare Act 1986, and/or Regulation 2.11.1(1) of the Occupational Health, Safety and Welfare Regulations 1995

---

Measures to be taken to remedy the contravention or to avoid further contravention of the Act (Optional for Inspector to complete):  
Basic First Aid Kits to be provided at both locations and brought to the attention of all employees. The kits are to be maintained by a nominated person. The kits are to comply with the OHS&W Approved Code of Practice - Occupational Health & First Aid in the Workplace Clause 4 and Appendix 1.

---

Under the provisions of Section 39 of the Occupational Health, Safety and Welfare Act 1986, the person\* to whom this Notice is addressed is to remedy the contravention and must do so no later than 5 am/pm on 27 Nov 1998

Signature (Inspector)  (date) 27 / 10 / 98

\* A person who contravenes or fails to comply with a Improvement Notice is guilty of an offence (see overleaf) \*

---

When contravention remedied, this portion to be completed and returned to Issuing Inspector. See over for additional information.


I certify that the requirements of this Improvement Notice have been completed Office stamp/label or business card

Name in block letters \_\_\_\_\_

(Position) \_\_\_\_\_

(Signature) \_\_\_\_\_ (Date) \_\_\_\_/\_\_\_\_/\_\_\_\_

8.2 Sample of Prohibition Notice – Hard Copy only

 **EXAMPLE**

OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT 1986

**PROHIBITION NOTICE**

I, Joseph Bliggs being an Inspector appointed under the Occupational Health, Safety and Welfare Act 1986, am of the opinion that there is an immediate risk to the health or safety of a person at work, or from any plant to which this Act extends by virtue of schedule 2, at (eg. Employer Name and Address):

ACME Co., 123 Fictitious Street, HAZARDVILLE NORTH.

Issued to: William SMIFF Position: Managing Director  
 (Person apparently in control of activity)

---

The activity from which the risk arises is:

The operation of Bliss 20 Tonne Power Press, Serial No. 0410E, located in the Press Shop.

---

The grounds for my opinion are:

Power Press is not fitted with guarding to control or minimise risks associated with its use by employees.


---

Measures to be taken to avert, eliminate or minimise the danger to which this Notice relates (Optional for Inspector to complete):

An interlocked physical guard is to be fitted to prevent access, by employees, to all dangerous areas of the press during normal operation, maintenance or cleaning as required by OHSEW Act, Sec. 19 and OHSEW Regulations 3.3.3.(5)(6)(7) & (8).

Under the provisions of Section 40 of the Occupational Health Safety and Welfare Act 1986, the activity specified above is prohibited until an Inspector is satisfied that adequate measures have been taken to avert, eliminate or minimise the risk.

Inspector contact details:  Office stamp/label or business card

Signed  \_\_\_\_\_  
 (Inspector)

Date: 27/11/98

---

• A person who contravenes or fails to comply with a Prohibition Notice is guilty of an offence (see overleaf) •

**Inspector's Certification re Measures taken**

I (Inspector's name) \_\_\_\_\_ on \_\_\_ / \_\_\_ / \_\_\_ certify that I am satisfied that adequate measures have been taken to avert, eliminate or minimise the danger to which this Notice relates.

# **Victoria**

## **Health and Safety Compliance and Enforcement Policy**

## **CONTENTS**

**Our vision**

**Our mission**

**Our values**

**Our approach**

**Introduction**

**Constructive compliance**

**Information, education and communication**

**Financial incentives**

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## OUR VISION

Workplaces free from injury and disease

## OUR MISSION

To work with all Victorians to progressively reduce the incidence, severity and cost to the community of work-related injury and disease.

## OUR VALUES

**Commitment** drives us to improve Victoria's workplace health and safety system

**Integrity** compels us to be honest, fair and objective

**Cooperation** motivates us to work in an open and supportive way

**Accountability** demands we are professional in the delivery of high quality services

**Care** is what we try to show in everything we do

## **ABOUT OUR COMPLIANCE AND ENFORCEMENT POLICY**

### **OUR APPROACH**

The Victorian WorkCover Authority now has a compliance and enforcement policy that reflects the need for innovative strategies to prevent work-related deaths, injuries and disease. Our prevention strategy is driven by constructive compliance – a balanced approach that relies on both positive motivators and deterrents to improve workplace health and safety.

The compliance and enforcement policy represents a significant realignment of our approach to reflect more openly the Authority's role as a regulator.

All field staff and specialists are appointed as inspectors under OHS legislation. They are charged primarily with enforcing occupational health and safety law and will use the tools available to do so.

The policy makes it clear that the Authority facilitates compliance with health and safety laws through a number of mechanisms, including education, information, incentives and enforcement.

### **HEALTH AND SAFETY COMPLIANCE AND ENFORCEMENT POLICY**

It provides the criteria by which the Authority makes decisions about what is the appropriate tool for given circumstances and incorporates guidelines for prosecution.

This policy sets the criteria by which inspectors make decisions and it informs the development of training materials and procedures to assist inspectors.

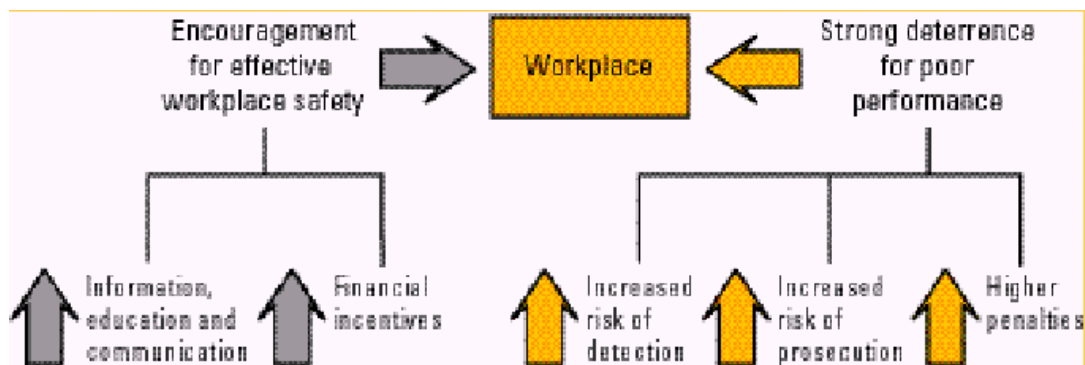
It provides the community with information about how we administer Victoria's health and safety legislation. Most importantly, we believe our new policy will make a difference.

**BILL MOUNTFORD**  
Chief Executive

## INTRODUCTION

Preventing work-related death, injury and illness underpins every aspect of our compliance and enforcement policy. We recognise that real and sustainable improvement in health and safety is achieved primarily by the active involvement of employers and employees in workplace hazard management and the elimination of hazards.

A key driver of improvement is constructive compliance, a strategy which combines encouragement for effective workplace health and safety and strong deterrence for poor performance. Central to constructive compliance is the Authority’s compliance and enforcement policy.



## CONSTRUCTIVE COMPLIANCE

### Legislative framework

There are a number of Acts and associated regulations that constitute the health and safety legislative framework for the Authority’s compliance and enforcement policy.

The Acts are:

<ul style="list-style-type: none"> <li>• <i>Occupational Health and Safety Act 1985</i></li> <li>• <i>Dangerous Goods Act 1985</i></li> <li>• <i>Equipment (Public Safety) Act 1994</i></li> <li>• <i>Road Transport (Dangerous Goods) Act 1995</i> which gives effect to the <i>Road Transport Reform (Dangerous Goods) Act 1995</i> and regulations (Commonwealth)</li> </ul>	<p>To achieve our vision, we must also strive for:</p> <ul style="list-style-type: none"> <li>• widespread community support for the fundamental right to a healthy and safe workplace</li> <li>• workplaces moving beyond minimum compliance towards continuous improvement and effective health and safety management</li> <li>• the effective participation of all workplace parties in health and safety improvements in the workplace</li> </ul>
<p>The Authority’s vision of workplaces free from injury and disease can only be achieved when there is widespread compliance with Victoria’s health and safety laws.</p>	

## INFORMATION, EDUCATION AND COMMUNICATION

When it comes to workplace health and safety, an important role for the Authority is to inform Victorians about their rights and responsibilities.

