

6. SUMMARY OF REVIEW FINDINGS AND RECOMMENDATIONS

Review Findings and Recommendations, under each of the Terms of Reference in which they appear in the text, are as follows:

5.1 Review the progress with the implementation of the recommendations of the Mine Safety Review and the Gretley Report

5.2 Consider whether any change in the implementation of these recommendations is required

The Review finds that the majority of recommendations in the 1997 Mine Safety Review and the Gretley Inquiry Report have been carried out. There are however a number of matters, subject of recommendations in the earlier reports, which remain to be dealt with and/or completed. The relevant matters are outlined below.

Safety incentives

The Review considers that the recommendations of the 1997 Mine Safety Review (see Appendix 7), regarding the practice of production bonus payments and safety performance incentive schemes, have not been adequately addressed to date and do warrant further independent investigation.

1. The Review recommends that an independent assessment of the practice of production bonus payments and safety based incentive schemes, be undertaken as a matter of priority, under the direction of the reconstituted Mine Safety Advisory Council (MSAC).

Risk-based legislation

The Review considers that enabling, risk-based legislation has the potential to offer some safety improvement, if combined with effective safety management systems, good communication/feedback, full involvement of all levels of the workforce and an effective regulator. The successful use of systems and plans to manage risk requires that activities be effectively monitored and audited for adherence to the intended systems and plans.

The Review considers the consensus of expert opinion favours a shift to risk-based legislation, but with the retention of prescriptive regulation in particular areas (eg where the safety factor of the risk is uncertain and a careful threshold is required, such as mine gas levels). However, the critical issue is the effective implementation of safety management systems. The shift requires demonstration that risk-based standards are effectively enforced.

Regulations

The fact that Regulations under the new legislation have not yet been made is of concern to all parties. The process has been one of trying to reach consensus as to the content of the Regulations, but after protracted negotiations between the parties on a number of topics (particularly hours of work and contractor management) the process has broken down.

The Review considers that final analysis and determination of both the hours of work and contractor issues can be achieved in the short term, given the stage that consideration and discussion between the parties has reached.

2. The Review recommends that the Regulations, proposed under the Coal Mine Health & Safety Act 2002, should be introduced without delay. In addition, the Review recommends that the introduction of Regulations for the Mine Health & Safety Act 2004 be expedited.

3. The Review recommends that such Regulations require mine owners and operators to involve employees in the development, implementation and monitoring of the systems and plans required by the Regulations.

4. The Review recommends that the new Regulations be subject to further audit and review 24 months after commencement.

Databases

The 1997 Mine Safety Review identified the need to establish a more comprehensive range of reporting and performance measures to more accurately reflect safety performance within the mining industry.

The Review considers the lack of a broader set of performance indicators for mine safety carries with it a number of problems:

- It makes it more difficult to identify where and why OH&S performance is improving or deteriorating.
- The growing use of contractors makes it more difficult to assess both aggregate and mine specific trends in injuries etc., especially where their use has been associated with “under-reporting” of incidents. This has, in turn, implications for OH&S management systems and managing return to work.

5. The Review recommends that the existing COMET data system used by the DPI Inspectorate, and its mine data/indices, should be benchmarked and improved to national and international best practice.

Exposures to health hazards

The Review considers the absence of comprehensive health/hazard exposure indicators is a serious issue requiring urgent attention.

The Review considers that data gathered at mine sites by DPI and Coal Services Pty Ltd should be compatible and able to be cross referenced. The Review considers that much more comprehensive health indices should be developed. Health hazards need to be identified and monitored.

DPI acknowledges that it does not regulate workforce health issues and essentially focuses on safety issues. The Review considers this represents a major unresolved issue. It is widely accepted that regulation of OH&S must include health as well as safety issues, usually under the control of one authority but at the least with central coordination.

6. The Review recommends the responsibility for the regulation of mine health and safety issues be brought together under DPI, rather than by separate agencies as at present.

7. The Review recommends that DPI be responsible for identifying potential mine related health hazards and for monitoring and reporting on such hazards to MSAC and other relevant agencies.

8. The Review recommends that DPI, in conjunction with other relevant agencies, develop a data base on mine related health indices as a matter of priority.

