

(No. 7)



Parliament of Tasmania

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

Members of the Committee

Hon Kerry Finch MLC
Hon Paul Harriss MLC

Hon Ruth Forrest MLC (Chair)
Hon Jim Wilkinson MLC

Secretary: Mrs Sue McLeod

Ensuring the health and safety of employees should be the key objective of any legislative framework under which mining and any other hazardous industry is regulated.

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Executive Summary

The mining industry is an important industry to Tasmania in terms of employment, both direct and indirect, generating significant revenue for government through the payment of mineral royalties and other taxes. Royalty revenue in the 2007-08 financial year was \$41.4 million.¹ By its nature, the mining industry is a hazardous industry that operates in an unnatural environment. Over the last decade there have been a number of deaths in the Tasmanian mining industry and it is inevitable that questions relating to safety will arise.

Any incident or accident on a mining site attracts intense and often disproportionate media attention compared to other industries. Evidence received from the Workplace Relations Ministers' Council in August 2008, however, clearly indicated that over the past five years, the mining industry in Tasmania, including all underground and open-cut mines and quarries, had fewer workers compensation claims for temporary incapacity involving one or more weeks. There were also fewer claims in the mining industry for fatality and permanent incapacity than in the manufacturing, transport and storage, agriculture, forestry and fishing, electricity, gas and water supply industries.

Workplace Standards Tasmania (WST) noted that mining and other primary industries including agriculture, fishing and hunting and forestry have all experienced a marked downtrend in injury rates since 2002, with the mining industry notably showing the greatest percentage reduction. Furthermore, miners are not included in WorkCover Tasmania's 'Black Spot Report' which identifies the 13 most hazardous occupations.²

Evidence received clearly demonstrates that Tasmanian mines have high standards for safety and all involved in the industry take the issue of safety extremely seriously. This includes the workers, the companies, management, unions, contractors, representative bodies, mining communities and regulators. It is evident that all levels of the industry are involved in the maintenance of a safe workplace, as is required under the current duty of care legislative framework.

Much discussion and commentary has surrounded the issue of the most appropriate legislative framework under which the industry should operate. As stated, currently the Tasmanian industry operates under the *Workplace Health and Safety Act 1995* (WHS). The *WHS Act* takes a general duty of care approach, that is non-prescriptive and performance based. A duty of care model requires the employment of appropriate safety systems that encompass risk management, hazard identification, adequate supervision,

¹ Department of Infrastructure, Energy and Resources, *2007-08 Annual Report*, p.6 accessed at http://www.dier.tas.gov.au/data/assets/pdf_file/0017/33731/DIERAnnualReport07-08.pdf

² WorkCover Tasmania, *Occupational Black Spots - Update 2006*, p. 1 accessed at http://www.workcover.tas.gov.au/resources/research_papers/black_spot_report

safety education, engagement with, and personal responsibility by, the entire workforce, such that a culture of safety pervades the entire site and attitude of the workforce.

There are only a small number of mining specific provisions in the *WHS Act* relating to the Chief Inspector of Mines. This fact has been noted in independent reviews and by coroners in recent investigations into mining fatalities and incidents in Tasmanian mines. Whilst there remains a small sector of the mining community who support a more prescriptive model, the majority of interested parties, together with the evidence, support the current risk based, duty of care model. Further improvement is required, however, through the development of mining specific regulations for defined hazards. There is a further need for the implementation of auditable safety management plans.

There was discussion and some confusion at times between the terms safety management system and safety case regime. A safety management system is a generic system that is not site specific. Both are at the risk based end of safety management, as opposed to a prescriptive approach. They have a series of elements that seek to create a safe workplace, commencing with hazard and risk identification, analysis of the risks and then the development of a plan to mitigate and monitor those risks. The workforce should be engaged throughout this process. The plan then needs to be incorporated into the day to day running of the work site including management and workforce training, to foster a culture of safety.

The importance of a nationally consistent legislative framework was highlighted and the work of the National Mine Safety Taskforce in developing a National Mine Safety Framework (NMSF) is widely supported. The recommendations of this report acknowledge the work of the National Mine Safety Taskforce and do not conflict with the approach being taken nationally.

Data collection that is consistent, reliable and published to a uniform national standard is needed. Comparison between States regarding injury rates and lost time is difficult due to the lack of consistent and uniform data. Analysis of this data lacks credibility and significance as a result of this issue.

Sentinel events or 'near misses' must be included in the mandatory data collection to ensure they are recorded and investigated appropriately. The aim is to avoid a recurrence that could well result in serious injury or fatality. Systems and processes for reporting and investigation of sentinel and actual adverse events in the industry must be consistent and shared across jurisdictions to enable learnings from these events to be broadly communicated.

The role and effectiveness of WST, as the Government appointed regulator, has been subject to significant criticism in recent years. Following the enactment of the *WHS Act 1995*, when the mines department was subsumed into WST, evidence suggests that there were significantly fewer inspectors employed, fewer mines inspections were carried out and the role changed to

more of a prosecutor than a regulator. The majority of their activity was reactive, dealing with the aftermath of major accidents.

The Tasmanian inspectorate within WST has been chronically understaffed and under resourced, despite repeated requests from the within the inspectorate including the Chief Inspector of Mines and the Director of WST. This under resourcing was compounded by the tragic fatalities at the Renison mine in 2001 and 2003 and more recently in 2006 at Beaconsfield, that effectively saw all the resources of WST consumed investigating these incidents, with no residual capacity to oversee the mining industry in Tasmania. At this time, the industry was experiencing significant growth, with new underground mines commencing operation. Much of this work proceeded without the oversight of WST.

During the time of this inquiry, the mining industry was booming and qualified, experienced and skilled mining engineers and managers were in high demand. These people were commanding very high salaries and inspectorates around the nation were having trouble attracting and retaining suitably qualified and skilled inspectors. The potential for sharing mining regulators between jurisdictions drew a mixed response. It was suggested that it would be more achievable and prudent to contract in those specialist services when needed.

The number of inspectors has recently been increased in WST. Two of these inspectors are qualified and experienced mining engineers. It is important to have a range of skills, including audit skills, within the inspectorate, as no one person will have expertise and qualifications in all areas of mining operations.

The matter of the regulators being willing and able to provide advice to mining operators also drew a mixed response. There is a broad view, however, that this should form a part of their role with the appropriate protection in place.

There was a strong opinion that in Tasmania there is not a regulatory role for the union in terms of mine site inspections or as a member of the inspectorate. In some other Australian States union members/representatives who are involved in the regulation of the industry are highly trained and skilled in regulatory roles. This is not the case in Tasmania.

Mine managers, industry representatives and others agreed that unions do have an important role to play in mine safety, particularly in promotion of workplace safety, engaging and empowering their members' and the general workforce, and liaising with management on members behalf, if and when necessary. It is considered by many to be healthy to have the union involved in a tripartite sense with the management, the union and the inspectorate working together to enhance and promote a safe workplace through involvement in safety meetings and the development of safety systems.

It was stated that predominantly unions are industrial organisations, with varying levels of membership at different sites. It is important that all sites and

workers develop a culture of safety and the unions have an important role to play in its development within the workplace.

In conclusion, whilst acknowledging that mining is a hazardous industry, safety of workers and work sites is paramount in the operations of mine sites around Tasmania. The industry's safety record over recent years has shown significant improvement but a zero tolerance for serious injury and fatality must always be the goal. The mining industry has shown a greater percentage improvement in the safety record than many other primary industries. The current general duties/duty of care legislation does and can continue to meet the needs of the industry, however, improvement can be made by introducing some prescription in defined highly hazardous areas through the implementation of mining specific regulations.

**Parliament House, Hobart
12 March 2009**

**Ruth Forrest MLC
Chair**

Conclusions

The Committee concludes that:

Chapter 2

1. Ensuring the health and safety of employees is the key objective of the legislative framework under which mining is regulated.
2. The Workplace Health and Safety (WHS) Act 1995, that encompasses a duty of care, performance based model is an appropriate regulatory model, for the mining industry in Tasmania.
3. Some prescription in defined highly hazardous situations and risks is appropriate and needed and therefore the WHS Act needs to be strengthened with mining specific regulations to achieve this outcome.
4. The development and application of safety management plans must be an integral part of the WHS regulations and implemented in all mines and quarries. They could also be applied to other hazardous workplaces.
5. A nationally consistent approach to regulation of the mining industry is required, particularly in light of the current highly mobile workforce.
6. Safety case regimes are not an appropriate model for dynamic mining operations within Tasmania. Further research in this area may be required.

Chapter 3

7. All involved in the mining industry have high standards for safety and a culture of safety is being promoted.
8. Over the last five years the industry has experienced lower rates of workers' compensation claims for temporary incapacity involving one or more weeks of compensation as well as all claims for fatality and permanent incapacity.
9. Any incident on a mine site attracts intense and often disproportionate media attention when compared with other primary industries.
10. Even time rosters (eg. 4 days on/4 days off) enable workers to work continuously, at another mining site or other employment, in their rostered time off. This can result in fatigue and potentially compromise workplace safety.

11. Reporting and investigation of sentinel events or 'near misses' is an important aspect in the prevention of incidents that may result in injury.
12. There is a lack of sensitivity and consistency in data collected nationally. This includes definitions of lost-time and/or lost-day injury, injury severity and impacting on workers including lost time from usual occupation, resulting in unreliable comparative data and an inability to undertake robust analysis of injury related statistics.

Chapter 4

13. Workplace Standards Tasmania (WST) has experienced chronic understaffing and under-resourcing since the implementation of the WHS Act.
14. The grossly inadequate resourcing of WST has occurred despite requests from within the Inspectorate, the Chief Inspector of Mines and the Director of WST to the State Government.
15. The situation was further exacerbated by the investigation of two deaths in 2001 and one in 2003 at the Renison mine which effectively tied up the resources of the inspectorate for a number of years.
16. The issue of under-resourcing has been addressed to some degree in recent times.
17. The role of mines inspectors has included the provision of advice in an informal manner; however there is a general reluctance to provide advice due to a perceived risk of conflict of interest or culpability.
18. A range of qualifications and skills are required to conduct all aspects of a mine site inspection and to carry out audits. It is impossible to have all the desired qualifications, experience and skills in one person. Where specific areas of expertise cannot or are not available within the WST Inspectorate, such expertise may need to be obtained on a contractual basis.
19. Unions have an important role in the promotion and awareness of safety in the mining industry, but do not have a role as a regulator of the industry or as mine site inspectors.
20. Resource sharing, including human resources, across jurisdictions should be considered and investigated, particularly in areas of known skills and expertise shortage.

Chapter 5

21. The road infrastructure on the West Coast where ore and minerals are transported by road, is inadequate in terms of safety, for all road users as trucks are unable to negotiate sections of the roadways without crossing double white lines.

Recommendations

The Committee recommends that:

Chapter 2

1. The existing duty of care framework, the *Workplace Health and Safety Act (WHS) 1995*, continues to apply to all workplaces.
2. The key objective of the *WHS Act*, to ensure the health and safety of employees, should be stated explicitly in a preamble to the legislation but should not form part of the duty. The duty of care must be expressed in terms of reasonable practicability.
3. Industry specific regulations be enacted for mining and other hazardous workplaces.
4. The *Workplace Health and Safety Act 1995* be amended to provide adequate guidance on risk management processes and hazard controls across all workplaces.
5. The *Workplace Health and Safety Act 1995* be amended to mandate the development and implementation of auditable safety management plans.
6. The work and recommendations of the National Mine Safety Taskforce be considered in any legislative or regulatory change and a nationally consistent approach be adopted.
7. Further research be conducted into the use of safety case regimes.

Chapter 3

8. Continued vigilance within the mining industry regarding fatigue and external work levels is required. Mine Operators should consider testing for fatigue as a part of the ‘fitness for work’ assessment.
9. Legislation mandate the reporting and investigation of near misses.
10. Consistency of data collection according to a uniform national standard be implemented, including definitions relating to injuries.

Chapter 4

11. Workplace Standards Tasmania at all times be provided with appropriate resources to properly oversee the mining industry.
12. Inspectors provide appropriate advice to all mine operators with regard to the application of safety systems.
13. Expertise and specific skills, not available within WST and required to ensure a comprehensive regulatory and inspection role, be acquired on a contractual basis.
14. Resource sharing, including human resources, related to accessing qualified and experienced mines inspectors and regulators between state jurisdictions, be considered and investigated.
15. Unions do not have a role in the inspectorate as regulators and conducting mine site inspections.
16. Unions maintain their important role in mine safety, particularly in the promotion of workplace safety, engaging and empowering their members and the general workforce, and liaising with management on members' behalf.

Chapter 5

17. Government assess road infrastructure where ore and minerals are transported by road and commit to upgrades to address issues of all road user safety.
18. Government assess options for expanding rail transport on the West Coast.

1.1 APPOINTMENT AND TERMS OF REFERENCE

On Tuesday, 15 April 2008 the Legislative Council resolved that a Select Committee be appointed with power to send for persons and papers, with leave to sit during any adjournment of the Council, and with leave to adjourn from place to place, to inquire into and report upon —

- (1) Regulation and workplace standards within the mining and related industries in Tasmania.
- (2) Safety performance of the Tasmanian mining industry compared to other primary industries in the State and the mining industry nationally.
- (3) The role of Workplace Standards Tasmania in the regulation of the mining and associated industries.
- (4) The efficacy and limitations of the co-regulatory model within the mining industry in Tasmania; and
- (5) Any other matters incidental thereto.

The Committee comprised four Members of the Legislative Council – Mr Kerry Finch, Ms Ruth Forrest (Chair), Mr Paul Harriss and Mr Jim Wilkinson.

1.2 THE REASON FOR ESTABLISHING THE COMMITTEE

In moving for the establishment of the Committee, the Hon Ruth Forrest MLC stated that just the suggestion of the committee "...seemed to spark some action by the Government to be more proactive and engaging with the industry on the matters that the industry has been trying to address for many years".³

Ms Forrest stressed that the Committee would be inquiring "... into standards and systems ... the regulatory framework and the role of workplace standards. It is not about culpability or inquiring into tragic incidents that have occurred in the past".⁴

"I believe a number of areas and issues can be effectively considered and that potentially a number of questions can be answered, including the following: has there been a demonstrable reduction in workplace accidents since implementation of the current regulatory model; is the current model the best and most

³ Forrest, Hon Ruth, MLC, Hansard, Tuesday, 15 April 2008, p. 2.

⁴ Forrest, *Ibid.*, p. 3.

effective model; should other models be considered; what models, if any, are working in other jurisdictions; are the current systems in the mining industry appropriate; how are these systems and models accepted in the industry by the employers and employees and other interested parties, such as the unions; how has the regulator performed and responded to this model; is legislative reform needed to meet the future regulatory framework and is the current model delivering the outcomes that Tasmania needs and expects at this time?”⁵

It was for these reasons that the Committee was established and to “provide a broad and important role in considering the most appropriate regulatory framework for [the mining] industry”.⁶

1.3 PROCEEDINGS

The Committee called for evidence in advertisements placed in the three daily newspapers. In addition invitations were sent to key stakeholder groups and individuals.

Twenty one written submissions were received and verbal evidence given by twenty five witnesses in Tasmania and twelve people interstate.

The Committee met on fourteen occasions. The Minutes of such meetings are set out in Attachment 4.

The witnesses are listed in Attachment 1. Documents received into evidence are listed in Attachment 3.

⁵ Forrest, *Ibid.*, p. 12

⁶ Forrest, *Ibid.*, p. 3

Regulation, Workplace Standards, Efficacy and Limitations Chapter 2

TERM OF REFERENCE (1)

Regulation and workplace standards within the mining and related industries in Tasmania.

TERM OF REFERENCE (4)

The efficacy and limitations of the co-regulatory model within the mining industry in Tasmania.

Currently, within Australia there are two predominant legislative/regulatory models relevant to mine safety. These models are based on firstly, prescriptive legislation and secondly the duty of care, risk management based legislative model. These two legislative and regulatory frameworks, including combinations of aspects of both models, are currently in place across Australia. The most appropriate approach is currently being considered by the National Mine Safety Framework.

In considering the current regulation and workplace standards within the mining industry in Tasmania, it should be noted that approximately 12 years ago regulation of the mining industry transitioned from a prescriptive model of regulation to a duty of care model. This transition met with mixed reactions from those within the industry, unions, regulators and other interested parties.