Information and education activities will assist all parties involved in health and safety including employees, employers, health and safety representatives, contractors, designers, manufacturers and suppliers. Particular target groups are managers, supervisors and health and safety representatives because they are at the centre of change in the workplace.

An important way in which the Authority can assist workplace change is by providing practical, accessible and customised guidance material on hazard identification, risk assessment and risk control. We will actively support the election of health and safety representatives and the development of their skills.

We will also promote the establishment of health and safety committees, effective workplace consultation and issue resolution because these are also vital to improving health and safety in the workplace. The Authority promotes effective workplace health and safety management that emphasises:

- a planned and proactive approach
- the commitment and involvement of managers at all levels
- meaningful and effective employee involvement
- the identification and assessment of all risks and the control of hazards at their source
- appropriate provision of training, information and supervision
- the integration of health and safety into broader enterprise systems and practices

The Authority has produced guidance material on a large number of topics ranging from manual handling to issue resolution. We will continue to develop guidance material in partnership with our key stakeholders.

Visit [www.workcover.vic.gov.au](http://www.workcover.vic.gov.au) for a full list of available guidance material or call the Authority's publications line on 9641 1333 for your copy.

## **FINANCIAL INCENTIVES**

**To encourage business to improve their health and safety performance the Authority offers a number of financial incentives.**

These include the Safety Development Fund and the Small Business Innovation Fund. In addition, the workers' compensation premium system is being reviewed to maximise the incentives for good health and safety performance and good claims management.

## **ENFORCEMENT**

Leaders and some managers and specialists are appointed as inspectors under relevant health and safety legislation. \*\*The Authority's inspectors take enforcement action in response to legislative breaches or immediate risks. All relevant duty holders will be targeted for enforcement action – key duty holders are employers, including contractors and labour hire companies, and manufacturers, designers and suppliers. Four key principles underpin the Authority's approach to enforcement: proportionality, consistency, transparency and targeting.

## PREVENTION PRIORITIES – ENFORCEMENT PRIORITIES

**Enforcement action will arise from inspection activity, including investigation of incidents in the workplace.**

*Strategy 2000* sets clear focus areas for prevention. We are targeting:

- high risk industries
  - agriculture
  - manufacturing
  - transport and storage
  - public sector
  - community services
  - construction
- 100 poor performing firms
- common injury types – especially sprains and strains
- work-related fatalities
- major hazard facilities

### Enforcement principles

All of the Authority's field staff (Field Officers, Principal Field Officers, Group Leaders) and some managers and specialists are appointed as inspectors under relevant health and safety legislation. The Authority's inspectors take enforcement action in response to legislative breaches or immediate risks. All relevant duty holders will be targeted for enforcement action – key duty holders are employers, including contractors and labour hire companies, and manufacturers, designers and suppliers. Four key principles underpin the Authority's approach to enforcement: proportionality, consistency, transparency and targeting. These principles ensure that:

- any enforcement action taken will be proportionate to the risk involved
- a consistent approach in similar circumstances will be taken to achieve consistent outcomes
- a transparent process will be maintained so that duty holders understand what is expected of them and what they should expect in their dealings with the Authority
- high risk situations and industries are targeted

There is a range of compliance and enforcement tools. Often the most appropriate response is to combine these tools in an integrated strategy. For instance, guidance material may be provided at the same time as issuing notices; or prosecution will trigger information and communication activities to maximise deterrence.

## ENFORCEMENT CRITERIA

Where non-compliance with legislation is detected, or where there is an immediate risk, a notice or direction will be issued to control the problem, unless the matter is addressed by the duty holder at the time of its detection and in the presence of the inspector.

An inspector will consider using additional enforcement tools after assessing:

- the extent of the risk
- the seriousness of the perceived breach and the actual or potential consequence
- whether a target issue, target hazard or specific strategic priority is involved
- the impact of the regulatory action, especially its impact on encouragement and deterrence
- the compliance history of the duty holder
- the attitude and response of the duty holder
- whether the incident or nature of the non-compliance is of considerable public concern
- the need to highlight a common hazard or risk in order to deter other workplaces from continuing particular practices

Selecting the appropriate additional action, including whether prosecution is warranted, will be based on a consideration of the nature of the non-compliance, the duty holder's performance and the Authority's priorities as set out in *Strategy 2000*.

## ENFORCEMENT TOOLS

The Authority uses a number of tools to enforce compliance with Victoria's health and safety laws.

- Prohibition notices, improvement notices and written directions  
Sections 43 and 44 of the *Occupational Health and Safety Act 1985*; sections 22 and 23 of the *Equipment (Public Safety) Act 1994*; sections 28 and 29 of the *Commonwealth Road Transport Reform (Dangerous Goods) Act 1996*; sections 17 and 17B of the *Dangerous Goods Act 1985*
- Infringement notices  
Section 47A of the *Occupational Health and Safety Act 1985*; section 45B of the *Dangerous Goods Act 1985*; section 38 of the *Commonwealth Dangerous Goods Act 1996*; and section 27 of the *Equipment (Public Safety) Act 1994*
- Revocation of licences, approvals, certificates and exemptions under the various Acts
- Prosecutions, including prosecutions under the *Crimes Act 1958*

There are two further enforcement tools that are issued by persons other than inspectors to secure compliance with health and safety legislation. They are provisional improvement notices, which may be issued by health and safety representatives, and provisional directions which may be issued by authorised delegates under the *Dangerous Goods Act 1985*.

Alleged non-compliance with these notices or directions will be investigated as though they were notices or directions issued by an inspector.

In addition, health and safety representatives can, under certain circumstances, order work cessations under section 26(2) of the *Occupational Health and Safety Act 1985*, in the event of an immediate risk to health and safety. Any request for an inspector to attend a workplace in relation to a provisional improvement notice, provisional direction or work cessation will be dealt with expeditiously. To address immediate risk and remedy non-compliance there are notices and directions.

### **Prohibition notices and their equivalents**

If there is an immediate risk to health and safety, an inspector will issue a prohibition notice (or its equivalent under the dangerous goods and road transport legislation).

The notice or direction will require the person in control of the situation to immediately cease the activity until the risk is remedied. If the notice or direction is not complied with, an investigation will commence with a view to prosecution.

### **Improvement notices and their equivalents**

Improvement notices (or their equivalents under the dangerous goods and road transport legislation) will be issued where non-compliance is detected and not corrected immediately. Such notices or directions focus duty holders on the tasks to be carried out to ensure compliance. Notices or directions themselves are not punitive tools. They give duty holders a further opportunity to comply with their legislative duties or address an immediate risk without penalty at the time the notice is issued. Firm deadlines for the completion of these tasks will be set by the inspector after consultation with the duty holder and any relevant health and safety representative(s). The duty holder has the responsibility to ensure that compliance with the legislation is achieved within the timeframes specified. The inspector provides assistance with this by:

- advising on relevant codes of practice and publications
- advising on effective health and safety management
- demonstrating the risk assessment process
- advising on avenues for further assistance

If the notice or direction is not complied with, an investigation will commence with a view to prosecution.

## **Infringement notices**

When specified breaches of health and safety law are detected, the issuing of infringement notices has the benefit of providing an immediate punitive effect. Infringement notices are not intended to be a substitute for prohibition notices, improvement notices or written directions. In most cases, infringement notices will be issued along with other notices or directions. Infringement notices will not be withdrawn because compliance with simultaneous notices and directions has been achieved. Nor are infringement notices intended to signal any lessening of emphasis on prosecution. Prosecutions will continue to be instituted where warranted. An infringement notice will not be used in circumstances where prosecution is considered a more appropriate response.