9. The Review recommends that MSAC progress, as a priority, improved mine related health regulation and monitoring.

5.3 Review the operation of the Mine Safety Advisory Council and the supporting consultative process

While the Mine Safety Advisory Council (MSAC) was established to provide a vehicle for progressing matters on a cooperative basis, all parties expressed concern about the current operation of the Council and its failure to resolve outstanding issues between the parties.

The Review endorses the following proposed actions to enhance MSAC:

1. A need to establish the best consultative structure of MSAC and other related committees, to develop a strategic plan for the NSW industry that outlines the vision and the pathway to achieve the vision over the next 5 years.
2. A need to seek agreement to a decision making process that focuses the committees on safety and health issues, minimising interferences from political or other outside issues.
3. A need to establish a method of defining required work programs through MSAC and other committees with resources to undertake those work programmes derived from the stakeholders.
4. Once MSAC is strengthened and revitalised and its strategic plan is defined, contentious issues such as hours of work, contractors and fatigue management should be further examined and progressed by MSAC.

10. The Review recommends that a new, strengthened Mine Safety Advisory Council (MSAC) should take forward future examination and progression of mine safety and health issues.

The Review considered two main potential models that could be considered for a revitalised MSAC. These are:

- 1) A body similar to the present MSAC but with 2 independent, expert members.
- 2) A body similar to that which operates in Queensland (which has provisions for voting on contentious issues prior to making recommendations to the Minister).

The Review favours the first model for the new MSAC.

The Review considers that the number of employer and employee representatives should be restricted to three each to more readily focus MSAC's deliberations.

The Review considers that the Council adopts a "strategic" position in regard to the mining industry and sets its own priority issues as circumstances change. It also must be seen as a body to which issues can be referred directly from the corporate mining industry or the unions, and be the main conduit for advice on mining health and safety issues to the Minister. The Review considers that MSAC needs to meet more frequently than at present, probably at least six times a year.

Funding and resources for MSAC is an issue which needs addressing.

11. The Review recommends that the structure and membership of the Mine Safety Advisory Council (MSAC) be strengthened by:

- *the appointment of an independent Chairperson, being a person of eminence in the Australian community;*
- *the inclusion of two independent members, expert in occupational health and safety; and*
- *the most senior level of representation from all parties participating in the formal proceedings of MSAC.*

12. The Review recommends that MSAC shall be the vehicle for referral of industry occupational health and safety matters to the Minister, and that the Chairperson of MSAC, after consultation with the Council, shall provide the Minister with MSAC's recommendations on such matters. Failing agreement by the members of the Council, the Chairperson shall provide his/her recommendations on matters to the Minister.

13. The Review recommends that MSAC be empowered with an independent capability to conduct research, commission consultants, process/evaluate submissions from Council members and develop policy recommendations.

14. The Review recommends that MSAC be provided with a secretariat, independent of DPI, comprising a small support team and an Executive Officer appointed by the Chairperson.

15. The Review recommends that MSAC be resourced appropriately to carry out its charter and work program. The Review favours the imposition of a small levy on the coal companies in order to provide financial independence for MSAC, together with the capacity for MSAC to engage independent advisory consultants as required. This levy might also be used to help provide funds necessary to enhance inspectorial resources and mine safety initiatives in New South Wales. At the same time Government would need to give consideration to an appropriate levy system on the metalliferous and extractives sectors of the industry.

5.4 Review and make recommendations in relation to

- (a) the safety performance of contractors;**
 - (b) the broad practice of hours of work and fatigue management;**
- in the New South Wales mining industry**

(a) Contractors

There appears to be a general recognition amongst stakeholders that the growing use of contractors in the mining industry has implications for OH&S that require attention.

The Review considers that the current contractor management arrangements in the new legislation, when implemented, should bring into force a sound regime to manage contractors' safety and health in the mining industry.

Monitoring implementation will be a key role for the DPI Inspectorate. The Review considers that ongoing risk-assessment and monitoring of contractor and subcontractor activities is essential to ensure that they adhere to management plans. In particular, communication and feedback loops for both contractor employees and those working alongside them need to be established so any problems can be identified and rectified.

The Review considers it is important that safety management requirements for contractors and company employees should be the same, to avoid two classes of workers developing on mine sites, with obvious attendant safety problems.