In working under a duty of care model and determining what a safe workplace actually is, Terry Long, Chief Executive Officer of the Tasmanian Minerals Council stated that under a duty of care model:

“... you will provide safe workplaces and you will take every measure at your disposal to ensure that the workplace is safe.”⁷

And a safe workplace:

“... means that you will do everything in your power to prevent the potential for injury or fatalities in a workplace.”⁸

When discussing the past model of prescriptive legislation with a mining engineer approximately two years ago, Mr Long was informed by the engineer that he:

⁷ Long, Mr Terry, CEO, Tasmanian Minerals Council, Transcript of Evidence, Hobart, 14 August 2008, p. 29

⁸ *Ibid.*, p. 29

“... sort of liked prescription; I thought it was great ... because you had a rule book. It was black and white and you knew what you had to do. If you had done it then you had complied”⁹

When asked by Mr Long about his views of the duty of care model, the engineer informed him that:

“You are always uneasy about things because you are not sure what you’ve got to do. You do know your Australian standard, implement controls, do your risk assessments and hazard ID’s, but you’ve always got an uneasy feeling about compliance because it’s not black and white.”¹⁰

Mr Long’s response to this comment as stated in his verbal evidence was that:

“In my opinion the idea of safety in the workplace is not for you to feel easy about. It’s to prevent injuries to people who are working here, so if it means you’re a bit uneasy about it, well so be it. Your uneasiness needs to be balanced against the fact that you are constantly assessing better ways to provide a safe workplace, which is what safety is all about.”¹¹

The Chair of the National Mine Safety Framework Steering Group, the Hon. Clive Brown, highlighted the need for a nationwide approach to regulation of the mining industry. He stated:

“Firstly, we see the transference of mine workers between States quite significantly. Secondly, we see the operation of national companies and the fact that national companies need to have a variety of occupational health and safety systems currently and in order to drive efficiency. Thirdly, without better national consistency we tend to have learnings in one State, sometimes from very tragic and unfortunate circumstances that don’t get conveyed to other States all that well. There is no disciplined way of looking at the learnings from one State to see that it gets transmitted and considered across the States.”¹²

According to the National Mine Safety Framework’s ‘Strategy 1 – a nationally consistent legislative framework’, three of the eight overarching principles of such a framework include:

- a. “legislative and regulatory framework that is clear and enforceable and requires all involved with mining operations to discharge their responsibilities for health and safety;

⁹ Long, *Op.Cit.*, p. 29

¹⁰ *Ibid.*, p. 29

¹¹ *Ibid.*, p. 29

¹² Brown, Hon Clive, National Mine Safety Framework Steering Group, Transcript of Evidence, Hobart, 29 July 2008, p. 1

- b. clear and specific legislative obligations on those involved in the mining industry including owners, employers, employees, contractors and includes suppliers of goods and services, manufacturers, designers and importers, with the level of obligation being commensurate with the degree of responsibility or control held;
- c. effective risk-based safety and health management systems, developed and implemented, that apply to all types of risk of personal harm, addressing all reasonably foreseeable hazards, not just major accident events.”¹³

The National Mine Safety Framework’s (NMSF) written submission outlined the steering group’s aims in developing a national legislative framework incorporating:

“...a mix of principles, performance and process based standards and prescription. The aim of this mix is to strike a balance between a proactive systematic approach to safety management, the identification of outcomes to be achieved and, where necessary, the specification of prescriptive measures. The key platform of the Legislative Framework is the adoption of a ‘safety management system.’”¹⁴

The NMSF’s submission further stated:

“The implementation of the Legislative Framework will require significant changes in all States if the goal of consistency between jurisdictions is to be achieved.”¹⁵

Mr Brown explained what he saw as the rationale for the review stating:

“I think it is in the national interest that there be a high level of consistency for the safety of mine workers, let alone the efficiency of the industry, but I put that as a supplementary matter. For the safety of workers I think there is a need for a high level of consistency because I think currently we do not learn across Australia from the tragic events that occur in different States and those learnings are not applied nationally.”¹⁶

The Australasian Institute of Mining and Metallurgy’s written submission outlined their concerns about the current situation:

“The pitfalls of national inconsistency are well recognised by the minerals sector. At present, companies that work across jurisdictions are required to comply with multiple regimes driven by a variety of compliance philosophies. The various jurisdictions have different approaches to key issues such as the scope of the duty of care, levels

¹³ National Mine Safety Framework, *Legislative Framework—Overarching Principles*, pp. 1-2.

¹⁴ Gibson, Alice, Head of National Mine Safety Framework Secretariat, Written Submission, June 2008, p. 2

¹⁵ *Ibid.*, p. 2

¹⁶ Brown, *Op. Cit.*, p.15

of accountability for different duty holders, the role of the inspectorate and the approaches to prosecution. The divergent approach not only makes compliance difficult, but it also compromises the integrity of the concept of best practice health and safety management.”¹⁷

Based on the above opinions, it is apparent that variations across jurisdictional borders are creating challenges for the industry. The question of whether mining specific legislation and regulations, as opposed to the broader workplace safety and health legislative framework with either mining specific regulations or broader regulations and defined codes of practice, was discussed at length with varying views. However, a unified, national approach was universally supported.

In one recent coronial report into a mine related death, the Coroner observed:

“The Tasmanian legislation, unlike mainland states, does not have “mines specific” OH&S legislation. This means that the same standards apply to all workplaces, regardless of the danger or complexities of the tasks carried out. This would be an acceptable legislative infrastructure, provided the legislation could be drafted to be applicable to all industries, but mining, in my view, is not an industry which readily falls under a general umbrella of workplace health and safety.”¹⁸

It was suggested to the Committee that the Government intended to push ahead with mining reform before the outcome of the National Framework had been released. If this was to occur, Mr John Webber, Principal, Balance Consulting Australia, related that:

“My reading of the National Mine Safety Framework is that it will be broad enough for the States to fit their regulations in as part of it.”¹⁹

He continued:

“I think there is still a lot of discussion going on about what you put in a regulation versus what you put in other instruments, be they codes of practice or whatever. I think there is still a reasonable view that there has to be some flexibility to apply some particular guidelines in certain circumstances because it does not matter which State or Territory you go to the industry varies depending upon how remote you might be or what the infrastructure is around and all that sort of approach. I do not think it is going to cause a problem other than if the State were to adopt

¹⁷ AUSIMM – *National Mine Safety Review Submission*, July 08, p. 3

¹⁸ CIRCUMSTANCES SURROUNDING THE DEATH and COMMENTS & RECOMMENDATIONS, IN THE CORONERS COURT HELD AT BURNIE IN THE MATTER of the CORONERS ACT 1995 -and- IN THE MATTER OF INQUESTS TOUCHING THE DEATHS OF JARROD KEITH JONES, MATTHEW DAVID LISTER and SIDNEY THOMAS PEARCE, Cor: D J Jones, Wednesday, 21 May 2008
http://www.magistratescourt.tas.gov.au/data/assets/pdf_file/0015/100923/Renison_Decision_21-5-08.pdf at [362]

¹⁹ Webber, Mr John, Principal, Balance Consulting Australia, Transcript of Evidence, 14 August 2008, Hobart, p. 3

the position that we are not going to do anything until the National Mine Safety Framework is handed down and everything is done and dusted.”²⁰

It appears that this is indeed what the National Mine Safety Framework proposes, with Mr Brown commenting:

“...when we drive for national consistency we accept that there are different legislative instruments used across the States. We are not saying that the ideal should be that you would have a separate occupational health and safety act for mining or that you would have this or that. We are saying, irrespective of the legislative instrument you use, there is a whole range of principles and processes you can use in your legislation, which can be consistent - and we would argue for consistency.”²¹

Ms Monika Sarder, Manager, Policy and Advocacy, Australian Institute of Mining and Metallurgy stated:

“Our key point is that we see it as really critical that anything that does come out of the review or any action that is taken with regard to mine safety does not undermine the process of the National Mine Safety Framework.”²²

In relation to the nationalisation of regulation, Mr Chris White, Executive Officer – Occupational Safety and Health of the Chamber of Minerals and Energy of Western Australia, commented that:

“What really matters goes to a further level with regulation. If a mine manager is faced with a given set of circumstances on a mine in Western Australia or in Tasmania, the basic requirements or the parameters should be the same. We are a long way from that. Even if we get all these bits of legislation lined up ...practically there is a long, long way to go. I think the harmonisation process has decades to go yet, and that is with good will all around the table. There is a lot of good will.”²³

With regard to the current transferability of other states’ legislation, Mr Webber concluded:

“I think we would be kidding ourselves if we said we could simply go and apply what they do in New South Wales or Western Australia. The industry in Tasmania is different anyway, just by virtue of its size. We do not have BHP Billiton and Rio operating in this State in competition.

²⁰ Webber, *Op. Cit.*, p. 3

²¹ Brown, *Op. Cit.*, p. 14

²² Sarder, Ms Monika, Manager, Policy and Advocacy, AusIMM, Transcript of Meeting, Melbourne, 26 September 2008 p. 19

²³ White, Mr Chris, Chamber of Minerals and Energy of Western Australia, Transcript of Meeting, Perth, 22 September 2008, p. 19

Maybe that might occur but under the current circumstances we have a small industry that is pretty well connected. I think there is a pretty genuine approach within the operators to work as a group, not to stand alone and keep other people out. I think that is an opportunity within the State that needs to be leveraged. It is no different from any of the other industries in the State, whether it be tourism or farming or whatever. To me it is how you bring all that lot together. I think the framework that is in place and how it is captured in legislation is obviously the trick, and that needs to support and encourage that.”²⁴

To whom does the legislation need to cater?

It was the view of Mr Robert Flanagan of the Australian Workers’ Union that:

“The legislative framework that regulates occupational health and safety sets a minimum standard and it is the minimum compliance which needs to be effective at preventing injury and fatality within the industry. That is the minimal compliance. There are a number of companies that currently implement safety regimes in excess of the minimum requirements of the legislation and they will continue to do that. So the focus of the legislation should be on those that will only be concerned with minimum compliance because the others will by necessity act above that.”²⁵

Mr Terry Long commented along similar lines that:

“Regulation always tends to be for the least performer. There are mines in Tasmania whereby you could have no legislation, no regulation and they would still be providing an extremely safe work place.”²⁶

Mr Stuart Gula, General Manager, OZ Minerals, made comments related to the safety standards that large companies operate under, regardless of the location of the operation. He stated:

“... Botswana, their legislation came out of Canada, China had their own rules ... and Eastern Europe had their own rules again... as a foreign company we had to take the legislation and our approach to safety from where we came from, not adopt where we were going to... The legislation that we took into those countries was always of a higher standard than what was there originally... Companies such as OZ Minerals have a set of standards. Our investors demand safe operations... the way the Government runs it will impact less on our

²⁴ Webber, *Op. Cit.*, p. 14

²⁵ Flanagan, Mr Robert, Australian Workers’ Union, Transcript of Evidence, Hobart, 14 August 2008, p. 15

²⁶ Long, *Op. Cit.*, p. 42

business than on some of the smaller operators and how they do their business.”²⁷

Another important consideration under this topic is the types of operations to which the legislation applies. The Department cited the “Glossary of Geology” to provide the following guidance as to what constitutes both a mine and a quarry:

“Mine: n.(a) An underground excavation for the extraction of mineral deposits, in contrast to surficial excavations such as quarries. The area or property of a mineral deposit that is being excavated; a mining claim. V. to excavate for and extract mineral deposits or building stone.”²⁸

Whereas a quarry was defined as:

“Open workings, usually for the extraction of stone.”²⁹

As of 30 October 2008, there were 625 leases that had either been granted or were being processed in Tasmania.³⁰ Mr Fred Sears, the Chief Mine Inspector, helped clarify the definitions of what these leases were held over by noting that a quarry:

“... is a small open-cut operation that is non-metallic...for concrete aggregates, road base, materials like that and then I would deem the mines to be extracting minerals, if you like - silver, lead, zinc, gold, anything like that.”³¹

Strengths of the current model

The current risk based, duty of care model has broad support, although many witnesses suggested improvement is needed. The Australasian Institute of Mining and Metallurgy (The AusIMM) submitted that:

“... in order for a duty of care system to effectively address risks in complex environments such as mining operations, authoritative mine specific guidance on appropriate risk management processes and hazard controls is a necessity.

²⁷ Gula, Mr Stuart, General Manager, OZ Minerals, Transcript of Evidence, Queenstown, 11 August 2008, pp. 64-65

²⁸ Bates, Robert L. and Julia A. Jackson (eds.), *Glossary of Geology*, 2nd ed. Virginia: American Geological Institute, 1980

²⁹ Llewellyn, Mr David MP, Minister for Energy and Resources, Letter received 30 October 2008 at Attachment 2

³⁰ *Ibid.*, at Attachment 1

³¹ Sears, Mr Fred, Chief Mining Engineer, Workplace Standards Tasmania, Transcript of Evidence, Hobart, 13 October 2008, p. 36

The current Tasmanian legislation includes appropriate general duty requirements, but lacks adequate guidance on risk management processes and hazard controls.”³²

The AusIMM’s submission also suggested that:

“The AusIMM supports a duty of care expressed in terms of risk or hazard management ... the duty of care of employers should be to provide a workplace that is free from risk to health and safety as far as is practicable, as is embodied in the Victorian and Tasmanian legislation.... Ensuring the health and safety of employees, meanwhile, is the key objective of the Act. This should be stated explicitly at the start of the legislation but should not form part of the duty.... the duty must be expressed in terms of reasonable practicability.”³³

Mr Michael Catchpole, CEO, Australian Institute of Mining and Metallurgy, was of the view that:

“The Tasmanian regulation, as it exists, has a very good provision of duty of care. We see that as a strong point, one that can be built and supported better with some guidance around mine-specific risk assessment and risk management.”³⁴

Mr Matthew Daly, then General Manager, Henty Gold Mines (Barrick), agreed that the duty of care legislative approach has a number of benefits. He suggested:

“There are certain aspects...of certification of certain people ensuring their competency. But in general it allows that flexibility to move with the times as situations change.”³⁵

Mr Daly also stated that the duty of care approach:

“... does give some flexibility to still have a very good safety management system performance. The prescriptive approach just gives you a fixed base line and the duty of care enhances that approach... from a duty of care perspective if you feel that your work environment is deficient ... you will take it that much higher. Under a duty of care, a registered responsible person most likely has a bit more authority within a company system than they do under a prescriptive minimum standard or standard to adhere to.”³⁶

³² AusIMM Tasmanian Legislative Council Select Committee, Written Submission, Undated, p. 3

³³ *Ibid.*, pp. 2-3

³⁴ Catchpole, Mr Michael, CEO, AusIMM, Transcript of Meeting, Melbourne, 26 September 2008, p. 21

³⁵ Daly, Mr Matthew, General Manager, Henty Gold Mines (Barrick), Transcript of Evidence, Queenstown, 11 August 2008, p. 55

³⁶ *Ibid.*, p. 52

Mr Catchpole summarised his overall position by saying:

“Certainly we see that the duty of care within the existing act is a very good one. There can be some strengthening of that. There can be some specific mining industry guidance on risk management and risk management process. That would certainly strengthen the current act in Tasmania. As we have in other jurisdictions, we urge the proper resourcing of an inspectorate, a broad workplace safety inspectorate, with specific mining industry knowledge. Whether that is drawn from a national pool or drawn from some expertise held within the broader inspectorate depends very much on the resources that are available, recognising the pressures on the professionals who work within this sector, some of whom are our members.”³⁷

A suggestion from Mr Catchpole was that there might be a need for:

“... mine-specific regulation on those areas that are very obviously related to mining. They can be built in underneath the existing legislation and that would work well. It would give very strong guidance in terms of mine health and safety in those areas that are very specific to mining.”³⁸

This has also been suggested by other organisations. Ms Alice Gibson of the National Mine Safety Framework Steering Group explained that:

“...the steering group are saying that you do not necessarily need to have a mining-specific act. It is also saying, of course, that where you do have a mining-specific act then you obviously would need mine-specific regulations, or mine-specific supplementary acts, whichever the case may be.”³⁹

Mr Clive Thompson, a mining engineer, did not feel that the wide-ranging legislation currently enacted was appropriate for the industry:

“Amusement parks get a mention all the way through, but mining very rarely. It is smattered through there, but not very often. It's written for everything; it's trying to keep everybody happy. It's written for Cadbury's chocolate factory and so on, not for our legislation. Everybody there tries to do the right thing. Safety does come first, but sometimes you need assistance from the legislative powers to help you do your job as you know it should be done. That's where I'd like to get to.”⁴⁰

In commenting on the current regulatory framework, Mr Roy Ormerod, General Manager, Workplace Standards Tasmania, stated:

³⁷ Catchpole, *Op. Cit.*, p. 29

³⁸ *Ibid.*, pp. 21-2

³⁹ Gibson, Ms Alice, National Mine Safety Network Steering Group, Transcript of Evidence, Hobart, 29 July 2008, p. 21

⁴⁰ Thompson, *Op. Cit.*, pp. 73-74

“...the legislation that we operate under is the general OH&S legislation, the Workplace Health and Safety Act. It has some provisions that relate to mine safety but not much. Most of it is overarching principles that are based upon the principle of care by the workplaces, having a duty of care, more so than the regulator. So the whole idea of this legislation is based on the Robens model and to be less specific because I believe the old style of OH&S of ticking boxes was not really all that intuitive. It did not really help people look at where there may be health hazards...The whole idea around the Robens model, [was] to get people to think more widely about the issue of health and safety, not just to tick a box.

But it is acknowledged that mining is unique and contains certain hazards. The industry are supported by their minerals council and also unions. Our inspectorate believes there would be greater value in having a more specific regulatory model underpinning the Workplace Health and Safety Act which points to mine safety, so that is what we are working on at the moment.”⁴¹

Describing the differences between prescriptive and duty of care legislation approaches, Mr Gula, stated that:

“...issues relating to having prescriptive legislation are that the legislation has difficulty in keeping up with the level of activity and developments in the industry. So the challenge then becomes that the inspectorate becomes the keeper of the rules, but then it also becomes a help desk as far as interpreting the rules. Then what happens is ‘We have this and it is not covered by the rules, so how do you want us to handle it?’”⁴²

Mr Gula further stated:

“I think the duty of care approach is a valid one given that the mining industry has gone through a period of significant change and innovation. What we will continue to see in the industry is continuing innovation and change because, by nature, our industry has to respond to changes in commodity prices and changes in pressures from our environment and from our stakeholders.”⁴³

Is legislative change required?

When considering the current legislative framework, The AusIMM’s submission supported the move to a duty of care framework.

⁴¹ Ormerod, Mr Roy, General Manager, Workplace Standards Tasmania, Transcript of Evidence, Hobart, 29 July 2008, p. 1

⁴² Gula, *Op. Cit.*, p. 64

⁴³ *Ibid.*, p. 64

“In the past a highly prescriptive approach was taken to managing risk associated with mining activities. The AusIMM submits that such an approach was ineffective. Mining operations represent a technologically heterogeneous, dynamic environment subject to daily and hourly decision making and changes. An approach to safety management that is proactive and flexible, and encourages ongoing engagement by all persons involved in mining activities is more appropriate.