## **Revocation, suspension or cancellation of licences, approvals, certificates or exemptions**

Holders of licences, approvals, certificates or exemptions issued by the Authority must comply with their conditions. If they do not, the Authority can revoke, suspend or cancel them, even if another enforcement tool is used. Instances of non-compliance with health and safety legislation will also be reported to other relevant regulatory agencies or statutory registration boards for consideration under their legislation.

## **PROSECUTION GUIDELINES**

### **The Authority is required by legislation to publish general prosecution guidelines.**

The Authority will consider prosecution in circumstances where there is alleged non-compliance with the legislation, including where death or serious injury has resulted. A decision to prosecute is based on an assessment of the nature of the non-compliance, the duty holder's performance and the Authority's priorities (see below).

All duty holders (including designers, manufacturers, importers and suppliers) may be subject to prosecution. In addition, prosecution will be influenced by consideration of the public interest.

### **Publicising prosecutions**

Prosecution assists prevention by deterring others from committing health and safety offences. Publicising the outcomes of successful prosecutions draws attention to the consequences of health and safety violations and the need for real and sustainable improvement in workplaces.

### **Prosecution priorities**

Priority will be given to prosecuting offences relevant to target industries, poor performing firms, injury types and workplace fatalities. Other specific prosecution priorities include:

- alleged failure to comply with a prohibition notice, improvement notice, written direction, provisional improvement notice or provisional direction
- offences against inspectors, and other authorised officers, in the exercising of their legislative powers
- cases of discrimination against an employee for any action in relation to occupational health and safety
- breaches of the consultative provisions of the *Occupational Health and Safety Act 1985* and regulations

The Authority may also investigate offences under other legislation, such as the offences of manslaughter and negligently causing serious injury under the *Crimes Act 1958*.

## **Western Australia**

**Enforcement Policy**

**Prosecution Policy**

**DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES****SAFETY, HEALTH AND ENVIRONMENT DIVISION****Mining Safety Inspectorate****ENFORCEMENT POLICY****APPLICATION**

This Enforcement Policy applies to the Department of Mineral and Petroleum Resources Safety, Health and Environment Division's (MPR SHED) enforcement of the *Mines Safety and Inspection Act 1994* and the *Mines Safety and Inspection Regulations 1995*.

**ENFORCEMENT POLICY**

All provisions of the *Mines Safety and Inspection Act 1994* and the *Mines Safety and Inspection Regulations 1995* are important in regard to requirements for compliance, and will be appropriately enforced. However, the enforcement action which is warranted will depend on the circumstances of the case, in particular the seriousness of the breach as reflected by the penalty Parliament has provided.

Identified non-compliance with the *Act* or *Regulations* will be addressed (in order of increasing seriousness) by:

- Expressing concern verbally and/or issuing a verbal direction at the time and place where a breach is first detected. (Verbal concerns and directions will be confined to circumstances where a breach can be rectified prior to the inspector leaving the working area where the breach was detected and in any event, in such circumstances, verbal communications will be confirmed by means of an entry in the mine record book.);
- Issuing a written notice of a defect, which will be recorded in the mine record book;
- Issuing a letter of concern to the Registered Manager and/or relevant Executive Manager (who may be required to attach a copy of the letter to the mine record book);
- Issuing a direction under section 22 of the Act, which will be recorded in the mine record book. In appropriate circumstances, such as where a breach tends to threaten immediate harm to persons, a verbal direction to stop work and withdraw persons from the area may precede the formal issue of a formal direction;
- Reviewing and/or upholding a direction;
- Prosecution;
- Any or all of the above in combination.

Action taken by the inspector, including verbal directions, will be conveyed to the Registered Manager, and, where practicable, to safety and health representatives (or their equivalent), safety and health committee, or any other relevant party while the inspector is at the mine.

Where an inspector obtains sufficient evidence to establish a *prima facie* case, and there is a reasonable prospect of a conviction, consideration will be given to taking prosecution action, instead of or in addition to applying alternative enforcement actions, in circumstances including:

- Where an entry in the mine record book is not considered sufficient for ensuring compliance with the *Act* or *Regulations*;
- Where an alleged breach of the *Act* or *Regulations* either has resulted, or could have resulted, in a fatality or serious injury;
- Alleged failure to comply with an entry in the mine record book;
- Where an inspector alleges a person has repeated the same offence or breach;
- In cases of discrimination against an employee for any action in relation to occupational safety and health;
- Serious breaches of the consultative provisions of the *Act*; and
- Obstruction of an inspector.
- Where an employee has been exposed to a hazard resulting from negligent action by a person or employer

In cases falling under one or more of the above circumstances, a prosecution will only be initiated where:

- An inspector obtains sufficient evidence to establish a *prima facie* case;
- There is a reasonable prospect of success; and
- It is judged to be in the public interest.

The Safety, Health and Environment Division's Prosecution Policy is provided as an Appendix to this Enforcement Policy.

The Prosecution Policy details the relevant considerations associated with decisions relating to instituting and continuing a prosecution, and considerations relating to appeals. The three items mentioned above: a *prima facie* case, reasonable prospect of success and the public interest, are discussed in detail in the Prosecution Policy.

## **UNDERLYING PRINCIPLES**

- The Safety, Health and Environment Division (SHED) will improve, recommend and promulgate acceptable safety and health laws and standards relevant to the Western Australian minerals industry.

- SHED will develop and maintain mining operations audit assessment protocols and operational strategies, and incident and complaint investigation programs to support the Enforcement Policy.
- SHED will develop and maintain the competency of its officers and operational procedures to effectively administer the Enforcement Policy.
- SHED will maintain records of non-compliance detected and of its responses; follow-up to ascertain remedial actions taken by industry; maintain records of the remedial action (or inaction) and of the follow up of the action (or inaction).
- A regulatory response or action will be considered in every instance where non-compliance with the relevant standards becomes known.
- Enforcement action will be applied in a fair and consistent manner, taking into account the seriousness of the non-compliance or the imminence of danger, in a cooperative manner where appropriate.
- Enforcement action will be applied in an escalating fashion where previous actions have themselves not met with satisfactory responses.
- A high level response will be considered where the severity or imminence of danger warrants such action.
- Prosecution is an appropriate enforcement option, and will be considered based on the inspector's opinion and following consultation with the State Mining Engineer, the Director of Safety, Health and Environment and the Director General of the Department of Mineral and Petroleum Resources.
- Circumstances may arise in the process of investigating a serious injury or fatality whereby SHED forms the view (after advice from the Crown Solicitor) that the evidence is appropriate to action under the Criminal Code, and the Director of Public Prosecutions, the Police Service and/or Coroner's Office will be briefed accordingly.

**DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES****SAFETY, HEALTH AND ENVIRONMENT DIVISION****Mining Safety Inspectorate****PROSECUTION POLICY****1. PURPOSE OF THIS POLICY**

A prosecution has an impact on the rights of the alleged offender, the interests of the victim and the community generally.

The purpose of this Prosecution Policy is to ensure the law (in this case the *Mines Safety and Inspection Act 1994* and the *Mines Safety and Inspection Regulations 1995*) is applied impartially, in a fair and consistent manner. It aims to ensure decisions in relation to prosecutions are based on appropriate criteria which are public, open, fair and capable of being applied consistently across the broad range of circumstances to which the abovementioned laws apply. The policy recognises the role of the public interest in determining whether or not a prosecution, or subsequent appeal, will be initiated or continued.

Through application of this policy, Safety, Health and Environment Division (referred to as "the Division") will avoid arbitrary decisions, and will ensure prosecutions are not conducted for improper purposes, capriciously or oppressively.

This policy embraces the principles contained in the *Statement of Prosecution Policy and Guidelines* issued by the Director of Public Prosecutions and published in the *Western Australian Government Gazette* on 20 September 1999.

**2. APPLICATION**

This policy applies to all prosecutions for offences under the *Mines Safety and Inspection Act 1994* (referred to as "the Act") and the *Mines Safety and Inspection Regulations 1995* (referred to as "the Regulations") and, as the circumstances allow, to all appeals arising out of proceedings in respect of any such prosecutions.