The Review endorses the need for all contractors coming onto a mine site to have participated in a relevant industry-recognised induction scheme.

The Review recognises concerns about the hours worked by contractors at mine sites and the need to more accurately record and monitor this data.

16. The Review recommends that provisions relating to contractor management in the Coal Mine Health & Safety Act 2002 and its proposed Regulations be implemented without delay.

17. The Review recommends that DPI:

- **closely monitor the implementation of contractor management provisions during the initial two years of operation; and**
- **conduct a major audit of the practice, performance and compliance under the new provisions after two years.**

18. The Review recommends that DPI closely monitor and audit contractor management systems and take enforcement action commensurate with the gravity of any breach of the required provisions.

19. The Review recommends that the new MSAC progress the development by industry of systems to more accurately record and monitor hours worked at mine sites by all workers. Such systems could include the use of a computer “swipe card”, “smart card” or similar technology.

(b) Hours of work and fatigue management

The issues of hours of work and fatigue management for mine workers (including contractors) are complex and related. The current legislation (*Coal Mines Regulation Act 1982* and *Mines Inspection Act 1901*) prescribes a maximum daily limit on the number of hours worked in the coal (18 hours) and metalliferous sectors (8 hours except where exemption is granted).

However, the Review found that the legislative prescriptions bear no relationship to current practice in the industry. The Review found such a wide variation between mine sites in the hours of work, shift patterns and approach to fatigue management as to suggest that the current legislation in relation to hours of work is largely irrelevant.

The Review considers there was insufficient evidence presented in submissions received and information obtained from site visits to draw firm conclusions about the pattern of working time arrangements.

Models for working hours

There is a wide divergence of opinions on the issue of hours of work and fatigue management. An approach that takes account of a range of opinions, is to introduce a tiered approach to fatigue management.

The DPI in its submission presents a "hybrid model" of working hours based on a number of recent Australian and overseas approaches to the hours of work issue.

The Review considers that both the hybrid model and the tiered approach are superior to the existing legislation covering hours of work in the NSW mining industry.

The Review notes the shortage of more objective data on the hours of work issue. Because of the conflicting views presented, it is important that a project be undertaken to collect and analyse sufficient data to enable sustainable and justifiable conclusions to be made.

20. The Review recommends that MSAC commission, as a matter of priority, an expert in the field to conduct an independent assessment of the hours of work and fatigue management in the mining industry, involving direct contact with a significant sample of the workforce at all levels.

21. The Review recommends that the results of this research (referred to in the previous recommendation) be directed to MSAC for consideration, leading to recommendations to the Minister, as a matter of the highest priority, in relation to hours of work and fatigue management.

22. The Review recommends that this research should not delay the introduction of the Regulations, proposed under the Coal Mine Health and Safety Act 2002.

5.5 Review the enforcement policy and the processes used by the Department to implement the policy

The Review finds that there has been a wide divergence of views presented to it about the current enforcement policy and process. This divergence illustrates a core of distrust between unions and the corporate mining industry on this issue. The Review considers this issue to be of fundamental importance to mine safety in NSW and warrants careful, detailed examination. Further, whilst the core of distrust exists, there is little likelihood of the stakeholders agreeing upon an acceptable enforcement policy and process.

Since the 1997 Mine Safety Review and the Gretley Inquiry Report, DPI has launched a number of prosecutions. There is wide disagreement amongst employers and the unions in their submissions as to the extent and effectiveness

of these, with the former seeing such prosecutions as unhelpful to developing a more proactive approach to OH&S, while the unions are critical of what they see as inadequate enforcement.

The Review considers that there appears to be a gap in the compliance sanctions of the DPI enforcement practice - between the issuing of notices and full-scale prosecutions.

The Review's necessarily limited examination of the enforcement policy and the attitude of stakeholders towards the policy has not enabled any firm conclusions to be drawn. However, it does indicate a need for further investigations of a range of matters relating to enforcement.

These matters include:

- Progress towards prosecution of systematic failures and “near misses”.
- Progress on making other sanctions available to inspectors - eg. issuing provisional infringement notices (PINs) and removing accreditation (“tickets”) from statutory officials for serious breaches.