The AusIMM supports a process based approach to regulation, whereby mining companies are required to put in place processes to identify, assess and control risk... we are in favour of legislation that places duties on all persons at mining operations, with particular duties placed on individuals with reference to their ability to control risk.”⁴⁴

However, clear differences of opinion exist about whether change to the current legislation is required, particularly with regard to the need for greater prescription. Mr Webber stated:

“I am clearly of the view there needs to be more prescription. Where it fits in terms of the legislation, it could be in regulation, it could be in codes of practice, but I think there needs to be more prescription because the way it has gone has allowed variability to occur. When you have that level of variability, it’s very difficult to manage audit, review, monitor and understand exactly what is going on. So the first thing I would say is that that has to be tightened, not back to where it was previously because I think that clearly stifled and restricted people in thinking of ways forward. I think the nature of the regulator needs to be reviewed: does the existing model work? Clearly there are gaps in the existing model. I do not believe that the solution is just to add more to it so let’s employ more regulators. There needs to be some recommendation around how that regulatory framework should apply.”⁴⁵

In relation to the type of legislation that was the most appropriate for mining, Mr Thompson noted that:

“As a mine manager I would prefer prescriptive legislation; as a mine owner I would prefer what you have.”⁴⁶

He did however also note:

“Whatever legislation you choose [it] would only really be an instrument in changing the culture a little bit. I do not think it is a huge influencing factor on the way the mines are operating. In my experience of a marginal operation – and I have to explain that a marginal operation is just surviving – for me to have had prescriptive legislation would have been a big advantage as a mine manager. As a marginal operation, there just is not any money. You can go and point to the relevant

⁴⁴ AusIMM, *Op. Cit.*, p. 2

⁴⁵ Webber, *Op. Cit.*, p. 13

⁴⁶ Thompson, *Op. Cit.*, p. 75

clause to get the money to do what you want to do. But you cannot do that with duty-of-care legislation. It is not as clear-cut.”⁴⁷

Mr Dave Sandy, then Managing Director, Australian Bulk Minerals and President of the Minerals Council of Tasmania, compared prescriptive and duty of care legislation, stating:

“The problem with prescription is that it is very onerous. At its most basic level it stipulates, if you put a handrail in place it has to be so high. If somebody stands on that rail to reach something and slips and kills themselves, the mine could say, under prescriptive legislation, the hand rail was at the right height, the individual chose to stand on it, so it is their fault. The duty of care says you have a duty to maintain a safe workplace and in doing so, not only does the rail have to be a safe height ... but you also need to have a safety conscious workforce. To achieve safety consciousness in a work force means that you have to do a whole lot more than physical, structural things; you have to have an interactive process with your employee on matters of safety and instil in them that before they do anything they assess the risk.”⁴⁸

Mr Long highlighted that the problem with prescriptive legislation is:

“...always the danger of compliance. It doesn't necessarily mean you've provided a safe workplace; it means you've complied with the regulations. For example, if the regulations said that the safety barrier has to be one metre high, you build a one-metre high safety rail, but that's not the risk. The risk is that someone will climb up on it and try to change an overhead fan blade and fall off it. So with risk-based systems you would still build the rail but then you'll do a risk analysis and ask what are the risks of someone being injured in this installation. The risk is that someone will use it as a ladder, so on a risk-based system you would then have a mesh fence erected between that and the ceiling, or have protocols that say it is unsafe for anyone to put any part of their body beyond this barrier and it is not to be used as a ladder - because that's the risk.”⁴⁹

He feared that the prescribed level would become the maximum as, “people become complacent because they've complied with the regulations. That's where the risk system is far more effective.”⁵⁰

Mr Long believed mining specific regulations were appropriate:

“As long as they don't become too prescriptive in which case people spend all day reading the regulation on how high the walk rail has to be and not doing stuff that matters.”⁵¹

⁴⁷ Thompson, *Op. Cit.*, p. 76

⁴⁸ Sandy, Mr Dave, Managing Director, Australian Bulk Minerals and State President of the Minerals Council, Transcript of Evidence, Burnie, 13 August 2008, p. 12

⁴⁹ Long, *Op. Cit.*, p. 37

⁵⁰ *Ibid.*, pp. 37-8

Mr Daly also feared that “being quite prescriptive can be impractical because it does not keep up with the times necessarily.”⁵²

Mr Scot Clyde, General Manager, Copper Mines of Tasmania agreed that the move away from prescriptive legislation was positive.

Dr Andrew Lewin, HSEC Lead Auditor, BHP Billiton stated that he believed:

“The problem in Australia is that there is too much prescription and no real clarity why it is there. I have audited against the Tasmanian legislation and regulations and found some regulations where I could not understand why they were there, what purpose they served and what risk they were looking to mitigate. You can spend a lot of time complying with the law instead of managing the risks and doing the things that are important.”⁵³

Mr Sandy, in his written submission stated:

“... the current Act and regulations are adequate and whilst there will always be room for improvement, having more regulations will not by itself improve safety on mines.”⁵⁴

Mr Sandy referred the Committee to the ‘Loss Causation Model’ developed in the late 1960’s by Frank E. Bird Jr.:

“Bird discovered that accidents are not caused by inadequate regulation alone but rather a whole series of events and inadequacies that eventually result in damage or unintended harm, and that the coincident of these events and inadequacies more often than not resulted in a ‘near miss’.... Bird contended that if we reported and investigated near misses and developed measures to prevent a reoccurrence of the near miss then the chances of a serious or major injury would be significantly reduced or prevented.”⁵⁵

Mr Sandy contended that “regulation of mines should therefore be aimed at ensuring competent management and adequate safety management systems are in place.”⁵⁶

Mr Long suggested that for a safety management system to be effective it must involve and include the entire workforce. He stated:

⁵¹ Lang, *Op. Cit.*, p. 35

⁵² Daly, *Op. Cit.*, p. 53

⁵³ Lewin, Dr Andrew, HSEC Lead Auditor, BHP Billiton, Transcript of Evidence, Hobart, 29 July 2008, p. 2

⁵⁴ Sandy, Mr Dave, Managing Director, Australian Bulk Minerals, Written Submission, 30 May 2008, p. 2

⁵⁵ *Ibid.*, p. 2

⁵⁶ *Ibid.*, p. 2

“... the thing about a safety management system is that, unless it has buy-in from the ground up, it is not a safety management system. One of its core requirements is consultation and communication with the workforce about the safety management system and then about its implementation. Otherwise it is simply paper.”⁵⁷

Mr Long added:

“We [the Tasmanian Mineral Council] favour a system for the mining industry where safety management systems are mandatory.”⁵⁸

Mr Flanagan summarised the overall situation by saying that:

“The bottom line is that the way the system is working at the moment is inadequate and that is why we are proposing that we have mine-specific arrangements. We do not have them at the moment. The experts have said that is not good enough, the people who have looked at what has occurred. What we are proposing is that you have regulation so that you can enforce that up-front.”⁵⁹

He suggested:

“...that in Western Australia they have a general duty of care which is the overarching obligation and then sitting under that are the mine-specific regulations. So it would seem to me that that would be an appropriate way going forward. And that is also consistent with the findings which keep coming out from the independent experts. What they are saying is that mining is special so it does need specific regulation.”⁶⁰

When asked if the prescriptive element required should be in the legislation, Mr Thompson replied:

“The Act is just a map of where to get to. The regulations are the rule book. That is really what I meant. The answer is not black and white, it is a grey area and at the moment you have duty of care legislation. There is discussion about whether it should be prescriptive or not, but it is that plus the inspectorate. Does the inspector know what he is looking at? Is he an embarrassment to the department or does he know what he is looking at and does he know what he is talking about? Can he offer any constructive advice or is he just there to prosecute someone if something goes wrong? They cannot even do that very well because they are so inexperienced.”⁶¹

⁵⁷ Long, *Op. Cit.*, p. 31

⁵⁸ *Ibid.*, p. 32

⁵⁹ Flanagan, *Op. Cit.*, p. 26

⁶⁰ *Ibid.*, p. 19

⁶¹ Thompson, *Op. Cit.*, p. 76-77

Ms Andrea Shaw of Shaw Idea Pty Ltd described as “nonsense” the notion that some operators would not go above a prescribed level of legislation. She said:

“It is certainly a claim that is made but I would simply say give us some examples of where that has happened. It is not to do with the legislation; it is for other reasons when people play those sorts of games. That is for making political points; that is not because of the legislation but because of other things they are trying to achieve in other aspects. The mining industry is a very good example of that. People go above and beyond the requirements of the legislation all over the country and in every jurisdiction. If you should take Queensland which, as I said, has some very prescriptive stuff, and New South Wales, they do that bit for reasons other than the legislation - because of a community licence to operate, because you have a mine manager who is particularly enthusiastic and committed and able to wangle the organisational resources that perhaps his colleagues have not been able to get. People do it for all sorts of reasons and in all sorts of ways. No-one has ever produced an example for me where it is because of the legislation preventing them doing better.”⁶²

Ms Shaw summarised her views by saying:

“It is important to have good legislation - don't get me wrong - and I think making sure the way the legislation is done is really important, but it is only part of the problem and it is only part of the solution. In Australia we also have to get much better at coming up with consistent regulatory approaches - and the regulators hate it! It is really hard to come up with approaches that are consistent when you have different backgrounds, different traditions... Part of the reason I am raising that is that I think it would be worthwhile for Tasmania, the Northern Territory and Victoria and maybe even South Australia to have some discussions around how a smaller regulator functions to ensure that in regulating the smaller operators we can do it in a way that is consistent and fair.”⁶³

Mr Clyde noted:

“I think the move away from the prescriptive is positive but it is not without its challenges. The duty-of-care legislation, with the onus on the employer and responsible officer and accountable persons within that structure, is very much geared to a risk-based approach and I think personally that is the way to go. It is a positive. One of the issues with the prescriptive legislation is you cannot necessarily cover every eventuality, as the risk-based assessment does a number of things. It allows you to look at site-specific conditions and requirements and hazards to develop your risk register and risk control and mitigation

⁶² Shaw, Ms Andrea, Shaw Idea Pty Ltd, Transcript of Meeting, Melbourne, 26 September 2008, p.11-12

⁶³ *Ibid.*, p. 16

plans for your site but which may not apply on other sites. They may be very specific to your site.”⁶⁴

Mr Ormerod’s view was that:

“...there is a call for some more specific regulations, which we are working on now. I think you have to have a co-regulatory model. If it becomes too prescriptive then there is a risk of standards dropping. We have to remember that if you look at injuries and accidents in workplaces, they are dropping. The Robens model has been operating since effectively 1998 and injury statistics have continued to drop. So that says that the legislation itself is not that deficient but we can always improve.”⁶⁵

Dr Lewin supported prescription in some areas of legislation:

“If I was looking for prescription in legislation it would be around reporting near misses and good guidance on what they should be. There are two parts to this. They are asking what are the right things to focus on in terms of near misses and what events are those precursors or near-miss events that have a high consequence and low probability. How do we get those events reported because there is a culture in an organisation of reporting and that can be low or high... There is currently an environment where it is very litigious and there is always this reluctance to provide too much information publicly on things that have gone wrong.”⁶⁶

Ms Nicole Rooke, Director, Chamber of Minerals and Energy of Western Australia, suggested that the process of deciding where to include prescription in the framework is difficult. She argued that “rather than contain that prescription in the regulations you have guidance material that is available and can be updated as information changes and new knowledge comes along.”⁶⁷

She continued that:

“We still argue though that there are some mining-specific provisions that should be contained in mining legislation that sits under the bigger umbrella.”⁶⁸

As indicated, the underlying philosophical aspects of the current legislation are based on the Robens model. Mr Bob Gozzi stated that:

⁶⁴ Clyde, *Op. Cit.*, p. 3

⁶⁵ Ormerod, 29 July 2008, *Op. Cit.*, p. 19

⁶⁶ Lewin, *Op. Cit.*, p. 10

⁶⁷ Rooke, Ms Nicole, Director, Chamber of Minerals and Energy of Western Australia, Transcript of Meeting, Perth, 22 September 2008, p. 15

⁶⁸ *Ibid.*, p. 16

“... there is this debate about the Robens philosophy. Some people call it deregulation but I refer to it as self-regulation and I think there is a huge difference between deregulating something and self-regulating. I think the Robens model of self-regulation is underpinned by trying to provide a safe workplace as best as you possibly can and to minimise within the bounds of reasonably practicable hazards and risk. There is this debate about that philosophy and prescription. In my capacity as chair of the TCH&S committee, which has started again, I have been talking to some of my colleagues about that and I think there is a debate to be had about that.

My view is that I think the current model, the Robens system of self-regulation and focusing on making workplaces as safe as you possibly can, eliminating risk as far as you can, identifying hazards and getting them fixed is not a bad model. I think it is a better model than trying to be prescriptive. The concern I have about being prescriptive is where does the initiative in terms of prescription cut in or cut out? I think if you self-regulate then you are looking at workplaces as individual workplaces as opposed to relying on a whole lot of prescription to govern what should happen. My view I think is that, as I say, because it is a strong point of discussion I think workplaces are different and workplaces should be managed according to underpinning philosophies which address the issues in those particular workplaces.

One of the real issues for me is that I have always believed in a participative model. You cannot have too much consultation. I think you get ownership through consultation and you raise the level of awareness because of the consultation. One of the underpinning philosophies of the Robens philosophy is that it really is a requirement for employers and employees to engage to try to make the workplace as safe as possible.”⁶⁹

Mr Gozzi continued:

“One thing that I would say though in terms of the regulatory approach is that I very strongly support codes of practice.”⁷⁰

Mr Peter Newport was sceptical about regulation under this model:

“Self-regulation is not going to work ever, I am afraid. There are too many conflicts of interest involved there and it just cannot. If it comes to a question of safety, do it safely and do it slower and we will not meet our production targets, you know what will happen. It will be done the quick way.”⁷¹

He also believed that:

⁶⁹ Gozzi, Mr Bob, Transcript of Evidence, 14 August 2008, p. 62

⁷⁰ *Ibid.*, p. 63

⁷¹ Newport, Mr Peter, Transcript of Evidence, Hobart, 13 October 2008, p. 7

“You can't invent a safe work policy for everything. It becomes too cumbersome. You can't idiot-proof everything, you have to be able to think your way around things.”⁷²

Mr Chris Hinds, State Executive Officer, CFMEU, whose main area of interest was with regard to coal mining in Tasmania, expressed strong views that the duty of care legislation did not, and would not, provide the desired safety outcomes. His written submission stated:

“An ingrained belief amongst sections of the mining industry and Industry is that the general duty of care is not achievable given the “inherently dangerous” character of the mining industry.”⁷³

When asked whether he believed that a duty-of-care legislative framework with mining specific regulations would provide a “strong” enough framework, he answered:

“No. What the experts and our national vice president who is on the national steering committee of the National Mine Safety Framework tell me that it won't work... you have to have some prescription for that to work.”⁷⁴

Mr Hinds' written submission also stated that “... there is an urgent need for prescriptive Legislation when pillar extracting coal.”⁷⁵

Mr Long's view was that:

“...efficacy and limitations to the co-regulatory model depends on perspective, I guess. My experience is that, with the exception of Renison and Murchison United, people take their responsibilities very seriously.”⁷⁶

He believed that on the evidence that was known by the regulator, Renison should have been closed⁷⁷ and that:

“Duty of care sheets responsibility to the operator to provide a safe workplace. If the operator will not provide a safe workplace then the clear duty of the regulator is to close it. There is some scope for improvement notices. For example, if in a mine the regulator decides that things are substandard in a given area then they can issue an improvement notice to fix that within six weeks and we will be back to

⁷² Newport, *Op. Cit.*, p. 7

⁷³ Hinds, Mr Chris, State Executive Officer, CFMEU, Written Submission, 16 May 2008, p. 15

⁷⁴ Hinds, Mr Chris, State Executive Officer, CFMEU, Transcript of Evidence, Launceston, 13 August 2008, p. 22

⁷⁵ Hinds, *Op. Cit.*, p. 18

⁷⁶ Long, *Op. Cit.*, p. 41

⁷⁷ *Ibid.*, p. 42

check it out. If that does not happen they should just shut the front door.”⁷⁸

According to Dr Gerry McGushin the standard duty was:

“... to cater for the lowest common denominator and the only way to do that is to have an organisation which is not self-regulatory. In other words, how do you rule out the lowest common denominator if you do not have the power for an independent body to come in and close it down? It wasn't just the guys at Renison that got killed; there were a few other guys killed too on the west coast over a 20-year period. We are still looking into the Beaconsfield situation, aren't we? That still has to come to a conclusion. There's a good argument there that those guys are working with inadequate ground support.”⁷⁹

The Australian Institute of Mining and Metallurgy delegation supported:

“... a co-regulatory model to the extent that that means that you mandate a risk management process - not necessarily specifying the process, but you do have this process of risk identification that everyone who is involved in the mining process has an obligation to take part in and that you then put in place controls around that. That process has worked really well for the industry, especially given the rate of change in the industry at present.”⁸⁰

Some who presented to the Committee made suggestions based on the processes in place in other states. Mr Flanagan remarked:

“One aspect of the West Australian model which is attractive to the union is the concept of regulations specific to the mines which sits under the general duty of care obligation. An aspect of the Queensland model which is attractive is the concept of roving safety representatives funded by the industry. So there are aspects of different parts of the legislation which, if we draw on their experience, can be of benefit to what Tasmania's framework should look at going forward.”⁸¹

Mr Sears also sought guidance from systems in place outside of the jurisdiction:

“I think the legislation could have been improved a bit more with a little bit more prescription or Australian standards. Since the Renison inquest we have got up a code of practice with some Australian standards and that is just about to be advertised by the minister as being complete. There could have been some improvement there.

⁷⁸ Long, *Op. Cit.*, p. 42

⁷⁹ Dr Gerry McGushin, Transcript of Evidence, Hobart, 14 August 2008, p. 46

⁸⁰ Sarder, *Op. Cit.*, p. 19

⁸¹ Flanagan, *Op. Cit.*, p. 20

There are things such as ventilation requirements which are really spelt out in Western Australia, if you like, which I thought probably could have remained in place and we are considering that now. There are mining-specific areas I think that could have been included. The West Australian system, apart from areas like ventilation, says that you should do this and that but it stops short of saying to what degree. You know, 'You will paint your walls white or grey'. It will say that you should paint them but leave the rest up to the site. I think there is that combination too."⁸²

As did Mr Daly:

"I think there should be the guidelines, or some industry-specific sort of codes there, and there'd be certain aspects that can be prescriptive. But I think we have a lot to learn from some of the other States. One of fears would be of the Tasmanian Government reinventing the wheel when we have good working legislation in some other States, in particular Western Australia and Queensland."⁸³

What is the ideal system of regulation?

In a paper written in 2007 by Professor Neil Gunningham, that investigates the different approaches to mining regulation and summarises the arguments related to the strengths and weaknesses of prescriptive, performance, principles and process based standards, it is noted that:

"Mine safety legislation has made substantial advances in recent years.... The highly detailed and prescriptive approach of former decades has given way to not only the adoption of general duties, "goal setting" and risk management approaches, but also to requirements to adopt hazard management plans integrated with holistic health and safety management systems ...