All authorities to prosecute are, in the first instance, to be subject to legal advice from the Crown Solicitor's Office. The decision to charge will still be one for the Division, although it will generally be entitled to act on the recommendation of the Crown Solicitor.

**3. THE DECISION TO PROSECUTE**

In applying the law impartially, in a fair and consistent manner, it is necessary to consider the:

- Rights of the alleged offender;
- Interests and rights of victims; and
- Interests of the community.

Under the criminal justice system, the courts have the central role in determining guilt and imposing appropriate sanctions or penalties for criminal conduct. The role of the prosecutor is to lay all of the relevant evidence before the court to enable it to make these determinations. Ordinarily, discretion in the decision to prosecute will be exercised so as to recognise this role of the courts and such decisions will not be taken arbitrarily or for inappropriate reasons.

The Division's Enforcement Policy, to which this Prosecution Policy is appended, extends to circumstances under which consideration would be given to initiating and conducting a prosecution instead of or in addition to applying alternative enforcement actions (such as the issuing of an inspector's direction under the *Act*). The availability of prosecution as a course of action should not preclude the taking of other enforcement action which may be warranted by the circumstances of a particular case.

The circumstances for considering a prosecution are:

- Where the issue of directions is not considered sufficient for ensuring compliance with the *Act* or *Regulations*;
- Where an alleged breach of the *Act* or *Regulations* either has resulted, or could have resulted, in a fatality or serious injury;
- Where an alleged failure to comply with an inspector's direction occurs;
- Where an inspector alleges a person has repeated the same offence;
- In cases of discrimination against an employee for any action in relation to occupational safety and health;
- For serious breaches of the consultative provisions of the *Act*;
- Obstruction of an inspector; and
- In cases where an employee has been exposed to a hazard resulting from negligent action by a person or employer.

In cases falling under one or more of the above circumstances, a prosecution will only be initiated where:

- An inspector obtains sufficient evidence to establish a *prima facie* case; and
- It is judged to be in the public interest, including there being a reasonable prospect of success.

The above considerations are detailed under sections 4, 5, and 6 below.

The decision to continue a prosecution is at least as important as the decision to charge and takes into account factors beyond those which influence an investigator. Those factors are set out in this document.

As far as possible, the Division will maintain an approach to prosecution consistent with that of other agencies enforcing similar provisions under other legislation. This will ensure, as far as practicable, that prosecutions actioned by the Division will be instituted and proceed under similar circumstances to those from which one is actioned by other agencies under like provisions of other legislation.

#### 4. A *PRIMA FACIE* CASE

Consideration should be given, as early as possible in the prosecution process, as to whether the evidence discloses a *prima facie* case.

The question whether there is a *prima facie* case is one of law. This involves consideration of whether the evidence could lead to the conclusion, **beyond reasonable doubt** (note: this does not mean beyond **all** doubt), that all the elements of the offence have been proved.

Where, in the opinion of the Division, on appropriate advice, the available material does not support a *prima facie* case, the prosecution should not be instituted or proceed under any circumstances.

#### 5. THE PUBLIC INTEREST

If a *prima facie* case exists, the prosecution of an offence (and, the continuation of such a prosecution) must also be in the public interest.

This requires the balancing of a broad range of factors, as they relate to the particular case. The presence of a particular factor does not necessarily mean it would be against, or in, the public interest to proceed with or continue a prosecution, and the same factors could equally weigh in favour of prosecution in one particular case, yet weigh against it in another. Ultimately it is all the relevant factors **taken together** which will determine, on balance, whether it is in the public interest to proceed.

As mentioned earlier in this Policy, it is the role of the courts to determine guilt or innocence. While all prosecutions must be in the public interest, the test of public interest must be applied in a manner which does not remove the central role of the courts in the prosecution process. As is the case with other issues relating to the public interest, it is a matter of balance and exercise of appropriate judgement.

It is in the public interest that prosecutions be conducted fairly and impartially.

A prosecution which is conducted for improper purposes, capriciously or oppressively is not in the public interest.

In general, prosecutions of individual persons will be undertaken only where there is some significant degree of negligence on the part of the individual involved and the individual has the authority, ability and capability to exert control and to influence the outcome.

## 6. EVALUATION OF THE PUBLIC INTEREST

### 6.1 Reasonable Prospects of Conviction

It is not in the public interest to proceed with a prosecution which has no reasonable prospect of resulting in a conviction.

A prosecution should be discontinued if, based on the available material and appropriate advice, the Division considers that there is no reasonable prospect of conviction, unless further prompt investigation will remedy any deficiency in the prosecution case.

The evaluation of prospects of conviction requires dispassionate judgment, based on the advice and experience of the Department's legal counsel and prosecutor.

Such decisions may on occasions be difficult. However, this does not mean that only cases perceived as 'strong' should be prosecuted. Generally, the resolution of disputed questions of fact is for the court and not the Department. A case considered 'weak' by some may not seem so to others. Nevertheless, the Division has a responsibility, in the public interest, to exercise appropriate discretion and judgement in the assessment of the prospects of conviction when deciding to bring a matter to court. The assessment of the prospects of conviction is not to be understood as an usurpation of the role of the court but rather as an exercise of discretion in the public interest.

The evaluation of the prospects of conviction includes due consideration of:

- Whether any alleged confession was given voluntarily and whether there are grounds for reaching the view that a confession will not meet the various criteria for admission into evidence;
- The likelihood of the exclusion from the trial of a confession or other important piece of evidence in the exercise of a judicial discretion. In the case of an alleged confession, regard should be given to whether a confession may be unreliable having regard to the intelligence of the accused, or linguistic or cultural factors;
- The competence, reliability and availability of witnesses;
- Matters known to the prosecution which may significantly lessen the likelihood of acceptance of the testimony of a witness. Regard should be given to the following:
  - Has the witness made prior inconsistent statements relevant to the matter?
  - Is the witness friendly or hostile to the defence?
  - Is the credibility of the witness affected by any physical or mental impairment;
  - The existence of an essential conflict in any important particular of the prosecution case among prosecution witnesses;
- Where the identity of the alleged offender is in issue, the cogency and reliability of the identification evidence;
- Any lines of defence which have been indicated by or are otherwise plainly open to the defence.

Evaluation of the prospects of conviction will generally not have regard to:

- Material not disclosed to the prosecution by the defence;
- Notification of a defence which purports to rest upon unsubstantiated assertions of fact;
- Whether assertions of facts upon which a defence or excuse are based are contentious, or rest on information which would not, in the opinion of the prosecutor, form the basis of credible cogent evidence.

## 6.2 Other Relevant Public Interest Factors

### 6.2.1 Factors Which May Weigh Against Prosecution

Despite the existence of a *prima facie* case and reasonable prospects of conviction, it may not be in the public interest to proceed if other factors, singly or in combination, render a prosecution inappropriate.

Presence of one or more of the following factors does not necessarily indicate that the prosecution should not proceed, but rather that the factor(s) should be balanced against other factors relating to the case.

Factors which may, singly or in combination, render a prosecution inappropriate in the public interest include:

- The trivial or technical nature of the alleged offence in the circumstance;
- The youth, age, physical or mental health or special infirmity of the victim, alleged offender or a witness;
- The alleged offender's antecedents (ie previous history);
- The staleness of the alleged offence, including delay in the prosecution process which may be oppressive;
- The degree of culpability of the alleged offender in connection with the offence;
- The obsolescence or obscurity of the law;
- Whether a prosecution would be perceived as counter-productive to the interests of justice;
- The availability, utility or efficacy of any alternatives to prosecution;
- The lack of prevalence of the alleged offence and need for deterrence, either personal or general;
- Whether the alleged offence is of minimal public concern;
- The attitude of the victim of an alleged offence to prosecution;
- The likely length and expense of a trial;
- Whether the alleged offender has co-operated in the investigation and prosecution of others or has indicated an intention so to do;
- The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- The likely effect on public order and morale;

- Whether a sentence has already been imposed on the offender which adequately reflects the criminality of the episode; and
- Whether the alleged offender has already been sentenced for a series of other offences and the likelihood of the imposition of an additional penalty, having regard to the totality principle (ie where a person has been sentenced to a penalty to a level where "enough is enough"), is remote.