23. The Review recommends the formation of a Board of Inquiry by the Minister under Section 94A of the Coal Mines Regulation Act 1982, to examine the issue of enforcement policy and the processes used to implement the policy.

24. The Review recommends that the Draft Terms of Reference for the Board of Inquiry include the following:

- ***the adequacy of the legislative framework for mine health and safety enforcement policies;***
- ***the role of the DPI Inspectorate, including the qualifications and experience of staff, resourcing and training;***
- ***the implementation of policies, including developing a strategic approach to enforcement with a view to long-term improvement in compliance;***
- ***the range and application of sanctions available to inspectors, and if inadequate, sanctions that might apply;***
- ***the role of employers, unions and DPI in enforcement of breaches under the relevant legislation;***
- ***the adequacy of monitoring and reporting systems;***
- ***prosecutions; and***
- ***benchmarking the policies and practices of comparable mine health and safety agencies.***

DPI capacity to regulate safety management systems

One issue apparent to the Review, and an issue for which the Review was not in a position to investigate in detail, is the apparent "disconnect" or "disjunction" between corporate management systems/plans and their translation to a working level at the "coal face". Some DPI inspectors claim that many companies implement systems and monitor systems' performance poorly, while unions claim that DPI inspectors do not perform their duties of ensuring compliance in this area rigorously enough. The viability and sound performance of mine safety management systems is of critical importance.

25. The Review recommends that inspectors must regularly check (monitor, audit, inspect, observe) the implementation of companies' own risk management plans and safety management systems in general. Such a process must involve consultations with the workforce.

26. The Review recommends that MSAC undertake, as a priority, examination of the apparent "disconnect" between some company management systems/plans and the translation of such systems/plans to a working level (at the "coal face"), and that MSAC in addressing this extremely important issue seek a collaborative industry response.

The Review considers, because of changing approaches to mine safety management, that the training and leadership development of regulatory officers in the Inspectorate requires enhancement. The ongoing training and development should include regular opportunities for communication exchanges with industry peers and other inspectors, including from WorkCover.

27. The Review recommends that the role of the DPI Inspectorate be supported and strengthened by:

- 1. Allocating resources to enhance or replace current data systems to help maximise efficiency of inspectors' duties.***
- 2. Ensuring the DPI Inspectorate is adequately staffed and adequately resourced and funded.***
- 3. Ensuring adequate training is provided in the regulation of risk-based management systems with an emphasis upon strict compliance with safety obligations.***
- 4. Ensuring that during worksite visits inspectors make contact with, and hold discussions with, workers and their representatives; monitor the presence and activities of representative mechanisms; and monitor consultation and input into risk assessment.***

5.6 Consider ways and make recommendations as to how the New South Wales mining industry safety culture could be improved

Restoring trust between the corporate mining industry and the unions

The Review has found a stark lack of trust between the major parties in the NSW mining industry.

The Review considers that rather than defining “others” as the problem, there is a need for employers, unions and DPI to look to find concrete ways of promoting a more co-operative approach to OH&S, based on trust and commitment, involving consultation with all levels of the workforce and management.

28. The Review recommends that the revitalised MSAC adopts cooperative planning and action as a guiding principle towards improving mine safety, and encourages all parties to demonstrate their bona fides in this regard.

Workforce consultation

The Review agrees that workforce participation in the development of safety management plans is vital.

29. The Review recommends that the NSW mining industry, through MSAC, enhance consultative arrangements between management and mineworkers in accord with the spirit of the National Mine Safety Framework Implementation Plan.

30. The Review recommends that MSAC commission, as a matter of priority, an expert in the field to conduct an independent assessment of mechanisms for worker consultation, feedback and problem reporting of OH&S problems at the mine site, including:

- 1. The array of mechanisms and their coverage.**
- 2. The role, attitude and involvement of workers, unions, management, worker representatives, contractors and subcontractors.**
- 3. The contribution and effectiveness of these measures in resolving OH&S problems.**
- 4. Effective ways of improving or enhancing existing arrangements.**

Small Mines

The Review has noted that DPI safety initiatives over the last decade for small mines and opal mines in New South Wales appear to have produced positive results.

31. The Review recommends that DPI should be encouraged to develop and implement more strategic initiatives for small mine safety.