In broad terms, policy makers have contemplated four options in terms of the types of standards they invoke to protect OHS: (i) highly detailed and specific *prescriptive* standards; (ii) outcome based *performance* standards; (iii) *principles-based* standards, which set goals and establish general duties, and (iv) *process-based* standards, such as those which require risk assessment and control, or introduce OHS management systems and plans...

As regards mine safety regulation, however, that debate is still alive and well. Proponents of goal setting and process-based standards (large corporations, their representative associations and some regulators) are fiercely opposed by defenders of old style prescription (trade unions, some inspectors and some contractors' associations)

⁸² Sears, *Op. Cit.*, p. 44

⁸³ Daly, *Op. Cit.*, p. 61

and there is little common ground as to what best practice mine safety standards should involve.”⁸⁴

Whilst the Committee did receive some divergent views between the large companies and some union representatives and former mine inspectors and workers, the degree of separation of views with regard to the most appropriate regulatory model would appear to be toward a greater acceptance of the move away from highly prescriptive legislation to a broader risk-based, duty of care framework, with mining specific regulations. Such regulations would be required to cover the highly hazardous situations, where established and measurable standards could be applied or where there is no, or very few, viable alternatives to applying a tried and tested method, particularly in situations where consequences of an incident could have severe or widespread ramifications.

With regard to the level of regulation required, Ms Shaw noted:

“I have a personal preference for giving people the opportunity to develop approaches to control that suit their particular circumstances.”⁸⁵

The AUSIMM submission noted that:

“... there are some detailed existing standards and rules that have served industry well, and should be maintained, particularly where empirical evidence favours a particular threshold or standard of exposure in order to avert or minimise a risk (e.g., mine gas levels). It is critical that these learnings are retained. However The AUSIMM recommends that prescriptive learnings of a highly detailed nature be embodied in an industry code, rather than legislation or regulation.

The advantage of shifting prescriptive details on how to manage hazards to an industry code is that employers have some flexibility in how to address issues, and regulators are encouraged to focus on the effective functioning of safety management systems overall. Conversely, embedding detailed instructions in regulations can result in an excessive focus on highly detailed breaches of regulations rather than the overall effectiveness of a safety management system.”⁸⁶

There has been some discussion and suggestion that moving towards the implementation of a safety case regime in the mining industry, such as the framework utilised by the offshore petroleum facilities and pipelines, may be an appropriate step forward. In discussions with Mr John Clegg, CEO of the National Offshore Petroleum Safety Authority (NOPSA), the safety case regime, and its application to offshore petroleum facilities was discussed.

⁸⁴ Gunningham, Neil, “Designing Standards: Towards Best Practice” 6 March 2007 p. 1 (Later adapted into “Designing Standards: Towards Best Practice” as Chapter 3 (62; 97) in *Mine Safety: Law, Regulation Policy*, The Federation Press, Sydney, 2008).

⁸⁵ Shaw, *Op. Cit.*, p. 10

⁸⁶ AUSIMM National Review Submission, *Op. Cit.*, p. 7

Whilst there are significant variations between a fixed offshore oil rig and a dynamic mine site, the underlying safety issues are similar.

In notes provided to the committee following discussions, Mr Clegg noted that:

“The duty of care, safety-case-based regime, was appropriate but needed strengthening in certain areas, particularly in establishing responsibilities of various parties, and it should be administered by a single national regulator.”⁸⁷

In further comments related to the reduction of the regulatory burden on industry through consistent safety regulation across jurisdictions, Mr Clegg suggested:

“A duty of care legislative framework delivered through a safety case regime administered by a well resourced, independent, competent national regulator operating to quality processes... has the greatest opportunity for meeting this goal.”⁸⁸

Ms Gibson described and compared safety case and safety management systems:

“At one end of the spectrum you have prescription – your regulations, detail and everything you need to do. At the other end of the scale you have a safety case. Your safety case basically says to the operator of a facility, ‘You and your workforce know the risks better than we do, so you tell us – the regulator – how you are going to manage your facility safely. Then they might draw on codes of practice and recognised industry standards. In a safety case, that is usually a licence to operate.

A safety management system is close to that end of the spectrum. It is usually not a licence to operate but it is the same concept in that you need to identify and document how it is that you are going to manage your mine, or your facility, safely. ... the same concept but a difference of degree. ... You need to identify and then document how you are going to manage your facility safely. ... identify what your major hazards are and what your risks are and then how you are going to mitigate them.”⁸⁹

On the topic of how to apply safety regimes, Mr Flanagan stated:

“Certainly Professor Quinlan has said there is a need to have a case for a safety regime. He has said that you might have a cut-off point where it kicks in so that smaller operators do not have the onerous obligation of setting up a safety case regime. So that is another mechanism which might form part of it and really, as I understand it, the

⁸⁷ Clegg, Mr John, CEO National Offshore Petroleum Safety Authority, Notes of discussion, Perth WA, 22 September 2008, p. 1

⁸⁸ *Ibid* ., p. 3

⁸⁹ Gibson, *Op. Cit.*, p. 6

effect of the safety case is that you have identified the hazards and the measures that you are going to have to address any risks. It is audited on a periodic basis effectively for that site it becomes enforceable regulations.”⁹⁰

Ms Rooke attempted to clarify the confusion with the different safety regimes, explaining that:

“Safety cases are the next step up from a safety management system. Some of the fundamental differences are that you develop a safety management system. The safety case process is about demonstrating the adequacy of that safety management system and ensuring the implementation of it on an ongoing basis, so within a safety case model it is absolutely essential that companies have some kind of safety management system. The safety case models are the next layer up and that is where it is introduced in terms of needing to demonstrate the adequacy and ongoing implementation of your systems.”⁹¹

Dr Lewin argued that:

“For me a modern model of legislation that is commonly used in the UK in NOPSA and broadly in places such as Norway in the petroleum industry is one where this objective base is to try to minimise prescription... The best way to regulate that, in my view from my experience, is to have more objective base regulations about managing your risks. The more prescription you have the more often you have to change the legislation and the less flexible it is. It allows an industry to be dynamic. Mines themselves are dynamic; they change every day and I think that flexibility can be reflected in an objective base legislation.”⁹²

The written submission of The AusIMM to the National Mine Safety Review attempted to clarify the situation stating:

“The Hicks Report recommended the introduction of a safety case regulation for the mining industry along the lines of NOPSA. Although described as a ‘step-change’ in regulation, in principle, safety case regulation is closely aligned to process based regulation. That is, safety case regulation requires a safety management system to be put in place which incorporates risk management principles. The key difference is that there is a licensing regime for the safety case. Operators are required to make a case to the Inspectorate indicating how they intend to comply with these requirements, and the Inspectorate must ultimately accept or reject the safety case. Aspects of the safety case are open to professional challenge by the Inspectorate. Once the safety case is accepted, it is enforceable. The role of the Inspector is to audit against the operator’s own safety case

⁹⁰ Flanagan, *Op. Cit.*, p. 19

⁹¹ Rooke, *Op. Cit.*, p. 2

⁹² Lewin, *Op. Cit.*, p. 1

criteria rather than against process standards described by regulation, or, put another way, to risk manage the risk management of the mine.”⁹³

This report cautioned that:

“Studies on the effectiveness of the safety case model, both in Australia and overseas, have shown mixed results. The conventional wisdom is that such an approach has been beneficial in improving overall hazard identification and control. However it is unclear whether it improves overall safety culture and communications.⁹⁴ A safety case model has not yet been implemented for the mining industry anywhere in the world.”⁹⁵

The AusIMM were concerned that:

“Implementation of a safety case involves highly sophisticated management systems and continual active workforce involvement. There is some concern by The AusIMM that the dynamic nature of mining, the technical challenges it faces, the high rate of workforce turnover and reliance on contractors will all pose major challenges to the successful implementation of a safety case regime. In particular, such an approach would pose challenges for small to medium sized companies which in many cases have to engage a consultant to put together their safety case, reducing ownership of the risk management process by the workforce.”⁹⁶

It seems that safety case regimes were not widely supported within the mining industry as they did not allow for the truly dynamic situations encountered by a mine site as opposed to a rig. The changes made it difficult for safety cases to be updated through the inspectorate and to ensure that they adequately cover the current operating situation.

However, Mr Sandy believed a safety management system and a safety case regime were quite similar. He stated:

“The principles are that they both have a series of elements in there that if you applied those elements to a workplace and you work on those elements, you go towards creating a safe workplace. It starts off with a hazard identification, you identify where the hazards are, you then work out what sort of things you have to do to mitigate those risks and then it goes all the way through to training people, induction, orientation and all those management things.

⁹³ AusIMM Submission to the Mines Safety and Inspection Act 1994 Review, January 2008, p. 9

⁹⁴ Gunningham, N, ‘Mine Safety Law Regulation Policy,’ The Federation Press (2007) p. 42

⁹⁵ AusIMM Submission to the Mines Safety and Inspection Act 1994 Review, *Op. Cit.*, p. 9

⁹⁶ *Ibid.*, p. 9

The beauty of safety-management systems is that it is a generic system, it is not site specific, but once you do your hazard identification you then identify for each site what its unique hazards are.”⁹⁷

On a positive note it does seem that some larger companies are prepared to help smaller operations update their safety systems. Mr John Lemberg, General Manager – Operations, Rio Tinto Alcan, explained that:

“A great example of that is the work that I think Rio Tinto Alcan has done in terms of the contractor population in northern Tasmania where we took a position a number of years ago to say to people who wanted to do business with us that we required certain safety systems to be in place and for them to demonstrate a commitment to coming along the journey with us. That has been very successful in terms of setting some expectations and lifting the performance of those organisations with respect to safety, to the extent that the principals are now coming back and saying thanks for doing that. Not only has it delivered better safety outcomes for them but it has also delivered a better business outcome in many aspects.”⁹⁸

This can help resolve some issues, however, Ms Shaw suggested:

“... coming up with a national system is what we need. I am a bit of an agnostic with safety-case regimes because I have seen them work really well and I have seen them work really badly. I think any regulatory system that encourages the regulatee to think that all they need to do is come up with a nice big thick manual and their problems are solved is a worrisome regime....So it is not an industry that strikes me as able to cope with ambiguity, which is a necessary part of the safety-case regime. The safety-case regime will not say, 'Do this and you will be safe'. The safety-case regime says to the regulated 'Tell us, prove to us, satisfy us that you know what your risks are and that you have got them under control'.

The effort and change in approach that would be involved in implementing such a regime is worth thinking about but it could only happen on a national basis. I would be amazed if any jurisdiction were able to bring it in individually. With the greatest respect I think it would be extremely difficult in Tasmania because it requires a level of sophistication both on the part of the industry but more importantly on the part of the regulator that is very ruthless and intensive and you might want to have a look at some of the money that went into establishing NOPSA and that went into establishing the regime here in Victoria. It was a lot of money, it was a very expensive exercise and it has taken years to bed down.”⁹⁹

⁹⁷ Sandy, *Op. Cit.*, pp.18-19

⁹⁸ Lemberg, Mr John, General Manager – Operations, Rio Tinto Alcan, Transcript of Evidence, Launceston, 13 August 2008, pp. 42-43

⁹⁹ Shaw, *Op. Cit.*, p. 7

She declared that:

“My preference absolutely is to have a general OH&S act that applies in every workplace in a jurisdiction and then if there are specific needs for specific parts of that economy you would have a specific regulation, which is what they have in Victoria.”¹⁰⁰

Whilst The AusIMM submission to the National Taskforce noted:

“If a model OHS Act were to go forward and apply to the minerals sector, we submit that the Act should set a framework for high level principles around health and safety regulation, whereas the bulk of industry specific measures would be contained in state regulations or legislation. Codes of practice would set out more detailed learnings on how to address specific hazards or implement processes for which tried and true methods were established.”¹⁰¹

Mr Sandy, believed that a safety management system, rather than a safety case system is needed in Tasmania and stated that:

“... if we could get that [the safety management system] built into the legislation it would be a very good thing for the industry in Tasmania. The beauty about those systems is that you can vary them according to the hazards and according to the capacity of the company to cope with them.”¹⁰²

In commenting upon safety management systems and their operation, Mr Long noted that:

“... the thing about a safety management system is that, unless it has buy-in from the ground up, it is not a safety management system. One of its core requirements is consultation and communication with the workforce about the safety management system and then about its implementation. Otherwise it is simply paper.”¹⁰³

Mr Long believed that there was a role for Workplace Standards even if safety management plans were mandated. He said that he would:

“... prefer to see the overarching legislation staying much the same. Where Workplace Standards or regulators saw the need or the benefit for a safety management system then they could just regulate it under the subordinate legislation. We favour a system for the mining industry where safety management systems are mandatory.”¹⁰⁴

Mr Clyde noted further:

¹⁰⁰ Shaw, *Op. Cit.*, p. 8

¹⁰¹ AUSIMM National Review Submission, *Op. Cit.*, p. 5

¹⁰² Sandy, *Op. cit.*, p. 20

¹⁰³ Long, *Op. Cit.*, p. 31

¹⁰⁴ *Ibid.*, p. 32

“I think there is some misunderstanding about safety management systems. It is not something you develop, design and install and then that's it. It is like a work in progress. It is about ongoing improvement and looking at opportunities. Also with mining the nature of the business is such that things are continually changing.”¹⁰⁵

Mr White commented that “a very high proportion of the operations in Western Australia would have safety management systems. It is just the way business is done.”¹⁰⁶

Professor Hopkins' suggestion was to look to Victoria which he described as:

“... quite an effective model in that the act has an overall duty of care to ensure the safety and health of people so far as is reasonably practicable. That brings in the element of risk and then the risk management is stipulated in the hazard-specific legislation. That for me from time to time is still too prescriptive. I guess if I was writing them the only regulations I would have, other than ones about reporting incidents, would be that you have to understand and document your facility throughout its life cycle, that you must systematically identify, manage and control your risks and that you need to have management systems that assist you in managing those risks effectively. Those would be the three regulations that I would write.”¹⁰⁷

With regard to the best system that Tasmania could have, Mr Roger Billingham, Chief Inspector of Mines, Queensland, proposed:

“I would certainly be looking at risk-based legislation, non-prescriptive except where prescription is essential for very hazardous areas. So it would be risk based. I would also be looking at not necessarily specific legislation for mining but certainly specific regulations, maybe an act underneath your general legislation. But you also need to have clear obligations on everybody who works at the mine, from the mine owners and operators to all the staff and right through all the workers, clear obligations of what they are supposed to do under the legislation to make sure the hazards and risks are managed properly.”¹⁰⁸

Mr Flanagan noted:

“The ideal outcome from the union's perspective is a regulation that says if there is a rock fall it will be reported – not a regulation that says if you are using a bolt then it must be a certain length, width, diameter or whatever. We are not proposing that you have the regulations that were in place prior to 1998. We are proposing that we have regulations

¹⁰⁵ Clyde, *Op. Cit.*, p. 7

¹⁰⁶ White, *Op. Cit.*, p. 2

¹⁰⁷ Lewin, *Op. Cit.*, p. 4

¹⁰⁸ Billingham, Mr Roger, Chief Inspector of Mines, Queensland, Transcript of Meeting, Brisbane, 24 September 2008, p. 28

which identify obligations and duties. Where there is a specific standard, that standard should apply.”¹⁰⁹

He also stated:

“The union’s view is that it should be prescriptive regulation, not about the size of the bolt, but specific regulation which clearly identified the obligation which can be enforced before an incident occurs, rather than having it written in a code of practice which is a tool that is used reacting after an event has occurred. The whole name of the game is to stop the fatalities and injuries occurring in the first place. That is why you have regulation.”¹¹⁰

Mr Webber suggested that:

“For me, the critical thing about this process is that you must do two elements. You must have a comprehensive and well-understood approach to doing risk assessment and you must also capture the knowledge.”¹¹¹

In Mr Webber’s view, the system requires checks:

“In terms of the control there needs to be a management review process which says we are constantly reviewing policies and objectives, the planning processes and how things are being implemented. We need to ask what are we monitoring and how are we evaluating what we are monitoring; what auditing and reviewing is being done internally and externally and so on; and what element of continuous improvement have we built into the process? So to me those are elements of management review that must be in place to support the control of the risks that have been identified.”¹¹²

The AusIMM’s submission to the *Mines Safety and Inspection Act 1994* Review in Western Australia in January 2008, stated:

“Whilst the industry norm is process based management of safety, the Act [*Mines Safety and Inspection Act 1995 (WA)*] itself does not include the explicit reference to safety management systems or risk management. The duty for employers is to “so far as is practicable, provide and maintain at a mine a working environment in which the employer’s employees are not exposed to hazards.” This duty is underpinned by a requirement to provide adequate training and information to employees, engage in consultation, to eliminate employee exposure to hazards, or where this cannot be done to mitigate the risk.”¹¹³

¹⁰⁹ Flanagan, *Op. Cit.*, p. 22

¹¹⁰ *Ibid.*, p. 27

¹¹¹ Webber, *Op. Cit.*, p. 8

¹¹² *Ibid.*, p. 9

¹¹³ AusIMM Submission to the Mines Safety and Inspection Act 1994 Review, *Op. Cit.*, p. 2

TERM OF REFERENCE (2)
Safety performance of the Tasmanian mining industry compared to other primary industries in the State and the mining industry nationally.

By its nature, mining is a hazardous industry. Over the last decade Tasmania has experienced a number of deaths related to mining incidents. It is expected that questions relating to safety will be raised with regard to these tragedies.