### 6.2.2 Factors Which May Weigh in Favour of a Prosecution Proceeding

Factors which might require the prosecution to proceed in the public interest, and which should be balanced against any factors weighing against, include the:

- Need to maintain the rule of law (ie the application of the law without the influence of arbitrary power; the equal accountability of all before the law; and the protection of the rights and freedoms of individuals through the courts);
- Need to maintain public confidence in basic constitutional institutions, including Parliament and the courts;
- Entitlement of any person to be awarded compensation if guilt is adjudged;
- Release from obligation by a person to pay compensation, insurance or other similar payments in relation to the *Action* of the defendant, if the defendant is found guilty of an offence;
- Need for punishment and deterrence; and
- Circumstances in which the alleged offence was committed.

### Irrelevant Factors

- The following matters are not to be taken into consideration in evaluating the public interest:
- Race, colour, ethnic origin, gender, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender;
- Possible political consequences of the exercise or non-exercise of discretion;
- Prosecutor's personal feelings concerning the alleged offender or victim; and
- Possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

## 7. PROSECUTION APPEALS

The purpose of prosecution appeals is to ensure that offence provisions are justly and correctly applied; and in the case of appeals against penalty is to ensure that there are

established and maintained adequate, just and proportionate standards of punishment for offences.

Prosecution appeals have been held by the courts to raise considerations not present in an appeal by a defendant seeking a judgment of not guilty or a reduction in penalty. They have been described as cutting across time-honoured concepts of criminal administration and as putting the convicted person in jeopardy a second time.

Prosecution appeals must be considered against the background of many complex circumstances and legal principles. For any offence there is a range of sentencing options and a court must have regard, in choosing which option seems appropriate, to the principles laid down by Parliament and in other cases. For any offence there may be a number of different dispositions none of which are necessarily wrong. Therefore a prosecution appeal will not be initiated simply because the outcome is perceived as inadequate or inappropriate in a particular case.

The following factors are relevant in considering whether or not to lodge an appeal:

- Whether a penalty is so disproportionate to the seriousness of the offence as to reflect error in sentencing principle by the courts;
- Whether a penalty is so disproportionate to the seriousness of the crime as to shock the public conscience;
- Whether a penalty is significantly out of line with other penalties imposed for the same or similar offences without reasonable cause for that disparity;
- Whether the idiosyncratic views of individual magistrates as to particular offences or types of offences require correction;
- Whether disputed points of sentencing principle are giving, or are likely to give, rise to disparity of penalties imposed for offences of the same or similar type; and
- Whether existing penalties are already subject to wide and inexplicable variations and there is a need to reduce this disparity and variability in order to promote uniform standards of sentencing.

## 8. RESPONSIBILITIES

The primary responsibility for investigating offences and alleged offences and initiating prosecutions and issuing complaints under the *Act* and *Regulations* resides with individual inspectors within the Division, pursuant to the powers of an inspector under the *Act* [s.21(1)(m)].

As some prosecutions may have financial implications on the Division, all prosecutions shall be endorsed by the Division's Director before progressing. The Director may elect to seek the advice or authority of the Director General before agreeing that any prosecution should proceed. Any prosecution must be preceded by a brief to the Director outlining the basis of the prosecution, including a statement which demonstrates or affirms compliance with Section 4 *Prima Facie Case* and Section 5 *Public Interest* of this Policy and legal advice from the appropriate authority (ie. Crown Solicitor's Office).

## **7. ESTABLISHED CONSULTATIVE FRAMEWORKS**

The implementation plan proposed for the Framework calls for closer alignment of current consultative arrangements at both the workplace and State/industry level (see section 6 of the discussion paper). The establishment of effective consultative arrangements at the workplace level is also a key element of the ILO Convention.

An outline of the ILO principles and the existing arrangements in Australian jurisdictions are outlined below.

## CONSULTATION AT THE WORKGROUP OR WORKPLACE LEVEL

### INTERNATIONAL LABOUR ORGANISATION CONVENTION ON HEALTH AND SAFETY IN MINES

The relevant contents of *ILO Convention 176: Safety and Health in Mines Convention, 1995* are considered suitable to act as a reference standard for the practice of consultation at the workgroup or workplace level on safety and health issues in the mining industry.

This convention provides for *inter alia*, as follows:

- At Article 5 Paragraph 2(f) for:

“the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health at the workplace.”
- At Article 13 Paragraph 1, workers and their representatives are provided with various rights. viz:
  1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:
    - (a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
    - (b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and the competent authority;
    - (c) to know and be informed of workplace hazards that may affect their safety or health;
    - (d) to obtain information relevant to their safety or health, held by the employer or the competent authority;
    - (e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health; and
    - (f) to collectively select safety and health representatives.
  2. The safety and health representatives referred to in paragraph 1(f) above shall, in accordance with national laws and regulations, have the following rights:
    - (a) to represent workers on all aspects of workplace safety and health, including where applicable, the exercise of the rights provided in paragraph 1 above;
    - (b) to:
      - (i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and
      - (ii) monitor and investigate safety and health matters;

- (c) to have recourse to advisers and independent experts;
    - (d) to consult with the employer in a timely fashion on safety and health matters, including policies and procedures;
    - (e) to consult with the competent authority; and
    - (f) to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.
  3. Procedures for the exercise of the rights referred to in paragraphs 1 and 2 above shall be specified:
    - (a) by national laws and regulations; and
    - (b) through consultations between employers and workers and their representatives.
  4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.
- At Article 15

“Measures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines.”

## **EXISTING ARRANGEMENTS FOR STATE AND TERRITORY WORKGROUP OR WORKPLACE LEVEL CONSULTATION**

Each State and Territory has legislated for the involvement of employers and employees in managing safety and health of workers at minesites. The following briefly outlines these systems.

### **New South Wales**

In New South Wales, workgroup or workplace level consultation is legislated for under general OHS legislation viz the *Occupational Health and Safety Act 2000 (OHS Act)*.

This act specifies that employers must consult with employees so as to enable them to contribute to making decisions affecting their health, safety and welfare at work. The Act goes on to define the nature of that consultation, when it is required and how it is to be undertaken. Consultation may occur with Occupational Health and Safety Committees (where established), Occupational Health and Safety Representatives elected by the employees or by other means as agreed to by the employer and employees. Conditions relating to the number of employees and requests by employees apply. Roles for the OHS Committees and OHS Representatives are specified.

Disputes about consultation in mines are resolved by the Department of Mineral Resources. Both the coal and the metalliferous/extractive industries safety legislation contain specific provisions for consultation. The OHS Act also contains specific provisions. These provisions are administered by the Department and these often take priority over mine safety legislation.

The *Occupational Health and Safety Regulations 2001* lay down more detailed minimum requirements for the consultative process.

### **Northern Territory**

In the Northern Territory, the Mining Management Act covers Occupational Health and Safety in mines.

The Mining Management Act defines the obligations of the operator and worker for a mining site. It also allows the operator to facilitate consultation and co-operation between the operator, contractors and workers for initiating, developing and implementing measures designed to ensure the safety and health of the workers on site. The operator for mining site must, as far as is practicable, operate and maintain the site to minimise risk to the safety and health of the workers on the site.

### **Queensland**

In Queensland, mine safety and workgroup or workplace consultation processes are covered by the *Mining and Quarrying Safety and Health Act 1999* and the *Coal Mining Safety and Health Act 1999*.

These acts have very similar or identical provisions in regards to many issues. However, there are also significant differences. Both provide for the election of site safety and health representatives with whom management is to consult on safety and health matters. The range of issues on which consultation is to occur is broader in non-coal minesites than in coal minesites. In addition, whereas the *Mining and Quarrying Safety and Health Act (1999)* provides for site safety and health committees to be formed under certain conditions, the *Coal Mining Safety and Health Act (1999)*, provides instead for Industry Health and Safety Representatives to be appointed after a ballot of union members. The functions of Industry Health and Safety Representatives emphasize enforcement more than consultation.

## **South Australia**

In South Australia, safety and health at mine sites is control by the *Occupational Health Safety and Welfare Act (1986)*. The act requires management to consult with employees on a range of issues, including changes affecting safety and health. Comprehensive workgroup or workplace level consultation arrangements are included in this act. They involve Health and Safety Representatives and Health and Safety Committees. Both these are to operate on various conditions prescribed in the Act. Generally the appointment of Health and Safety Representatives follows requests from relevant employees and requires the establishment of designated workgroups before elections are held. Health and Safety Committees are established following a similar process. Employers are responsible for consulting with any Health and Safety Representatives or Committees on a wide range of workplace health and safety issues.

Where disputes are not resolved by other means (eg assistance from WorkCover's Workplace Liaison Unit), the matter can be referred to the Industrial Commission.

## **Tasmania**

In Tasmania, safety and health consultative processes are controlled by the *Workplace Health and Safety Act (1995)*. This act provides for the operation of health and safety committees and the appointment, by election, of Employee's Safety Representatives. The conditions of appointment and/or election include employees having to make a request and there being minimum numbers of on employees in the workgroup or workplace. Employers have a duty to consult with and provide support to Employee's Safety Representatives and Health and Safety Committees.

In addition to these provisions the *Workplace Health and Safety Regulations 1998* contain specific provisions relating to mandatory consultation. These regulations also detail how complaints are to be resolved.

## **Victoria**

Consultation on occupational safety and health in mines at the workgroup or workplace level is controlled by the *Occupational Health and Safety (Mines) Regulations 2002* which fall under the *OH&S Act (1985)*. These regulations contain a widespread part addressing consultation. In particular, consultation on safety and health issues is required, where practicable, with the Health and Safety Representative of each designated workgroup at a mine and if there is no designated workgroup or Health and

Safety Representative then with the employees themselves or their agreed representatives.

## **Western Australia**

The *Mines Safety and Inspections Act (1994)* regulates consultation on safety and health issues in mines. The act imposes a general duty on employers to consult and cooperate with any Safety and Health Representatives and other employees at the mine regarding occupational safety and health at the mine.

Safety and Health Representatives may be elected to represent employee safety and health interests. They may request that a Safety and Health Committee be formed. The functions of such a committee include consultation. Conditions for the appointment of Safety and Health Representatives are provided for including, support and protection by management. Conditions for the appointment of committees are also included.

The State Mining Engineer has the power to resolve issues relating to consultation arrangements.

## EXISTING ARRANGEMENTS FOR STATE AND TERRITORY CONSULTATION AT INDUSTRY LEVEL

### New South Wales

Under the *Mining Legislation Amendment (Health and Safety) Act (2002)* a Mine Safety Advisory Council, (MSAC) has been established.

The MSAC will replace a Mine Safety Council and has been established to foster an industry with safety as a core value and to provide advice to the Minister on strategic safety and health matters in the mining industry. The membership is to include representation from peak industry and employee organisations but there is no prescription of the number of such representatives. The terms of reference adopted by the council are:

- To establish strategic safety and health direction and goals.
- To analyse and review the safety performance of the industry and to provide information to stakeholders so that safety performance can be improved.
- To provide leadership to the mining industry to develop safe and healthy workplaces within a framework which:
  - Encourages innovative and safe technology and processes.
  - Sets the strategic direction for the industry in developing competent people.
  - Advances a legislative framework that leads to safe mining practice.
- To encourage a move towards cross-industry and national standards.
- To interact with the safety advisory committees to enable them to lead their industry sectors, and to inform the work of the Council

There are three technical and specialist industry sector committee of the MSAC, viz. The Metalliferous, Extractive Industries and the Coal Safety Advisory Committees. Membership of the MSAC and its committees are tripartite, including representatives of Government, Employer Groups and Employee Groups.

In addition, a Mining Industry Reference Group (IRG) has been established under the *Workplace Injury Management and Workers Compensation Act (1998)*. This IRG operates under the following Terms of Reference;

- IRGs are required to:
  - Identify and prioritise major OHS problems in their particular industry;
  - Develop focussed, specific solutions or strategies to address these problems;
  - Implement the solutions and strategies by seeking industry's support for and commitment to their implementation; and
  - Assist in their dissemination and promotion to industry.
- IRGs must also provide regular reports to the WorkCover Authority of New South Wales on uptake of the strategies by the industry and on the effectiveness of the solutions.

The IRGs comprise equal numbers of employer and employee representatives with additional support provided by representatives from WorkCover and the insurance industry.

## **Northern Territory**

The Mining Management Act has specific provision for consultation at the industry level on safety and health matters in mines. The functions of the Mining Board of the Northern Territory, set up under the Mining Management Act include the power to advise the Minister on the operation of that act.

## **Queensland**

The *Mining and Quarrying Safety and Health Act (1999)* and the *Coal Mining Safety and Health Act (1999)* provide for industry consultative arrangements through the establishment of the:

- Mining Safety and Health Advisory Council (for metalliferous mines and quarries); and
- Coal Mining Safety and Health Advisory Council.

These councils each consist of:

- three nominees of organisations representing mine operators
- three nominees of organisations representing mine workers
- three Inspectors of Mines.

The councils provide advice to the Minister on the promotion and protection of the safety and health of persons at mines. In addition, they have the functions of reviewing the effectiveness of legislation and establishing competencies for persons carrying out prescribed tasks.

Departmental procedural consultations also occur. These include:

- tripartite committees have been established to develop and review regulations.
- union and operator organisations attend legislation implementation committees.
- when the new legislation was proposed, discussion papers were released for comment and extensive awareness presentations were made throughout the state (these presentations were organised by the Mines Inspectorate, but assistance was given at the presentations by union and industry representatives)
- new guidance notes, guidelines and recognised standards are referred to stakeholders for comment prior to completion
- there is an annual meeting with industry CEOs of the mining industry in addition to frequent meetings with individual CEOs
- Inspectors of Mines participate in meetings of mine managers and coal industry site safety and health representatives.

## **South Australia**

In South Australia, The Mining and Quarrying Occupational Health and Safety Committee has been set up under the *Workers Rehabilitation and Compensation Act (1986)*. The committee is a tripartite body aimed at promoting occupational health and safety and

preventing injury and disease in the mining and quarrying industry. It also administers expenditure of the Mining and Quarrying Industries Fund.

The Committee's primary objective is to assist in reducing the social and economic costs of occupational injury and disease to employers, workers and the general community. It does this by:

- Working with all groups in the industry, that is, employers and employer organisations, workers and unions, government bodies, safety and health professionals and others.
- Fostering cooperation between these groups in addressing the prevention of injury and disease and the safe rehabilitation of injured workers.
- Providing funding for occupational safety and health rehabilitation projects identified through a grants scheme
- Working with the industry to pro-actively identify needs and develop initiatives to meet these needs.

In addition to Government representatives and a person external to the industry, there are equal numbers of employer and employee representatives appointed to the Committee.

## **Tasmania**

The *Workplace Health and Safety Regulations 1998* contain specific provisions relating to mandatory consultation. These regulations also detail how complaints are to be resolved.

The *Workplace Health and Safety Act (1995)* also allows for the WorkCover Tasmania Board to establish advisory committees for the purpose of advising it on any matter arising in relation to the performance of its functions under this Act.