Generally, the public perception of mining concurs that it is a hazardous industry. Just how it compares to other industries is however surprising and indicates that the mining industry in fact fares better than several others. The graph on the following page outlines the performance of various industries over the past five years.¹¹⁴

Mr Sandy, noted in his written submission:

“According to Work Cover’s Annual Report mining has a better safety performance than construction, forestry, farming and fishing. In the ‘black spot report’ which aims to identify the 13 most hazardous occupations miners are not listed. And yet mining and particularly underground mining is perceived as a dangerous industry.”¹¹⁵

WST noted in their submission that mining and other primary industries including agriculture, fishing and hunting and forestry have all experienced a marked downtrend in the incidence of the rate of injury since 2002. However it should be noted that the mining industry has shown the greatest percentage reduction.¹¹⁶

Requests were made to allow other mine specific reports to be considered by the Committee.¹¹⁷ The Committee has had the opportunity to review Mr Melick’s independent investigation into the Beaconsfield rockfall. In summarising the report’s findings, Mr Flanagan noted that:

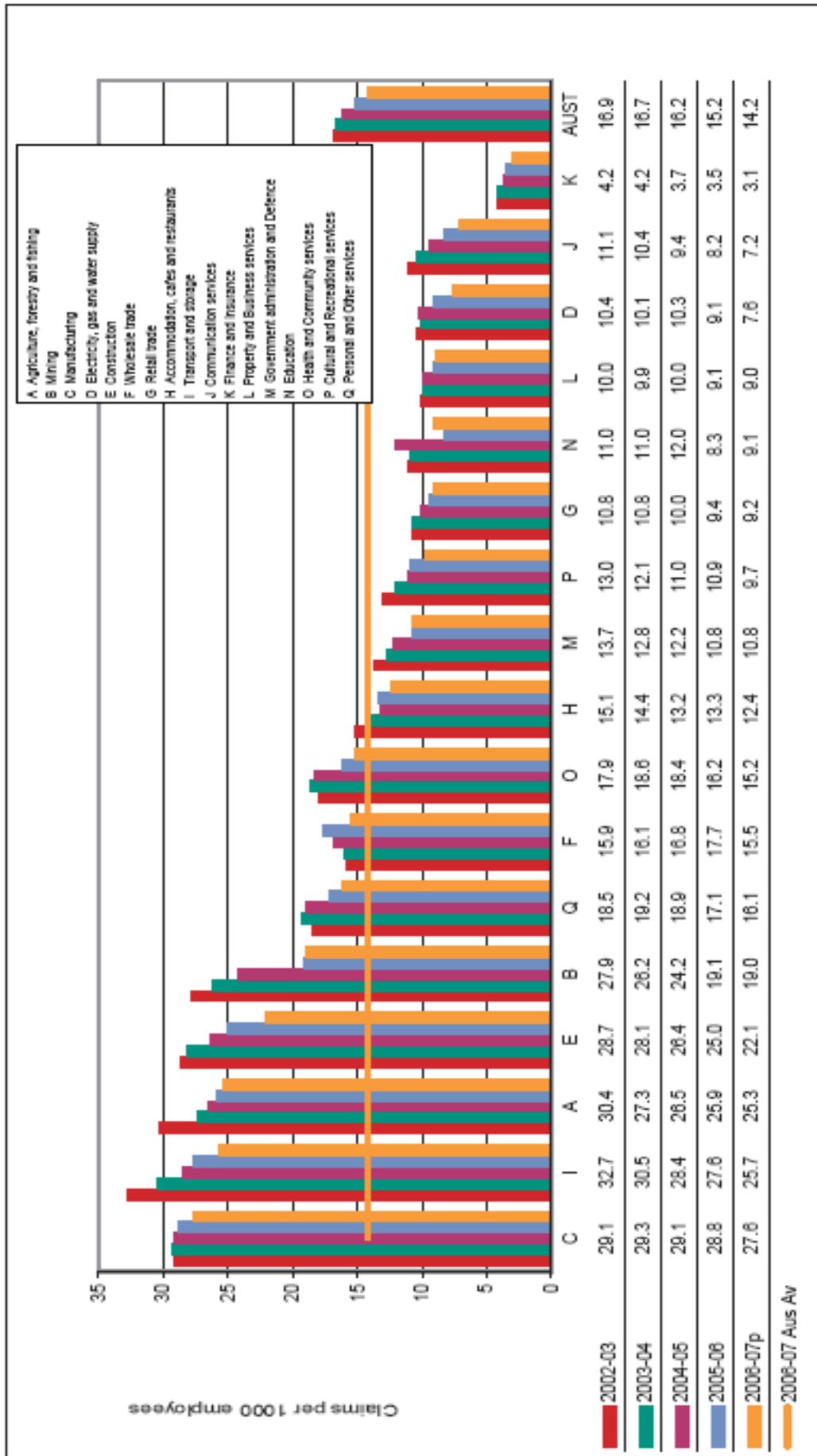
¹¹⁴ Workplace Relations Ministers’ Council – Comparative Performance Monitoring Reports, August 2008, Tenth Edition (accessed at <http://www.workplace.gov.au/workplance/Publications/WorkplaceRelations>)

¹¹⁵ Sandy, *Op. Cit.*, pp. 2-3

¹¹⁶ Workplace Standards Tasmania, Submission to Legislative Council Select Committee Mining Industry Regulation, 3 June 2008, pp. 2-3

¹¹⁷ Flanagan, *Op. Cit.*, p. 15

Indicator 24 – Incidence rate of serious* claims by industry



* Includes accepted workers' compensation claims for temporary incapacity involving one or more weeks of compensation plus all claims for fatality and permanent incapacity

“You will find a common theme from the experts. The first common theme is that mining is highly hazardous. That means we do not step back and say we will accept a greater level of injury or fatality in this industry because it is hazardous. We do not do that. We say that because it is more hazardous we need to take extra steps to prevent incidents occurring.”¹¹⁸

Responding to a question on mining safety in Tasmania, Mr Flanagan stated that:

“In the case of metalliferous mining in Tasmania the majority of fatalities have been from rock falls and that is directly attributable to the working environment. You are not going to get a rock fall on a farm or on a construction site. It just relates to the environment. There have also been injuries or fatalities related to the use of machinery but again the environment in which that machinery is being operated is very different to the environment in which a tractor on a farm is being operated.”¹¹⁹

He noted further that:

“... it is highly hazardous, though there are other industries such as the building industry that are also hazardous. I cannot tell you a solution for the building industry but the union has a very clear view about what needs to happen with metalliferous mining in Tasmania. That view is based on the recommendations that we have seen emerge from a number of recent independent investigations into how the current system is failing workers in this industry. That is the ultimate outcome; whatever way you dress it up the current system is deficient. We need to look to a new system which is better able to protect people from injury or fatality.”¹²⁰

With regard to the nature of the industry generally, Ms Rooke mentioned that:

“...people consider mining to be a very hazardous industry. Yes, there are major hazards in the industry, but to a large degree they are managed and the industry has learned how to manage and deal with them. I think that technology changes will resolve some of our risks/hazards, but will also introduce some new ones that we will have to deal with going forward. Remote-operated machines and the increase in automation remove people from the hard face and the immediate area of danger, but they bring a whole host of new risks.”¹²¹

¹¹⁸ Flanagan, *Op. Cit.*, p. 16

¹¹⁹ *Ibid.*, p. 17

¹²⁰ *Ibid.*, p. 17

¹²¹ Rooke, *Op. Cit.*, p. 14

The above would tend to suggest that the conditions faced in the mining industry are inherently more dangerous than in other industries. However, Mr Daly had a slightly different view. He felt that:

“...the worst industry is the agricultural farming industry because you do not have a big body - although you might find the big dairy company that will have its safety standards and systems in place, the individuals are a different story. The forestry is pretty much the same I think. There is the history of deaths and the exposure through the media, but I do not think that is all that has caused the mining companies to be more focused on training their individuals. I just think that it is a more commonsense progression that we do not want people to be hurt. There are also the government and community expectations and acceptance.”¹²²

Mr Long believed that the mining industry sat “in the middle of all industries in Tasmania.”¹²³ He reminded the Committee that:

“There are sites, for example Henty, that have not had a lost-time injury for two-and-a-half years but there are others that have. Also you need to remember that in the stats we are not just talking about large mines, they roll all the quarries and other things into those statistics.”¹²⁴

It would seem that data such as in the statistics above would support this more middle ranking. In considering the rate of injuries in mining in a wider context, Mr Trevor Marshall, Principal Inspector Mines, Workplace Standards Tasmania, was of the opinion that:

“...the mining industry gets bad press. Whilst all this was going on [the Beaconsfield Mine incident] I conducted three fatality investigations on King Island - two youngsters with ATVs and a farmer. On the same weekend that Fred and Mark were at Beaconsfield underground I flew to King Island to investigate a fatality over there. The poor fellow over there was a husband and a father, exactly the same as the fellow at Beaconsfield, but he barely rated an inch of press in our newspapers. The public seemed to have a fixation on mining fatalities. I think we should try to keep some sort of context in relation to this.”¹²⁵

A number of other witnesses also commented on the intense media scrutiny of any mining incident, when other serious and fatal events do not receive the same attention in the media. Mr Sandy noted in his written submission:

“News of miners trapped or killed underground is of immediate public interest. The accident and rescue at Beaconsfield is an example of the

¹²² Daly, Mr Matthew, General Manager, Henty Gold Mines (Barrick), Transcript of Evidence, 11 August 2008, Queenstown p. 58-9

¹²³ Long, *Op. Cit.*, p. 40

¹²⁴ *Ibid.*, p. 40

¹²⁵ Marshall, Mr Trevor, Principal Inspector Mines, Workplace Standards Tasmania, Transcript of Evidence, 13 October 2008, p. 53

media value of such an event which became international news within a matter of days of the incident and yet within the same week a magazine exploded in Victoria killing several people but barely got a mention... So without diminishing the tragedy of Larry Knight's death or the extraordinary rescue of the other two miners, it is important to get some perspective of the risks that people in the mining industry are exposed to compared to other industries."¹²⁶

Ms Rooke explained that the mining industry also attracts a heightened level of media attention in Western Australia:

"If there were a fatality on a mine it used to be front-page news in Western Australia. It is probably now about page 3 news, but it still gets reported. A single fatality gets reported in the news. Most other workplace fatalities are found on page 7 or 8 of the newspaper. They may or may not get on the TV news. We have many road deaths. I think if you look at our safety performance in years gone by, that attention was well deserved because we used to kill a lot of people every year. We unfortunately learned lessons the hard way. I think if you look at our safety performance now, compared to other industry sectors, we perform as well as if not better than all other sectors and our rate of improvement is substantially higher. As an industry, our culture is that no fatality is a good fatality. Although we have improved, we still have to improve more."¹²⁷

Mr Neil Valk, General Manager, Barrick Osborne Mine, noted in a similar vein that:

"Unfortunately the mining industry gets a lot of bad publicity for workplace injuries. It always seems as though no matter what happens in a mine the newspapers get hold of it and it becomes a newspaper item, while fatalities on roads or in forestry or some other areas probably don't get as much attention. The mining industry in Tasmania seems to be big enough but it needs to get individual attention. I don't know if that's the solution but I think a bit was lost by the old Department of Mines being morphed into Workplace Standards."¹²⁸

Ms Rooke commented on the Western Australian safety findings:

"We did a taxonomy of our fatalities since 1970 looking at where the fatalities were occurring, trying to pick up some trends. They used to be in underground mining and in ground control - so rocks falling on people, collapsed walls, mine walls collapsing on people. If you look at where our fatalities are happening now, two of the last three in Western Australia happened in the maintenance workshop. The nature of fatalities and where the fatalities are occurring has shifted over time."¹²⁹

¹²⁶ Sandy, Written Submission, *Op. Cit.*, p. 3

¹²⁷ Rooke, *Op. Cit.*, pp. 11-12

¹²⁸ Valk, Mr Neil, General Manager, Barrick Osborne Mine, Transcript of Meeting via video link 24 September 2008, p. 63

¹²⁹ Rooke, *Op. Cit.*, p. 12

The culture of safety in the mining industry

In his report into the deaths at the Renison Mine the Coroner, Mr Donald Jones, noted:

“Throughout this Inquest one matter caused me the greatest concern, which was what I perceived to be the culture that pervaded mining. This culture needs to be addressed perhaps by the provision of more stringent training of persons employed in mines, with a strong emphasis on the issues of workplace safety.”¹³⁰

Mr Long recalled his impressions on first being introduced to the mining industry. It appears that he has seen a different side of the industry. He was astounded by:

“... the priority given to safety in the workplace. Everywhere I went I was inducted, briefed, assigned a guide, told not to leave that guide under any circumstances, given protective clothing, and that was even if we were walking through a mill and not going underground. So the pervasiveness of safety struck me square between the eyes when I joined the industry.”¹³¹

After recalling a mining dinner where the fire wardens were pointed out to the diners and the alarm noise was identified, he noted that:

“It [safety] is built into the whole culture of the mining industry; it does not matter where you are. I just say that to underscore the fact of how predominant safety is in the mining industry. That just gives you the flavour of the priority it is given and the fact that it is woven into everything done in mines.”¹³²

However, such positive perspectives were not shared by all who contributed to the Committee’s inquiry. Dr McGushin’s view regarding the culture of safety was that:

“... it deteriorated markedly in the late 1990s and the early 2000s right across the board in the mining industry in Tasmania...Nowadays we have a lot of mission statements and a lot of talk about safety, about how to do things more safely and so on with all these signs on the wall, but if we do not actually have the culture whereby the guys can say

¹³⁰ CIRCUMSTANCES SURROUNDING THE DEATH and COMMENTS & RECOMMENDATIONS, IN THE CORONERS COURT HELD AT BURNIE IN THE MATTER of the CORONERS ACT 1995 -and- IN THE MATTER OF INQUESTS TOUCHING THE DEATHS OF JARROD KEITH JONES, MATTHEW DAVID LISTER and SIDNEY THOMAS PEARCE, *Op. Cit.*, at [381]

¹³¹ Long, *Op. Cit.*, p. 28

¹³² *Ibid.*, p. 28

without fear of reprimand to mine management that this is unsafe and we should not be doing it, we are not going to get anywhere.”¹³³

Mr Peter Newport suggested that the safety processes he had witnessed in Queenstown during the early 2000s were troubling:

“The new crew that was sent in to get some development measures happening quickly are very lax in the way they follow safety procedure.”¹³⁴

He continued that:

“We were basically meant to ignore things so they could get some metres happening. It was inconvenient to follow the procedure because it takes longer.”¹³⁵

In discussing some previous safety breaches at the Renison mine, Mr Long noted that:

“I guess I was naïve but I hadn’t envisaged that anyone, even in financial stricture, would short-cut safety. I would have thought that safety arrangements were inviolate – they would be cordoned off and you would do that before you’d do anything else, for obvious reasons. But if you read the Coroner’s report, you will see that that wasn’t the case and safety arrangements had been abandoned.”¹³⁶

This comment was significantly tempered by the following proviso he made:

“...you cannot then assume that all other mines in Tasmania at that time were operating in a similar fashion because they weren’t. Similarly, it has no bearing on what mines are doing now.

If you regulate from the basis of the lowest common denominator you invariably then catch up people who are doing the right thing in the first place, which is the rest of the mines. That regulation won’t necessarily hinder the operations of existing mines because in general they regard regulation as compliance, so they will be doing those things in any case. Compliance is also the first and lowest step on the safety ladder and people want to be beyond compliance. Compliance is the minimum standard of what you have to do. In a way it is like regulation, you have to do this, this is the lowest point you can be at. Most places are well beyond that because they operate on the basis of continual improvement and have quite sophisticated systems to achieve that.”¹³⁷

In response to negative comments about the “culture” apparent in the mining industry, Mr Flanagan remarked that:

¹³³ McGushin, Dr Gerry, GP, Transcript of Evidence, Hobart, 14 August 2008, p. 51

¹³⁴ Newport, *Op. Cit.*, p. 3

¹³⁵ *Ibid.*, p. 4

¹³⁶ Long, *Op. Cit.*, p. 35

¹³⁷ *Ibid.*, p. 35

“Where it is a workplace where employees are empowered that culture does not exist. In workplaces where workers are disempowered then people are more likely to take risks because they fear retaliation if they raise safety issues which are uncomfortable for their management to address.”¹³⁸

Mr Flanagan raised several suggestions for increased safety awareness measures. He said:

“There are a number of measures and the first is to ensure that there are protections there for employees when they are raising safety concerns. One mechanism which you will find in all of the reports is the mandatory establishment of a health and safety committee so that there is a mechanism there for that to occur. At the moment it is only if it is requested that should occur. The second mechanism, which was referred to specifically by Professor Quinlan... was the establishment of a roving safety representative funded by the industry. The third is the mandatory establishment of employee safety representatives for each crew in a mine site. I just want to draw down on this a little bit because it is quite important. Unless an employee is elected as an employee safety representative under the Workplace Health and Safety Act they do not have the authority to intervene in areas that are identified as hazardous. All an employee can do in the absence of that is go and say to someone, 'I think there is a problem over here' and then it is up to the managers to make an assessment about what they are going to do. An employee safety representative, if they have a genuine concern about an imminent risk to someone's wellbeing, can stop that particular work happening while they report it to the appropriate management people to have a look at it.”¹³⁹

Generally it is accepted that there is a safety obligation on companies. According to Mr Long, the requirement to provide a safe workplace means:

“...that you will do everything within your power to prevent the potential for injury or fatalities in a workplace.”¹⁴⁰

Mr Phil Kemp, Occupational Health and Safety Manager, Copper Mines Tasmania, recommended that:

“One of the focuses that we are attempting to put in place is that safety is not a priority and cannot be a priority. There are a lot of operations I have dealt with and when I came here where safety was the number one priority. What we find is when there is a priority it can be knocked off its pedestal because of the production pressures, as you pointed out. So if we are able to take the safety away from one of the priorities of production and then we can deal with it as a separate entity,

¹³⁸ Flanagan, *Op. Cit.*, p. 17

¹³⁹ *Ibid.*, pp. 17-18

¹⁴⁰ Long, *Op. Cit.*, p. 29

therefore it is stronger and it goes outside any financial problems of the company or other production pressures as we can maintain that higher safety level. It is a different view on how we approach safety...my experience is that there has been many a time when that production is under pressure that short cuts are taken in safety."¹⁴¹

Mr Peter Schulze, a former mine engineering superintendent, stated that he thinks there needs to be a change in focus regarding the attitude adopted when an incident occurs:

"The other element that does worry me in recent times - and I guess that is human nature - is that when there is an accident or a problem, people seek revenge, if you like, or they want to blame somebody. That is a natural thing particularly if there has been a fatality and they seek some scapegoat. In my time in the industry, and I have seen a lot of mines around the world as well as pretty well all of them in Tasmania, I find that the mine managers and responsible officers in the company are concerned, sensitive and worried about their employees and try to do the best for them. But they live in constant fear that I believe has become worse under the current regime and which will make it harder to get thinking and sensitive people who would understand that they are putting their neck on the block if anything happens. I guess there will always be accidents. In the mining industry, the public seems to focus on them to a greater degree than in other industrial sectors. Half of our fatalities are on the roads and other industries have worse records, in farming and the like, than the mining industry.