## **Victoria**

In Victoria, there are no specific state industry level consultative arrangements in relation to mine safety. However, the *Occupational Health and Safety Act (1985)* allows for the Authority, amongst other things,

- to provide advice to and cooperate with Government departments, public authorities, trade unions, [employer](#) organisations and other interested persons in relation to occupational health safety and welfare and
- to formulate standards specifications or other forms of guidance for the purpose of assisting [employers](#) [self-employed persons](#) and [employees](#) to maintain appropriate standards of occupational health safety and welfare;

The DNRE is represented on the Victorian Minerals and Energy Council OHS Committee and Safety and Operations group and regularly consults with the Extractive and Mining Industries Advisory Board and the Construction Materials Processors Association (CMPA). Formal industry consultation occurs through the Regulatory Impact Statement process when existing regulations sunset. An example of this is the release of the Issues Paper “*Review of the Regulations made under the Mineral*

*Resources Development Act 1990 Regulating Health and Safety in Mines*” by WorkSafe and DNRE for public consultation in 2002,

## **Western Australia**

In Western Australia, consultation on Mine Safety at the industry level occurs through the Mines Occupational Safety and Health Advisory Board (MOSHAB). MOSHAB is an independent tripartite statutory body established under the *Mines Safety and Inspection Act (1994)*. It is responsible for matters related to occupational safety and health in the Western Australian mining industry.

The functions of MOSHAB include to:

- Advise the Minister on matters relating to mining safety and health;
- Inquire and report into matters referred to it by the Minister;
- Make recommendations to the Minister on the formulation, amendment or repeal of mining safety and health laws;
- Prepare or recommend adoption of codes of practice, guidelines, standards, specifications or other safety and health guidance material;
- Advise of education, training and training courses;
- Advise the Minister on publications relevant to the mining industry; and
- Liaise with the WorkSafe Western Australia Commission to coordinate activities on related functions and maintain parallel standards.

Board membership consists of:

- 3 officers of Government departments
- 4 nominees of the Chamber of Mines and Energy of Western Australia Inc;
- 2 nominees of the Trades and Labour Council of Western Australia; and
- 2 employee's inspectors (elected by mine employees)

**8. CURRENT RESEARCH PROJECTS CONCERNING  
OH&S IN THE MINING INDUSTRY**

### Current research projects concerning OH&S in the mining industry

Organisation	url	Projects
<b>1 AMIRA</b>	<a href="http://www.amira.com.au/projects.asp">http://www.amira.com.au/projects.asp</a>	No projects listed seem to be safety-related
<b>2 CSIRO</b>	<a href="http://www.csiro.au/">http://www.csiro.au/</a>	No projects listed seem to be safety-related
<b>3 NIOSH</b>  National Institute for Occupational Safety & Health (US)	<a href="http://www.cdc.gov/niosh/mining/projects/default.htm">http://www.cdc.gov/niosh/mining/projects/default.htm</a>	See section attached
<b>4 VIOSH</b>  Victorian Institute for Occupational Safety & Health (at Uni of Ballarat)	<a href="http://www.ballarat.edu.au/viosh/">http://www.ballarat.edu.au/viosh/</a>	The ‘Research in Progress’ page contains no projects. The ‘‘Research’’ page mentions that work is done in conjunction with several other bodies such as the Australian Coal Association, the Joint Coal Board NSW, the WorkCover Corporation of Victoria and South Australia, Worksafe Australia, the Australia Research Council and Meat Research Corporation.
<b>5 SIMTARS, QLD</b>		
<b>6 NSW MINE SAFETY TECHNICAL SERVICES</b>		
<b>7 MASHA</b> <i>Mines &amp; Aggregates Safety &amp; Health Association (Canada)</i>	<a href="http://www.masha.on.ca/">http://www.masha.on.ca/</a>	This body appears to ‘‘review, evaluate and provide advice on projects and programs as requested by MASHA’s Board of Directors or MASHA’s General Manager’’ They do not seem to initiate or perform research.

<p>8 CRCs</p>	<p>www.crc.gov.au</p>	<p><i>(This project under assessment; others seem unrelated to safety)</i></p> <p>The aim is to significantly enhance mining industry performance in terms of: economics, safety, and environmental impact.</p> <p>Specifically the objectives are to improve the performance of mining machines, and particularly mining systems. These goals will be achieved by:</p> <ul style="list-style-type: none"> <li>• reducing short-range geological uncertainty;</li> <li>• advanced monitoring and control of machines;</li> <li>• characterising and controlling the overall mine production system, and</li> <li>• introducing radically new mining methods.</li> </ul> <p>The consequence will be that Australia enhances its position as the world leader both in education, delivering first-class graduates and postgraduates to a global market, and in the exploitation of innovative mining technology.</p>
<p>9 ACIRRT</p>	<p><a href="http://www.acirrt.com/">http://www.acirrt.com/</a></p>	<p>Fitness for Duty (02C0139)            CLIENT: Penrith Lakes Development Corporation</p> <p>Assessment of the effects of fatigue and the appropriateness of current job rotation structures 02C0141)            CLIENT: Port Waratah Coal Services</p> <p>Tasmanian Mining Industry Inquiry (01C0113)            CLIENT: Workplace Standards Tasmania</p> <p>Reserve Bank of Australia Surveys (98C0006)            CLIENT: Reserve Bank of Australia</p> <p>ACTU/Labour Council of NSW (02C0140)            CLIENT: Membership Statistics Profiles</p> <p>Generic Skills: How they are understood, practiced and valued by learners, employers and providers. (01C0127)            CLIENT: ANTA (Australian National Training Authority)</p>

<p><b>9 ACIRRT (contd)</b></p>		<p>High Performance Workplace Case Studies            CLIENT: Industrial Relations Victoria (01C0128)</p> <p>Stop Telling us to Cope: NSW Nurses Explain Why they are Leaving the Profession (02C0136)            CLIENT: NSW Nurses Association</p> <p>Research Project - Managing Contractor Safety in the Coal Mining Industry (02C0134)            CLIENT Joint Coal Board</p> <p>Group Training Schemes (01C0119)            CLIENT: NCVER</p> <p>The Impact of Industry Sector Downsizing on the NSW WORKCOVER Scheme and Outcomes for Injured Workers (02C0129)            CLIENT: WorkCover NSW</p> <p>Business Leadership, Knowledge Management and Organisational Learning in the New Business Environment (02C0124)            CLIENT: Australian Business Foundation</p> <p>Vocational Education and Training Skills and Innovation (01C0111)            CLIENT: NCVER</p>
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<p><b><i>10 JCB Health &amp; Safety Trust</i></b></p>	<p><a href="http://www.jcb.org.au/research/default.htm">http://www.jcb.org.au/research/default.htm</a></p>	<p>Heart Disease Risk Factors + National database                      Implementation of Ergonomics                      Acoustic Energy Meter                      Pain Management                      Injury Prevention &amp; Control                      Fatigue Monitoring                      Functional Fitness Measures for underground Miners                      Access &amp; Egress for Mobile Off-Road Plant                      Field Measurement of Diesel Particulate Matter                      Managing Contractor Safety                      Managing Hearing Loss                      Effectiveness of Sprain &amp; Strain Control Measures</p>
<p><b><i>11 MAQOHSC</i></b></p>	<p><a href="http://www.maqohsc.sa.gov.au/">http://www.maqohsc.sa.gov.au/</a></p>	<p>See Website for list of current projects.</p>
<p><b><i>12 ACG                      Australian Centre for                      Geomechanics</i></b></p>	<p><a href="http://www.acg.uwa.edu.au">http://www.acg.uwa.edu.au</a></p>	<p>Current Mining Geomechanics Research Projects</p> <ul style="list-style-type: none"> <li>• Mine Seismicity and Rockburst Risk Management Project No. SEIS 9902</li> <li>• Ground Control Training for Underground Mine Workers Project No. TRAIN 9905</li> <li>• Ground Control Training for Surface Mine Workers Project No. OPV 2001</li> <li>• Stress Measurements for Underground Mines Project No. STRESS 9904</li> <li>• Towards the Elimination of Rockfall Fatalities in Australian Mines Project No. ROCK 2001</li> </ul>