The mining industry is very conscientious...They are always open about the company and how it is going, its finances and everything else. The first thing they talk about is safety and they put their safety records and their trends which generally have been downwards in recent years. They are very conscious and work hard on that. I therefore find it tough when things go bad, go pear-shaped, in some cases, and there are these actions that are currently happening."¹⁴²

Mr Scot Clyde, General Manager, Copper Mines Tasmania, felt that some changes had occurred in the industry:

"Probably in the old days it was more acceptable, and mining as such probably attracted people who are not afraid to take risks. The culture change I mentioned, I suppose it comes from setting an example by leadership, showing what's acceptable and what is not - zero tolerance for certain things. There is also communication, letting people know what's happening around the site, and effective accident and incident

¹⁴¹ Kemp, Mr Phil, Occupational Health and Safety Manager, Copper Mines Tasmania, Transcript of Evidence, Burnie, 29 September 2008, p. 30

¹⁴² Mr Peter Schulze, Transcript of Evidence, Burnie, 13 August 2008, p. 2

investigation...the challenge is that it's a never-ending process; it's not something you do and it's done. It's an ongoing approach."¹⁴³

Mr Clyde gave an example of their copper mine's safety performance:

"We are probably averaging four to five LTIs a year. The frequency rate would be about a third to half of what Tasmania's lost-time injury frequency rate would be. One of the other improvements is that people are not just focussing on the LTIs. That used to be the indicator for most people, barring fatalities. They are looking at some of the positive indicators in terms of hazard reporting and that type of thing. Safety in an underground operation will depend on the nature of the mining method. Ours is a relatively safe one in terms of access for people as opposed to conventional sort of narrow-vein mining. People are at much higher exposure and it was more physically demanding."¹⁴⁴

He believed that:

"Having systems in place, getting your people to report stuff, acting on it and adhering to certain standards, be it your own or minimum regulatory standards, is the way to go. I think the communication is very important to your people and it is a two-way thing. Employees and people on-site, such as contractors, have to feel free about reporting and talking about the issues and the challenges that they see.

But the performance, I guess from personal experience I would say it has significantly increased from 20 years ago but it still has a way to go. I think that if any company says we are at the peak, best performance that we will ever be, they are kidding themselves."¹⁴⁵

Mr Gula, commented on his experience:

"Just like the regulator, we as the operator can't be everywhere in all sections of our mine at all times, so the best option has to be where the companies understand that safety has to be the way they operate. For us, we have to get our people operating safely and understanding what is going on. The battles that we are trying to win are the ones where we want people to think about what they are doing and stop have a think about what they are going to do before they get into it. We can capture the non-routine tasks and can understand those. We sit people down and do a risk assessment or a JSA, whatever you want to call it, before that goes on. Quite often it is the non-routine task that is the problem. The people who get hurt in an operation tend to be the first-timers, the ones that are green. The other end of the spectrum are those who have been there for a long time, who have done the same job for a long time and are used to doing it. They have done it the

¹⁴³ Clyde, *Op. Cit.*, p. 8

¹⁴⁴ *Ibid.*, p. 10

¹⁴⁵ Daly, *Op. Cit.*, p. 58

same way, day in day out, and they don't recognise that there has been a change and then, unfortunately, they get hurt."¹⁴⁶

In commenting on the types of injuries he had witnessed and mine safety, Mr Daly stated that:

"About 20 years ago some of the injuries in my nine years at King Island were horrific. We had three deaths in that time, which were totally unacceptable. When you look at them they were totally avoidable because there were no systems in place and the focus was not on safety; you accepted that there were going to be deaths. That has certainly changed in the industry as a whole, and I am not saying it has not happened in the other industry but the focus and exposure of the mining industry media-wise had really forced it, plus companies and boards have become more responsible when it comes to safety, environment and the community. I think it has been a change. I guess there has been no magic formula for it. It has just been an increased focus and people becoming less accepting of injuries and deaths at work.

I think one of our former measurements of injuries is not necessarily the best measurement with lost-time injury, lost-time frequency rates and all of those; I think it is more of an after-the-fact type of thing."¹⁴⁷

Mr Webber commented that in relation to the injury rates between states:

"There has been a clear focus on lost-time injury management, which I think is pretty well understood, recognised and published. However, if we look at the difference between the States, we see that there doesn't appear to be a significant model that has been applied in any one State or Territory that is having a better effect on the fatality frequency rates."¹⁴⁸

Statistical difficulties and lack of data consistency

The value of the data that is recorded in determining performance in the area of health and safety, and importance of nationally consistent data, were raised as issues by a number of witnesses. It should be noted that the National Mine Safety Framework is addressing this issue as one of the overarching principles and has included it as one of seven strategies.

"Strategy 5 of the NMSF aims for a 'consistent and reliable data and analysis'. It is intended that in the future health surveillance will be included in a national data set, collected in all jurisdictions."¹⁴⁹

Further, in the same document under the heading 'Reporting' it states;

¹⁴⁶ Gula, *Op. Cit.*, p. 66

¹⁴⁷ Daly, *Op. Cit.*, p. 57

¹⁴⁸ Webber, *Op. Cit.*, p. 1

¹⁴⁹ National Mine Safety Framework, Overarching Principles, *Op. Cit.*, p. 8

“The legislation shall provide for specified timeframes for reporting accidents, incidents and dangerous occurrences to the regulator... Legislation shall also provide for regulatory authorities to collect accident, incidents, occupational disease and dangerous occurrence statistics and analyse and publish such statistics in a timely fashion. Statistics collected and published shall be to a uniform national standard.”¹⁵⁰

In order to compare the safety rates within the mining industry and in making comparisons between industries Dr McGushin suggested that:

“You can compare fatalities by comparing the number of people who actually work in the industry. That is an easy one to compare. The harder one to compare I suppose is injuries because I do not know if anyone actually keeps statistics on the injuries. From my experience, certainly the mining industry was the keenest industry to get their miners back to work doing light duties. Whether or not they should have been back at work doing light duties is another matter and to my mind one of the major reasons for that was so that they could reduce their lost-time injury rate. They could say to everyone concerned, 'Well, look at our lost-time injury rate. It keeps going down, therefore we must be a safe industry.’”¹⁵¹

Dr McGushin was sceptical of the value of the statistics used:

“The crudest figure you are going to get is how many guys are actually killed in the mining industry. If safety seems to be going along pretty well you won't have fellows being killed. When it is not going well, guys will be killed. There is no point in looking at lost-time accidents because lost-time accidents in the mining industry no longer exist. I am the guy who used to write out the workers compensation certificates. Basically, to get a lost-time accident nowadays you have to be killed. If someone breaks an arm or leg or something like that I can sign them on as fit to do light duties. They will say, 'These guys can go back to work. They can answer a telephone'. That is fine if that is what they want to do. They are the employer, but then to pretend that we are having fewer lost-time accidents, and that makes us a safer industry, is all window dressing. The crudest figure obviously is the death rate.”¹⁵²

Others too suggested that LTI rates were flawed. In relation to the recording measures for safety related breaches and injuries, Mr Flanagan noted that:

“In terms of injuries, I don't accept that the lost-time injury statistics are a genuine reflection of what is occurring on the ground – based on anecdotal experience. In terms of fatalities, in the context of the hours of work issue in the industry, a number of years ago the union

¹⁵⁰ National Mine Safety Framework, *Overarching Principles, Op. Cit.*, p. 9

¹⁵¹ McGushin, *Op. Cit.*, p. 50

¹⁵² *Ibid.*, p. 48

compared underground fatalities from 1991 to 1998 to underground fatalities from 1998 to 2005, based on material obtained from Workplace Standards. That showed in that period a 350 per cent increase in underground fatalities after the introduction of self-regulation.”¹⁵³

Evidence provided from Mr Greg Dalliston, District Check Inspector, CFMEU Queensland, suggested that one of the problems with safety information is just what injuries they actually record. He noted that:

“... the main statistic not reported is the disabling injuries. You will see they never go up or down; they are in the permanent disabilities column. We know that about 40 of our people a year are put out of the industry and yet every year there are about three in the list.”¹⁵⁴

Mr Webber further cautioned that:

“... the lost-time injury frequency rate improvement could be explained by the fact that there has been, over the last 10-15 years, a significant focus on the upper triangles. In doing so, to a degree the severity rate has decreased. So we are not seeing the number of lost-time injuries because, in the way that things are being managed, the severity has decreased. So a person that would have sustained a lost-time injury now may only sustain a minor injury, which means that they would be in a lower section in the triangle. At the same time, the focus would be on predictable events - that is, the things that happen frequently and are fairly obvious. You can relate to them, see them, experience them and therefore you can do something about them. Their frequency is such that people see them regularly, so they're in front of you. If you look at the incidents around fatalities, typically you might see the low frequency rates; that is, they don't happen that often and quite often they could be termed 'unpredictable', or they would be perceived as unpredictable. When you add the fact that you have this turnover in people in mining operations, particularly in responsible positions, then if the frequency rate of these unpredictable events is such that it is outside the turnover rate, then some people will have never seen these things so they wouldn't be aware of them. They will be aware of the high frequency rate incidents but they wouldn't be aware of the low frequency rate incidents. If you add to that the lack of experience, there is another layer that says, 'I may not have spotted it anyway'. That is my explanation of the difference between the lost-time injury rate improvement and the fatality rate improvement.”¹⁵⁵

In relation to the recording of injury rates, Mr Bob Gozzi, TCCI OHS Committee member and a business development manager for Ecka Granules, Bell Bay related:

¹⁵³ Flanagan, *Op. Cit.*, p. 21

¹⁵⁴ Dalliston, Mr Greg, District Check Inspector, CFMEU Queensland, Transcript of Meeting, Brisbane, 24 September 2008, pp. 5-6

¹⁵⁵ Webber, *Op. Cit.*, p. 5

“If you are going to use this whole thing of frequency rates and lost-time rates as a determinant of how you are performing then you need to have consistency in reporting. There are lots of examples where you can read a board saying 1000 accident free days... The definition of it and how you do it is really, I think, a good thing to have. But in terms of saying because of that I am really doing a wonderful job, I think we need to get deeper than that.”¹⁵⁶

Another factor that makes comparisons difficult results from the lack of sensitivity in the data as it relates to the severity of the injury. Mr John Lemberg, Operations Manager, Rio Tinto Alcan described an incident where lost-time for injury was recorded, and the reason for the worker’s inability to return to full duties related to the assessment of the injury rather than the injury itself. Mr Lemberg described the incident:

“... an operator walking between two reduction cells and pot lines. He had his PPE on – mask and glasses and so forth. He was walking past the cell and a breath of air came out between some hoods, we think. He ended up with a bit of dust in his eye and went to first aid. They attempted to flush it out and still could not get rid of it so he went to the Anne Street Medical Centre in George Town and a doctor saw the guy and used some drops to flush it out. When he got back to work the next day the effects of the drops were still evident. Part of his duties is to drive the crane and it was felt it was not prudent to put him in charge of a crane while there was some chance ... of his vision being blurred so that was a lost-time injury. That is where the bar is.”¹⁵⁷

Mr Lemberg stated that Rio Tinto Alcan actually do measure severity in terms of a lost-time injury and consider “the number of days that the individual is restricted ... more often than not the individual is back 100 per cent to their normal duties within a day or two.”¹⁵⁸

Ms Jennifer Jarvis, Rio Tinto Alcan, commented on the Occupational Health and Safety Administration (OHSA) definition of lost-time injuries with regard to accuracy in data collection. She stated:

“The Workplace Safety definition currently is only a lost-day injury that gets counted as a lost-time injury, which perhaps leads to people being asked to come to work when perhaps they should not or not being counted as an injury because it was not a lost day because they have come to work. Maybe implementing or looking at implementing something that counts injuries or restricted injuries or whatever

¹⁵⁶ Gozzi, *Op. Cit.*, p. 68

¹⁵⁷ Lemberg, Mr John, Operations Manager, Rio Tinto Alcan, Transcript of Evidence, Launceston, 13 August 2008, p. 47

¹⁵⁸ *Ibid.*, p. 48

definition you want to use – but the OHSWA one is quite good - might lead to some sort of change in behaviour, for example.”¹⁵⁹

According to Ms Rooke, guidance should be sought from private industry.

“We look at what companies have done. Their measure of their performance used to be lost time injury frequency rates which used to be sensitive enough to detect trends and enable them to make decisions about where they should be putting resources and what they should be doing. I think increasingly companies have recognised that their LTI rates do not give them sufficient information any more, because at such a low level of frequency they do not provide them with any useful information, so they have moved to using measures like medical injury frequency rates, disabling injury frequency rates.”¹⁶⁰

Other jurisdictions have studied these issues and can provide insights on future direction. The NSW Report “Digging Deeper” expounded that performance benefits should not be determined and awarded on the basis of LTI results.¹⁶¹

What should be recorded?

As to what should be recorded and studied, Mr Chris White of the Chamber of Minerals and Energy of Western Australia, explained that:

“There is a movement called Positive Performance Indicators. The others are all lag indicators, what has happened, which might have something to tell you about their future. With positive performance we measure how safe things are rather than the failures that occur.”¹⁶²

Dr McGushin suggested that:

“The major statistics you should look at is the actual time taken for the worker to return to their previous job, not length of time away from work. That would be a good statistic to have.”¹⁶³

This point came after he explained that doctors had to either choose ‘fit for normal duties’ or ‘for modified duties’ in completing medical examinations of miners.¹⁶⁴

Mr White was concerned that:

¹⁵⁹ Jarvis, Ms Jennifer, Rio Tinto Alcan, Transcript of Evidence, Launceston, 13 August 2008, p. 51

¹⁶⁰ Rooke, *Op. Cit.*, p. 13

¹⁶¹ Shaw Idea, “Digging Deeper”, Final Report, 5 November 2007, (Commissioned by NSW Mine Safety Advisory Council).

¹⁶² White, *Op. Cit.*, p. 13

¹⁶³ McGushin, *Op. Cit.*, p. 50

¹⁶⁴ *Ibid.*, p. 50

“Data is very important and you have to have it. I do not think Tasmania does. I do not think Tasmania has an acceptable level of information on its own fatalities, its own injuries, mining and general. That is just my gratuitous comment, but certainly in mining specifically in terms of the way the system works there. In WA now it has shifted from that measure of performance because it has bumped along the bottom, to sentinel systems and earlier warnings of new types of injuries, which are more important data systems than the pure annual performance statistics, and in which we used to find the frequency rate for the year and whether it was better or worse.”¹⁶⁵

According to Mr Flanagan:

“You can make the figures say what they like, but what is important in the outcome for this Committee is that we have a system which protects people. Forget the statistics. That is why the union has observed in our submission that it is irrelevant to compare how we perform in Tasmania statistically to how we perform in another industry or in other States, because the only statistic that matters is no injuries and no fatalities.”¹⁶⁶

The Committee wishes to note several further issues which it sees as crucial to the continued safe and improved operation of the mining industry in the state. Evidence presented suggested that fatigue levels were in need of closer scrutiny, as was the attention paid to “near miss incidents”.

In the chapter above, Dr Lewin was supportive of prescriptive legislation regarding the obligation to report near misses.¹⁶⁷ Such prescription could be used to ensure that near miss situations are dealt with effectively by the interested parties. It would seem from the Beaconsfield incident, as well as others at Renison and elsewhere, that this ‘near miss’ reporting and a proactive inspectorate are crucial to avoiding future harm.

Darryl Gerrity, Mayor, West Coast Council, raised concerns about the issue of fatigue and twelve hour shift rosters of more than five days on, being detrimental to the workers’ health and the overall health and wellbeing of the community. Mayor Gerrity stated:

“We seem to feel that four on-four off or five on-five off is the most productive roster for the mining industry and also for the West Coast community because this is not a fly-in, fly-out work site... the fly in, fly out mentality started in Western Australia ... Here, when they finish some of these shifts they still have to drive to Burnie or Hobart, so it is not just a 12-hour day; it could be a 16 or 18-hour day. We thought,

¹⁶⁵ White, *Op. Cit.*, p. 12

¹⁶⁶ Flanagan, *Op. Cit.*, p. 21

¹⁶⁷ Lewin, *Op. Cit.* p. 10 as discussed at p. 29

from a health and safety point of view, that four on-four off or five on-five off should be the maximum allowed.”¹⁶⁸

Mayor Gerrity stated that there were currently applications before Workplace Health and Safety to extend the current working hours to “seven to 10 days on and three off.”¹⁶⁹

When asked where he saw the duty of care sitting, Mayor Gerrity stated:

“The duty of care should be in workplace safety and in the taxation system that double-checks this, and of course the miner, the operator. I am hearing that it is basically plumbers, electricians, carpenters, et cetera, who can work four-on at one site and go and work four-on somewhere else. So they do not get their R&R four days off.”¹⁷⁰

With regard to the fatigue of those working in mine sites it is suggested that further fatigue testing by mine management may be required.

Dr McGushin, a former Queenstown based GP stated that:

“During the 1990s and 2000s I think the mines were certainly working their work force as hard as they could possibly work them...I was seeing a number of men, for instance, who were operating heavy equipment underground and who were falling asleep at the wheel and then had a crash or something like that.”¹⁷¹

He was pleased to see that the “extended-shift” roster had stopped operating in Tasmania and that Workplace Standards had acted in this regard,¹⁷² however, it was not known if the whole industry was acting responsibly in ensuring the fatigue levels of their workers were not causing a potential safety risk. Positive examples of proactive measures were related to the Committee by representatives from Rio Tinto, with Mr Allan Jackson, International General Manager Health, Safety and Environment, saying:

“Rio is going through a fairly massive change in terms of its approach to the work force, in terms of fit for work, and fatigue. This is the outlier at the moment, going forward. This fatigue issue, about people not being fit for work for whatever reason, is something that is going to impact on us. That is going to be the big change I think in terms of health.”¹⁷³

¹⁶⁸ Gerrity, Mayor Darryl, West Coast Council, Transcript of Evidence, Queenstown, 11 August 2008, p. 21

¹⁶⁹ *Ibid.*, p. 22

¹⁷⁰ Gerrity, *Op. Cit.*, p. 23

¹⁷¹ McGushin, *Op. Cit.*, p. 47

¹⁷² *Ibid.*, p. 47

¹⁷³ Jackson, Mr Allan, General Manager Health, Safety and Environment, Rio Tinto, Transcript of Meeting, Perth, 22 September 2008, p. 30

They have developed policies to try and combat such influences. He explained that:

“There are three parts to Rio's fit-for-work policies. One of them is AOD - alcohol and other drugs. The other one is the wellness program, which is about people being fitter and having better diets and having coaches that will help them improve their level of fitness. If somebody is totally unfit and they are driving a haul truck for 10 or 12 hours, then they are going to have a problem. It is not just productivity; it is the impact on others. If you fall asleep at the wheel then you have a serious problem. You might survive but you might kill three other people. Vehicles and driving machinery are just a big hazard...

There is the wellness program, the fatigue standards and the AOD testing. They are the three legs of our fit-for-work policies. They are all-encompassing. When you start to look at what we are going to do going forward, they are the sorts of things that a regulator might want to look at. What are you doing about making sure that people are fit for work in whatever, whether it is AOD or whether it is their general wellness or whatever?”¹⁷⁴

In the New South Wales Government commissioned report, “Digging Deeper,” several recommendations that appear pertinent to Tasmania were made. The report found that only a limited number of companies had voluntarily implemented schemes to gauge fatigue levels and that the Department of Primary Industries should become involved more directly to ensure that appropriate standards were maintained.¹⁷⁵

A key concern was that negative outcomes often resulted from the reporting of fatigue and that this served as a deterrent from people experiencing such problems notifying the appropriate authorities.¹⁷⁶ Proactive measures to reduce fatigue were often lacking, instead putting the onus upon individuals to change out of work practices.

Some further recommendations of interest were that:

“Prescriptive hours of service rules should not be imposed, but sites should use risk management approaches to monitor and address the excessive hours of work at some sites and for some occupations. This requires support from all stakeholders and intervention by the regulator where necessary.”

Further:

“Sites should actively monitor and address excessive hours of work for all who work on sites. In particular, contracting companies should monitor and control working hours of their employees who work across

¹⁷⁴ Jackson, *Op. Cit.*, p. 30-31

¹⁷⁵ Shaw Idea, “Digging Deeper”, *Op. Cit.*, p. xii

¹⁷⁶ *Ibid.*

and travel to a variety of sites. DPI should not actively fund or promote a smart card system, but encourage employers to use appropriate techniques to monitor hours of work."¹⁷⁷

¹⁷⁷ Shaw Idea, "Digging Deeper", *Op, Cit.*, p. xix

The role of Workplace Standards in regulating the mining industry commenced with the introduction of the *Workplace Health and Safety Act 1995*. This resulted in the then Mines Department being subsumed into Workplace Standards, moving from a prescriptive legislative model to the current duty of care legislative model.

Mr Sandy is of the view that "... Workplace Standards should be the only body inspecting mines."¹⁷⁸

The enactment of the *Workplace Health and Safety Act 1995*, according to Mr Sandy, led to some changes that effectively reduced the number of mines inspections and altered the role of inspectors. In his written submission Mr Sandy stated:

"Shortly after the promulgation of the 1995 Health and Safety Act WSA the mines department was taken over by WSA. WSA interpretation on the regulation of Mines (and possibly other industries) was that it should not be involved in inspecting mines for fear it could somehow be implicated if things went wrong. Their role was more of a prosecutor than regulator. Inspection of mines was reduced significantly. Most of their activity was dealing with the aftermath of major accidents, rather than in the prevention of accidents."¹⁷⁹

Mr Sandy made further comment on the early operations of Workplace Standards (WST) under the head of WST at the time, Steve Hyam:

"...what seemed to drive the whole of Workplace Standards was that 'because of this duty-of-care legislation, all the responsibility for maintaining a safe workplace is now with management and our role is just traffic cop. We will hide in the bushes and wait until somebody does something wrong and then we'll jump out and fine them'. The mines inspectors withdrew, much against their will... they went from having regular inspections of mines, having certified mine managers certificates in Tasmania, being involved in safety issues on the mines, helping mines sort out safety issues, to sit in Hobart."¹⁸⁰

Mr Sandy noted in his written submission that he believed:

"The role of the regulator should be to assist with the prevention of accidents by ensuring there is competent management and an adequate safety management system in place. This can be done by carrying out regular inspections, involvement in accident and incident

¹⁷⁸ Sandy, Written Submission, *Op. Cit.*, p. 4

¹⁷⁹ *Ibid.*, p. 4

¹⁸⁰ Sandy, Transcript of Evidence, *Op. Cit.*, p. 15

investigation, and promotion and awareness of hazards and other safety related information.”¹⁸¹

WST stated in their submission that the role and staffing of the Office of the Chief Inspector of Mines, changed in 2005:

“Since June 2005, the Office of the Chief Inspector of Mines (OCIM) has operated as a separate office independent of the general workplace inspectorate. It is staffed by four inspectors, including the Chief Inspector of Mines. Two inspectors are qualified and experienced mining engineers and two are experienced generalist inspectors. The group works as a single team covering coal, metalliferous issues, quarries and mineral processing.”¹⁸²

In considering mine safety and the role of the regulator, Professor Andrew Hopkins, Professor of Sociology at ANU, submitted:

“To my way of thinking the most important issue is the question of who is the regulator, how is it resourced and where is it located. There is quite a deal of evidence that it is really the resourcing that goes into the regulator which is a critical determinant of safety outcomes, rather than the actual quality or details of legislation. In other words, if you have a safety-case regime but you do not resource the regulator properly then you are no further forward. So probably one of the very strong points I would want to make is that there is no point in moving to a safety case regime or any other regime if you do not at the same time beef up your regulator resources....”¹⁸³

The Queensland study commissioned by Ms Shaw found that:

“An ideal inspectorate would foster a climate of mindfulness in the industry to enable it to manage low probability, high consequence events as well as high probability, low consequence events (Weick and Sutcliffe 2001)”¹⁸⁴

Clearly the Tasmanian inspectorate is not at an optimal standard. Much criticism has been raised at the way regulation of mining has been handled in Tasmania over the last decade. Mr Long observed:

“For five years, including the period of the Renison disaster, Workplace Standards were essentially absent from the mining industry. I think for their own reasons they had convinced themselves that they had no role beyond prosecution; they had internalised and basically disappeared

¹⁸¹ Sandy, Written Submission, *Op. Cit.*, p. 4

¹⁸² Workplace Standards Tasmania, Written Submission, *Op. Cit.*, p. 4

¹⁸³ Hopkins, Professor Andrew, Professor of Sociology at ANU, Transcript of Meeting, 26 September 2008 via phone link p. 33

¹⁸⁴ Shaw Idea, “Digging Deeper” *Op. Cit.*, Chapter 4, p. 3

off the face of the earth. There were mines which did not see a Workplace Standards inspector for years.”¹⁸⁵

Mr Valk commented that during his time in Tasmania, at Mt Lyell and other mines they:

“... were not getting enough checking by the inspectorate. Again, I don't think that the inspectorate is there to check on you but there is a role to play there. Everyone tends to be a bit lax when there isn't an inspector around - and that is human nature. It is very good to have a check on your work and where you should be. They do seem to pass on industry knowledge and where other mine sites are at, even though they don't name them.”¹⁸⁶

Mr Robin Halfacre, a former mines inspector, gave evidence that:

“The quarry and extractive industries, in my opinion, have been totally neglected. I would be very surprised if most of the inspectors in the State knew where to find most of these quarries and from my experience in the last 18 months, prior to leaving Workplace Standards, the quarry industry was let run at its own whim and will.

I guess a lot of the problems were due to the lack of people on ground but what really annoyed me was that the things I'd told them about that badly needed attention were totally ignored.”

He pointed out to the Committee that he had shown new inspectors round mines that had been operating for over 20 years and the inspectorate had never heard of them.¹⁸⁷ Mr Halfacre then stated that:

“It is not a very nice feeling when you say to Workplace Standards, 'You have a problem out there that needs fixing' and you go back four months later and the crushing and screening plant is still operating in the same condition that it was four months prior. It used to make the hairs on the back of my neck stand up when I saw all these chains and belts flying around and open gears with no guard in whatsoever. If you report these sorts of things on a regular basis and nothing happens you will not bother reporting them any more.”¹⁸⁸

During questioning at the Coronial Inquest into the death of Larry Knight, Professor Quinlan stated that his:

“... evaluation of the resourcing of WST in the mining area was that it was on the best available evidence significantly inferior to that available to comparable mining inspectorates elsewhere in Australia on the number of inspectors per employee and on our basis worked that there

¹⁸⁵ Long, *Op. Cit.*, p. 37

¹⁸⁶ Valk, *Op. Cit.*, p. 63

¹⁸⁷ Halfacre, Mr Robin, Transcript of Evidence, Burnie, 29 September 2008, p. 20

¹⁸⁸ *Ibid.*, p. 15

was also a critical mass issue in the sense because of its small size there were no – it did not have any opportunities for focus to gain resource – economies of scale through specialisation. In other jurisdictions, for instance, a number of inspectors might concentrate on prosecutions in order to free up other inspectors to do other activities. And by concentrating on that area they would develop the skills and be able to work more effectively than an inspector doing that as a one off basis.”¹⁸⁹

This meant that regular proactive inspections were not conducted. Mr Halfacre commented that: “Unless you have people out there looking over their shoulder to make sure they are doing what they are supposed to be doing, things will slip.”¹⁹⁰

It seems that many shared this view. Less than a month prior to the Beaconsfield rockfall, Mr Mark Smith wrote a memorandum to the Chief Inspector of Mines in the following terms:

“I believe it is appropriate to apprise you of the current situation regarding my workload as the only non-management mines inspector currently operating in the Office of the Chief Inspector of Mines.

I have serious cause for concern about my/our ability to ensure the key safety messages and preventative actions are being implemented at workplaces under our jurisdiction ...

As a lone individual with competing priorities for my time I have been unable to pursue these matters adequately enough.

Without resolving these matters there is a high potential for serious recurrences that would jeopardise the current safe operations and hence the buoyant resources sector in Tasmania because we have not been able to maintain the level of safety that has resulted from the recent fatalities of the last few years. With the number of close call events that are occurring and no follow up to ensure that proactive measures are implemented and it is only a matter of time before another catastrophic event occurs.

With the commencement of the initiative for the Office of Chief Inspector of Mines in July 2005 and the unsuccessful attempts to recruit personnel to fill the vacant positions there is a clear perception by some participants in the industry that Workplace Standards Tasmania are not taking safety in the mining industry seriously and they are getting away with matters that would normally be pursued to prosecution. We only visit sites as a reactive measure when a major

¹⁸⁹ Knight Coronial Inquest, Transcript of questioning of Professor Quinlan, pp. 483-4

¹⁹⁰ Halfacre, *Op. Cit.*, p. 17

incident occurs with little opportunity to conduct proactive education and enforcement visits”.¹⁹¹

Dr McGushin commented:

“... if you do not have enough mines inspectors inspecting these mines you are not doing your job. They are not able to do their job; they are all purely reactive they are active only when something happens and they can make recommendations rather than being proactive and saying, ‘Okay, you are not safe. We are going to close you down until you are safe.’”¹⁹²

It was a common call for increases in the resourcing of Workplace Standards both in terms of funding and staff. Mr Flanagan of the Australian Workers’ Union (AWU) argued:

“... there should be increased resourcing of workplace standards with technical expertise. So rather than simply having generalist inspectors we need to resource the WST with the technical and specialist skills which are necessary for the specific nature of the mining industry. There should be a safety-case regime which is implemented and audited by Workplace Standards on a periodic basis...There should be notification of all rock falls. There should be the mandatory establishment of occupational health and safety committees. There should be roving safety representatives funded by the industry.”¹⁹³

In relation to the performance of WST, Mr Gozzi remarked:

“Resourcing the inspectorate is obviously a big issue. I think it is quite well understood that in terms of mines, inspectorate resourcing has been a problem. That problem comes about because of the remuneration level. The attraction and retention argument about attracting people into the inspectorate is an issue. I am generally aware, from the mining-boom environment, that it is very hard to attract high-level qualified people. I think in terms of this mining inspectorate that you do need to have highly qualified people to be able to read the seismological information and all the things that go with mining. I do think there has been a problem in that there have been insufficient numbers on the ground to provide the service required. It seems quite clear that Beaconsfield asked for an inspection to be undertaken and that was done remotely. In the normal course of events you would say that probably was not the right way to go about that. We can all be a lot smarter with hindsight and the view that I take is that people act with

¹⁹¹ MAGISTRATES COURT of TASMANIA CORONIAL DIVISION, IN THE MATTER OF THE CORONERS ACT 1995 AND IN THE MATTER OF AN INQUEST TOUCHING THE DEATH OF LARRY PAUL KNIGHT, FINDINGS, RECOMMENDATIONS AND COMMENTS of Coroner Rod Chandler following an inquest held in Launceston on 22 July to 25 September and 11 November 2008. 26 February 2009. Accessed at http://www.magistratescourt.tas.gov.au/data/assets/pdf_file/0016/117430/KNIGHT_Larry_Paul_-_2009_TASCD_25.pdf p.74 at [16.2.1]

¹⁹² McGushin, *Op. Cit.*, p. 45

¹⁹³ Flanagan, *Op. Cit.*, p. 15

good intent. If there is a lesson, the lesson is maybe that the inspection process, as part of the safety pressures I have just been talking about in the context of the audit process, ought to have perhaps been specifically targeted. This needs to be part and parcel of it, as opposed to being reactive. I believe they probably are proactive as much as they can be.”¹⁹⁴

In explaining the Inspectorate’s conduct, Mr Fred Sears commented that when he entered the inspectorate it was 1996, during the time of the restructure of WST. Mr Sears stated that:

“In September 1996, the restructure of Workplace Standards resulted in a number of the previously qualified Mines Mining engineers acting as mines inspectors, being mining engineers, an electrical engineer, a mechanical engineer, and I think probably a civil engineer. They retired and that left me as a qualified mining engineer and John Las as a senior inspector as well. ... prior to 1996 there were eight to 10 qualified engineers dealing with what was then the Mines Inspection Act and the Mines Inspection Regulations.”¹⁹⁵

He added that the inspectorate was:

“... pretty well purely reactive and it has remained that way for a number of years. We simply were investigating a large number of accidents and incidents, a few fatalities along the way, but quite a number of very, very serious accidents as well that left people badly injured.

We did basically what we could. The proactive part would come from our investigative roles. When we went to sites we would talk to the responsible officers - the managers, the site managers and the mining managers - and try to make sure that they covered or revisited those areas of their operations which had been involved in such a serious accident or even a fatality. Some of the things that came from the fatalities of course were recommendations by coroners and we put those into place. I suppose, to put it in a nutshell, we did what we could. We were overwhelmed with the work and I think that it did leave us extremely stressed.”¹⁹⁶

Evidence presented by Mr Sears showed that extra support was requested, particularly during the time of the Renison Mine fatality investigations. He stated:

“I talked to the then Director of Industry Safety, Steve Hyam, on a number of occasions. We were part of DIER in those days. We simply, as far as I am aware, were not going to get any more staff. ... At that stage there was only myself because John Las had retired on 31

¹⁹⁴ Gozzi, *Op. Cit.*, p. 64

¹⁹⁵ Sears, *Op. Cit.*, p. 35

¹⁹⁶ *Ibid.*, p. 37

December 2002. Mark is saying 2003. ... at that stage, I was the only mining person. I was investigating a very complex matter, a fatality, and I was completely overwhelmed. I know that Steve did ask someone on this side of the river for more resources and the answer came back that we were not going to get them.”¹⁹⁷

Mr Ormerod explained that:

“... in 2005 there was a budget submission to Cabinet and out of that there was funding received which was therefore prior to the Beaconsfield incident so there was a decision by Government to increase funding in 2005 and for two years the mines unit underspent its budget because they could not employ people. In the time I was with Workplace Standards we advertised the position of a mines inspector three times before we got someone so there was an identified need but it took a long time to find the people.”¹⁹⁸

The Beaconsfield tragedy drew attention to the staffing issue within the inspectorate. Mr Sears commented that:

“I think there was a realisation that more resources were needed and the Beaconsfield event I think pointed to the Government and probably to everyone else that there was a need to review the resourcing allocation in Workplace Standards at that time.”¹⁹⁹

With regard to the new resourcing arrangements, he continued:

“Hopefully, though, out of incidents such as these, mines and processing works et cetera and quarries learn the lessons and improve their systems and prevent it happening again.”²⁰⁰

The composition of the inspectorate

Some concern was raised about the fact that Tasmania did not have compulsory prerequisites, or certification of mine managers. Mr Thompson, a mining engineer, explained his experience in other states:

“It was a statutory requirement that they had been employed as a minimum for five years as a mine manager prior to becoming an inspector. This was New South Wales. Queensland, Western Australia are the same – I am not sure about the Territory. In New South Wales, Queensland and Western Australia, just to get an interview for a position as a normal mines inspector, you have to have five consecutive years as a mine manager.”²⁰¹

¹⁹⁷ Sears, *Op. Cit.*, p. 37

¹⁹⁸ Ormerod, 13 October 2008, *Op.Cit.*, p. 58

¹⁹⁹ Sears, *Op. Cit.*, p. 39

²⁰⁰ *Ibid.*, pp. 40- 41

²⁰¹ Thompson, *Op. Cit.*, p. 71

Mr Thompson was critical of the ease with which people could achieve high ranks in Tasmanian mines:

“I am sorry but to be a chief inspector of mines in Queensland and Western Australia calls for five years' management experience. You have either been a mine manager or you have not been a mine manager. If you are going to judge somebody on how he has performed or conducted himself but you have not worn their shoes and you have not sat in that chair and have not done that job, then it is just not right.”²⁰²

Ms Shaw took a different view and observed that:

“There is a view amongst mining inspectorates that the only kind of competence you need to regulate health and safety in the mining industry is mining engineering, and I certainly don't share that view. I think there are extraordinary risks in that industry that you need management expertise to deal with.”²⁰³

Mr Gula commented that:

“I think that the challenges Tasmania faces in relation to Workplace Standards is that there are a number of different operations working in a number of different mining methods and styles, from the smallest quarry to the largest open cuts. ... the real issue is being able to assess and understand the risks of any operation. ...