<p><b>13 MERIWA</b> <i>Mines &amp; Energy Research Institute of Western Australia</i></p>	<p><a href="http://www.dme.wa.gov.au/meriwa/">http://www.dme.wa.gov.au/meriwa/</a></p>	<p>The following projects seem safety-related:</p> <ul style="list-style-type: none"> <li>• M328 Mine Seismicity and Rockburst Risk Management</li> <li>• M329 Stress measurements from cored rock</li> <li>• M341 Towards the elimination of rockfall fatalities in Australian mines</li> </ul>
<p><b>14 ACIRL</b></p>	<p><a href="http://www.acirl.com.au">www.acirl.com.au</a></p>	<p>The ACIRL website does not seem to work. I do not expect that ACIRL would fund research; rather they would perform work funded by others (such as ACARP).</p>

## **NIOSH SAFETY AND HEALTH RESEARCH IN MINING**

### *Current Project Categories*

1. Diesel Emissions
2. Dust Measurement and Control
3. Fires, Explosions & Ventilation
4. Ground Control
5. Hazard Detection & Warning Devices
6. Hearing Loss Prevention
7. Injury Prevention & Equipment Design
8. Occupational Illness & Health Hazards
9. Surveillance
10. Training And Education

<p><b>1 Diesel Emissions</b></p>	<ul style="list-style-type: none"> <li>• Diesel Engine Emissions Measurement and Analysis</li> <li>• Reducing Diesel Particulate Exposure in Western Mines</li> <li>• Selecting &amp; Evaluating Diesel Emission Controls on Mine Equipment</li> </ul>
<p><b>2 Dust Measurement and Control</b></p>	<ul style="list-style-type: none"> <li>• Assessment of Personal Particulate Exposure</li> <li>• Characterization of Visual Dust Plumes From Highwall Drills at Surface Coal Mines</li> <li>• Control of Silica Dust Exposures in Underground Coal Mining</li> <li>• Development of Enhanced Spray Dust Capture Principles for Improved Silica Dust Suppression</li> <li>• Dust Control for Longwall Mining</li> <li>• Dust Control in Surface Coal Mining</li> <li>• Silica Dust Control in Metal/Nonmetal Mining</li> </ul>
<p><b>3 Fires, Explosions, and Ventilation</b></p>	<ul style="list-style-type: none"> <li>• Control and Suppression of Mine Fires</li> <li>• Explosion Hazards Reduction</li> <li>• Explosives Hazard Surveillance &amp; Evaluation for the Mine Safety &amp; Health Administration</li> <li>• Extended-Cut Air Delivery Systems</li> <li>• Hydrostatic Evaluation of Mine Seals</li> <li>• Improving CFR Safety Evaluations for Mine Ventilation Seals and Stoppings</li> <li>• Investigation of Methane Control Issues in Underground Mines</li> <li>• Laser Safety in Potentially Flammable Environments</li> <li>• Lake Lynn Laboratory</li> <li>• Life Support for Survival and Rescue</li> <li>• Remote Construction of Seals for Mine Fire Control and Abatement</li> <li>• Surface Blasting Safety and Health</li> <li>• Ventilation of Large-Opening Mines</li> </ul>

<p><b>4 Ground Control</b></p>	<ul style="list-style-type: none"> <li>• Development and Evaluation of Innovative Roof Support Technologies</li> <li>• Ground Stability Assessment With Seismic Monitoring</li> <li>• Identification and Control of Rock Burst Hazards</li> <li>• Preventing Injuries From Falling Rock in Underground Coal Mines</li> <li>• Reducing Ground Fall Hazards in Nevada Underground Gold Mines</li> <li>• Reducing Ground Falls in Underground Stone &amp; Nonmetal Mines</li> <li>• Slope Stability Hazard Recognition for Metal/Nonmetal Mines</li> </ul>
<p><b>5 Hazard Detection and Warning Devices</b></p>	<ul style="list-style-type: none"> <li>• Advance Warning of Ground Stability Hazards</li> <li>• Evaluating Collision Warning Systems for Construction Equipment</li> <li>• Evaluating Roadway Construction Work Zone Interventions</li> <li>• Investigation of Electromagnetic Precursors to Rock Bursting</li> <li>• Lockout/Tagout, Jammed and Moving Machinery Controls</li> <li>• Mobile Mining Equipment Warning Systems</li> <li>• Overhead Power Line Contact Alarm for Mobile Equipment</li> <li>• Safety Enhancements for Off-Highway Dump Trucks</li> <li>• Smart Fire Sensors</li> <li>• Wide Area Roof Fall Detection and Warning System</li> </ul>
<p><b>6 Hearing Loss Prevention</b></p>	<ul style="list-style-type: none"> <li>• A Health Hazard Study of Surface Drilling Operations</li> <li>• A Model Hearing Conservation Program for Coal Miners</li> <li>• Cross-Sectional Survey: Noise Exposure Patterns/Sources</li> <li>• Definition and Assessment of Engineering Noise Controls</li> <li>• Engineering Controls for Hearing Loss Prevention</li> <li>• Eval. the Role of Positive &amp; Negative Emotion in Promoting Hearing Conservation Behaviors Among Miners</li> </ul>

	<ul style="list-style-type: none"> <li>• Investigation of Impulse Noise in Mining</li> <li>• Investigation of Technology for Hearing Loss Prevention</li> </ul>
<p><b>7 Injury Prevention and Equipment Design</b></p>	<ul style="list-style-type: none"> <li>• Biomechanical Modeling of Jarring and Jolting</li> <li>• Ergonomics Interventions in Mining</li> <li>• Evaluation of Heat Stress and Interventions in Surface and Underground Mines</li> <li>• Fundamental Studies in Electrical Hazards</li> <li>• Human Factors Design for Machine Safety</li> <li>• Injury Prevention for Metal/Nonmetal Drilling and Bolting Operations</li> <li>• Materials Handling Accident Reduction in Underground Mines</li> <li>• New Technology to Increase ROPS Use on Tractors</li> <li>• Reducing Injury Risk from Jolting and Jarring on Mobile Equipment</li> <li>• Reducing Slipping and Falling Injuries at Surface Mines</li> <li>• Safety Issues of Storage and Transport of Bulk Solids</li> </ul>
<p><b>8 Occupational Illness and Health Hazards</b></p>	<ul style="list-style-type: none"> <li>• Characterization and Communication of Chemical Hazards in Mining and Processing</li> <li>• Effects of Dusts on Asthma and Pulmonary Infectivity</li> <li>• Environmental Causation of Allergies and Asthma</li> <li>• Genetic Factors for Silicosis and Lung Cancer in Gold Miners</li> <li>• Investigating Air Quality Issues in Metal/Nonmetal Mines</li> <li>• Particle-Induced Lung Injury in Mixed Exposures</li> <li>• Portable Monitors for Airborne Metals at Mining Sites</li> <li>• Toxic Fumes From Blasting</li> </ul>

<p><b>9 Surveillance</b></p>	<ul style="list-style-type: none"> <li>• Airways Disease in Miners</li> <li>• Coal Workers' Health Surveillance Program</li> <li>• Cohort Mortality Study With Nested Case Control Study of Lung Cancer &amp; Diesel Exhaust Among Nonmetal Miners</li> <li>• Economic and Social Consequences of Injury at Sand and Gravel Operations</li> <li>• Health Effect Studies of Uranium Millers</li> <li>• Improving Surveillance Data Utilisation Through Geographical Information Systems</li> <li>• National Coal Workers' Autopsy Study</li> <li>• Neurotoxic Chemical Hazards in Coal Preparation Plants</li> <li>• Risk Factors for Atherosclerosis Among Coal Miners</li> </ul>
<p><b>10. Training and Education</b></p>	<ul style="list-style-type: none"> <li>• Education and Training for an Evolving Mining Workforce</li> <li>• Evaluating Toolbox Training for Construction and Mining</li> <li>• Evaluation of Interactive Mine Safety &amp; Health Training Methods</li> <li>• Interactive Training &amp; Educational Development</li> <li>• Intervention Through Education &amp; Training to Prevent Hearing Loss Among Miners</li> <li>• Mine Rescue and Response</li> <li>• Virtual Reality for Mine Safety Training</li> </ul>