Certainly the quality of any kind of risk assessment or inspection can vary depending upon the qualifications or experience of the inspector. So it is hard to say that Tasmania should have two, three, four, five or six different inspectors or that we must have this level of inspectorate. It is having the availability of certain skills and being able to call on them at the right time and at the right place.”²⁰⁴

Generally it was accepted that there is a problem with the inspectorate attracting qualified and competent staff.²⁰⁵ Submissions suggested that the government would never be able to match the salaries offered by private enterprise and instead needed to market other desirable aspects of the role.

Further, Tasmania did not match salaries of mining engineers in other States, as shown by the evidence given to the Coronial Inquest into the death of Larry Knight, and provided in the following Table²⁰⁶:

²⁰² Thompson, *Op. Cit.*, p. 74

²⁰³ Shaw, *Op. Cit.*, p. 5

²⁰⁴ Gula, *Op. Cit.*, p. 75

²⁰⁵ Bradley, Mr Brian, Director-General, Department of Consumer and Employment Protection, Western Australia, Transcript of Meeting, Perth, 22 September 2008, p. 35, Billingham, *Op. Cit.*, p. 38, Mr Cook p. 46

²⁰⁶ Magistrates Court of Tasmania Coronial Division, Inquest Touching the Death of Larry Paul Knight, *Op. Cit.*, p. 77

| | <i>Tasmania</i> | <i>Queensland</i> | <i>NSW</i> | <i>WA</i> |
|------|-----------------|-----------------------------|-------------------------|-------------------------|
| 2006 | \$78K + 9% | \$105K + 12%+ vehicle | \$142-\$145K +9% | \$115-\$135K +5% |

In recent attempts to procure staff Workplace Standards has enlisted the help of recruitment professionals. These people helped to recommend how the position should be remunerated amongst other areas of advice.²⁰⁷

Mr Martin Knee, the Western Australian State Mining Engineer, suggested, in terms of the pay disparity issue in attracting staff, that:

“We need to concentrate on our pluses and you do not necessarily have to be competitive in terms of salary package. What you need to have to be competitive in is attractiveness overall and there are a lot of things that we have got going for us.”²⁰⁸

Professor Hopkins’ suggested a similar focus:

“Given that you are paying your inspectors less than they get in industry, it is the lifestyle you have to highlight. You have to make sure that lifestyle is as attractive as possible, that inspectorate positions are family friendly, that they get good superannuation and so on. It is true that some people gravitate towards inspector positions for all sorts of reasons to do with there being ultimately less stressful positions. Senior managers in big companies are highly stressed people and they are also very worried about their personal liability under various bits of legislation.”²⁰⁹

It seems from Ms Shaw’s study that it is the type of inspectorate that is developed that will have an impact on its ability to attract staff:

“An ideal mining inspectorate would be an employer of choice within the mining industry as well as in the broader OHS industry. It would attract young people seeking development over three to five years as well as those seeking long-term careers. It would also attract older staff who would bring knowledge and experience from mining and other industries. Salary would not be the only incentive in this environment.”²¹⁰

²⁰⁷ Sears and Ormerod, 13 October 2008, *Op. Cit.*, pp. 57-58

²⁰⁸ Knee, Mr Martin, Western Australian State Mining Engineer, Transcript of Meeting, Perth, 22 September 2008, p. 50

²⁰⁹ Hopkins, *Op. Cit.*, p. 35

²¹⁰ Shaw Idea, *Op. Cit.*, Chapter 4, p. 3

Two things that Dr Lewin thought were essential for a regulator were that it had a strong organisational capability in conjunction with individuals with well developed interpersonal skills.²¹¹ He stated these features were important:

“... because that is where quite often results are made. It is not by prosecutions or by improvement notices but by influence and skills, by having people who can communicate effectively.”²¹²

Mr Lemberg agreed that it is up to the mining company to develop the safety culture through “coaching, supporting and mentoring and encouraging partnership and encouraging organisations like our own to play a proactive role in that...”²¹³ rather than the inspectorate. He suggested that:

“The inspectorate has a part to play in facilitating and encouraging companies to adopt that vision and work out how to get there...”²¹⁴

On the issue of the Inspectorate’s competency, Mr Long raised a further important point:

“You’re never going to resource an inspectorate across the whole range of mining engineering skills because you’d end up with 30 or 40 people. For obvious reasons it’s what people don’t do. If you need a geotechnical expert then you hire one in; you get the report and then operate from the report.”²¹⁵

Overall, according to Mr Long:

“What you need in terms of regulation is an independent regulator which is fiercely proactive, which makes planned and unplanned visits to sites, which challenges, which seeks information and then prosecutes it, if necessary.”²¹⁶

On a positive note for current Workplace Standards’ practices, Mr Kemp was keen to record that:

“...I have seen them more this year than the rest of the mine has seen them in the entire existence of the mine. They really upped their visiting schedule this year. Their first visit was in February when they came and did an audit on us, and that was the first visit since 2006. Since that time they have been on site regularly. ... At the moment the level of visits we are getting and their interaction is on par with what I had been used to for the last 20 years.”²¹⁷

²¹¹ Lewin, *Op. Cit.*, pp. 2-3

²¹² *Ibid.*, p. 3

²¹³ Lemberg, *Op. Cit.*, pp. 53-54

²¹⁴ *Ibid.*, p. 54

²¹⁵ Long, *Op. Cit.*, p. 38

²¹⁶ Long, *Op. Cit.*, p. 37

²¹⁷ Kemp, *Op. Cit.*, p. 46

Mr Long agreed that there had been some improvement with the visibility of Workplace Standards recently but submitted that they were:

“... still not visible enough. They did an audit on communications but that was essentially because the Premier made a public statement during the Beaconsfield fatality. It wasn't, in my view, driven by a detached analysis by Workplace Standards of those areas which most needed auditing; it was a political response. I think Workplace Standards needs to review its operations in terms of the whole extractive industry. It needs to analyse what the tasks are, the statutory tasks and the other tasks that would underpin duty of care, and it needs to come up with a comprehensive plan of its own to allocate resources where they are most effective and where they are most needed.”²¹⁸

Coroner Chandler summarised the current position saying:

“The evidence now suggests that the Tasmanian Government has finally dedicated sufficient resources to the inspectorate to ensure that it is adequately manned, both now and in the immediate future. However, it is of real concern that it has taken over 3 years for this point to be reached. It is also of concern that the OCIM, in its new format, is untested. It is my recommendation that an audit of its performance be undertaken each 12 months with a view to ensuring that it is continuing to meet its statutory functions. It is trite to say it but worker safety within the mining industry requires an involved, proactive, vigilant and adequately resourced mining inspectorate.”²¹⁹

Should the Regulator be industry specific?

Ms Shaw was asked if she thought that it was best to have the mining inspectorate as part of the broader workplace inspection body. She commented:

“My views on that have gone through a whole range of positions. Certainly we recommend it in Queensland and I do not think it is any secret that the inspectorate should properly be within the general health and safety inspectorate. I have worked with Andrew Vickers... one of the points he made, which I think is pertinent to your work too, is that you need to make the decision on whether what we are talking about is a mining industry regulator or a health and safety regulator that happens to apply its regulatory expertise and framework to the mining industry. That creates two different ways of thinking about how you go about regulating an industry.

I am certainly much more of the view that it is a health and safety regulator that happens to apply its expertise, skills and background to

²¹⁸ Long, *Op. Cit.*, p. 37

²¹⁹ Magistrates Court of Tasmania, *Op. Cit.*, p. 78 [16.4.10]

the mining industry. I have certainly seen, both professionally and personally, some of the negative consequences that can arise when a regulator believes that its role is to support the industry rather than to regulate the industry and that can be a really significant problem.”²²⁰

It was Professor Hopkins’ view that:

“The problem is that mining is enormously profitable and all the people who are at all expert in the area of safety in relation to mining are sucked out of the inspectorate and given highly paid jobs in the mining industry. The only way you can stop that from happening is by paying them much higher salaries.

It is very difficult to do that in a department which is charged with administering other areas of safety because they make very properly an argument that safety amongst fisher people or farmers is just as important. In fact more people get killed in those areas than get killed in mining so it is more important that they be resourced than be paying much higher salaries to mines inspectors just to hang onto them. So it is virtually impossible to hang onto mines inspectors in that kind of department because they are just sucked away into the industry. This has been the experience with the oil and gas industry as well. That is one of the reasons NOPSA was set up as an independent agency which can pay people much higher salaries and which, by the way, is funded from the industry. It is funded by a levy on industry, but it is not a user-pays principle so it is not captive of the industry in any way. That is a very important point. Because it is essentially funded by the industry they can pay people much higher salaries and have some chance of hanging onto them.”²²¹

In summarising her view, Ms Shaw said:

“...I am more of an agnostic now about industry-specific regulators than I was in the past. However, for your purposes I would sound quite a note of caution. You are a small jurisdiction and in my view it would be extremely difficult practically for you to resource an industry-specific regulator appropriately. New South Wales has trouble getting people with the range of expertise they need to do particular jobs and they often hire contractors in or liaise with people who are working with people in other States. For example, they are doing a project on manual handling in the industry and they are working with the ergonomist that Queensland has hired to deal with that - it is a cooperative approach.

For small jurisdictions such as Tasmania an industry-specific regulator would be very difficult to resource adequately. It is very expensive, as you would be aware. For the kind of industry expertise that you might

²²⁰ Shaw, *Op. Cit.*, p. 3

²²¹ Hopkins, *Op. Cit.*, p. 32

want to access, the salaries in the industry in Australia at the moment, much less overseas, would make it almost impossible for you to compete in that market.

I think that there are structures that you can envisage that would allow you to not lose the important skills of having someone with experience and knowledge in the mining industry but at the same time resource them with the health and safety and regulatory expertise that you would need to run a regulator."²²²

Overall Mr Daly commented that:

"I think you've got to have the expertise in that department, whether you actually split it as in 'these are the mining guys'. At the moment we have a couple of light industrial inspectors who come into the west coast. Those guys have actually been good, due to their personality and keenness, but they both admit that they don't have that underground mining background. They certainly have had a fair bit of that in the last 12 months.

It might be asking a bit too much but I would like to have a proactive inspectorate as in the advisory, rather than somebody coming out with a measurement and a big bat and a fine. They should be more the adviser and counsellor rather than the policeman. Again, if the company doesn't take advice they should be prosecuted."²²³

Mr Daly also saw merit in a regular visit regime.²²⁴ He thought every three months or so would be beneficial,²²⁵ commenting that:

"Depending on the stage of your mine, I think a minimum of every three months, and be that a visit to be updated, or whatever. If I had an inspector come here every three months, that would be great, because in that period of time you are not actually dramatically changing your operation. Again, if I was opening up a new ore body or doing something very different like putting in a shaft, or something like that, I'd be actually asking the inspectorate to come and visit and get their exposure to it."²²⁶

There is clear support for the inspectorate to remain government funded. It is paramount that the inspectorate be adequately funded and resourced.

Mr Clyde related that:

"... I don't think anybody would dispute that they have been under-resourced for some time. The bottom line there is money. How do you

²²² Shaw, *Op. Cit.*, p. 4

²²³ Daly, *Op. Cit.*, p. 60

²²⁴ *Ibid.*, p. 59

²²⁵ *Ibid.*, p. 60

²²⁶ *Ibid.*, p. 60

finance it? Given the fact that most of the mines are paying a significant amount of company tax on royalties to the Government, I am not clear why it should be such a big issue to resource the inspectorate."²²⁷

Mr Stewart Bell, Executive Director, Safety and Health Division, Department of Mines and Energy, Queensland, explained that the inspectorates (in both Queensland and NSW) are funded by a levy system. He described that it is calculated in Queensland by:

"... the number of employees multiplied by a number. At the moment there are 33 000 employees in Queensland in the mining industry and the levy is \$804 per year per person. If the mine has 10 people or fewer, it is \$100 a year. New South Wales does it as a percentage of their workers compensation bill, which is just below 1 per cent and which works out at about \$1 000 a head, versus our \$804. As the number changes and more people are coming in, we have several options: we can reduce the levy; leave it about the same and put on more inspectors; or, if we have big expenses in a particular year, we could increase the levy the following year. So we have overs and unders as well."²²⁸

In support of this type of levy as opposed to further royalties:

"The fact of the matter is that they get 100 per cent of the money coming in and we take 10 per cent of it in royalty when the coal is over \$100 a tonne. We still leave them 90 per cent of the money on a resource that they don't own, that we own. We own it."²²⁹

In relation to the industry contributing to funding the regulator, Ms Rooke commented:

"... we do not support that at all for a number of reasons. It would be seen as a bit of a conflict of interest in terms of paying for the regulator. There are different models for calculating how it is done and whether it should be on a fee-for-service basis. You would have companies quibbling over whether they felt they had received a quality service from the regulator and whether it was worth the money that they had to pay for it. If it were on a levy basis, then it would be about ensuring that service provided was equitable. From our point of view it is a government responsibility to provide the service of a good quality regulator and they should adequately fund and resource that. You will hear often in Western Australia, with the significant amount of royalties that we are currently inputting into the regulator, that there should be no argument that they cannot afford to resource."²³⁰

²²⁷ Clyde, *Op. Cit.*, p. 15

²²⁸ Bell, Mr Stewart, Executive Director, Safety and Health Division, Department of Mines and Energy, Queensland, Transcript of Meeting, Brisbane, 24 September 2008, p. 27

²²⁹ *Ibid.*, p. 28.

²³⁰ Rooke, *Op. Cit.*, p. 9-10

Mr Schulze believed that with the amount of money generated from mining the government should be able to fund a strong system. He continued:

“However, becoming more pragmatic on it I guess that you might have to end up having to charge the mining industry for their inspections to help fund what some people consider a significant cost. If you got off their back in other ways they would probably go along with that idea of perhaps an inspection, and it occurs in a lot of other situations where a government agent comes onto your property to do something for you and you get a bill afterwards. That is the nature of government.”²³¹

Mr Sandy was sceptical of a plan where the industry helped fund the inspectorate. Whilst he said it was not a major concern to him he felt that:

“... if we were going to have to pay for our own inspectorate then we would want something for it and that is when you start getting into the conflict. And why do we have to pay for an inspectorate compared to the farming industry or the forestry or fishing or anybody who is manufacturing, or construction even? Do they pay for the inspectorate? If we pay, everybody should pay.”²³²

Should it be within the inspectorate’s role to give advice?

Under the current legislation, there is no explicit provision for inspectors to give advice.²³³ It is not clear that this is understood by all involved in the industry. However, Mr Ormerod has advised his inspectors that:

“... I do not believe they should feel limited by the legislation and advice they give because they operate [under the] *State Service Act*, which gives them certain protection. ...

There is always a duty of care but if they give that advice in the utmost good faith then I have told them that they have the support of the agency and the State Service as a whole under the State Service Act. So I have made it quite clear to them that they should not feel limited by the legislation. It would be useful to make the amendment but I do not think it is necessary, so from that they feel freer to give the advice that they have always wanted to give”.²³⁴

Mr Allan Jackson commented that:

“I think the big issue with the regulator is that they need to have the competency and the knowledge and qualifications to understand what good risk management is about, and what the safety case is all about if that is the way it goes, and also what makes up a really good safety

²³¹ Schulze, *Op. Cit.*, p. 7

²³² Sandy, *Op. Cit.*, p. 25-26

²³³ See relevant sections: 35-39 of the *Workplace Health and Safety Act 1995*

²³⁴ Ormerod, Mr Roy, Transcript of Evidence, 29 July 2008, p. 5.

and health management system from a certification point of view. I would like to sit back and think that if the regulator comes to visit me he or she really knows what they are talking about, not just sit there and look at the regulations and say, 'You are not meeting this and you are not meeting that and these are the reasons why', but also provide some advice."²³⁵

He thought that advice should be part of the role of inspectors.²³⁶

Mr Knee, a representative of the inspectorate in Queensland, discussed concerns that he held in regard to the inspectorate giving advice, explaining:

"That is problematic for us. We have always done it and we will continue to do it. We are in the midst of a debate at the moment as to whether we should continue to do that. I have no doubt that with some of the recent political changes there will be an expectation that we continue to do it. There is a good argument that the regulator is the regulator and if you want advice look under consulting engineers in the Yellow Pages. We regularly get requests for legal advice, technical advice, all sorts of things, such as how to comply with regulations."²³⁷

He suggested that a problem with the advice side of an inspectorate is exemplified in the fact that:

"We have had a very large increase in consultant engineers ringing us to say essentially they have a very lucrative contract to provide this advice and they would like us to tell them what to say. It really is an issue. Dealing with this consumes a significant part of our resources. It is always a trade-off in deciding, if somebody is going wrong, whether you try to stop them at a very early stage and steer them back on to the right track - which I consider would be a good use of our resources - or you just tell them they have to go somewhere else for that kind of advice. In point of fact most of the time our people will provide advice."²³⁸

Union Involvement

Divergent views were presented to the Committee with regard to the appropriateness and utility of union involvement in mine site inspections. Mr Flanagan believes there is a role to be played by both the inspectorate and the union in ensuring safety standards.²³⁹ The two principal unions involved in the State's mining industry are the AWU (metalliferous) and the CFMEU (shale mines).²⁴⁰

²³⁵ Jackson, *Op. Cit.*, p. 25

²³⁶ *Ibid.*, p. 26

²³⁷ Knee, *Op. Cit.*, p. 40

²³⁸ *Ibid.*, p. 41

²³⁹ Flanagan, *Op. Cit.*, p. 24

²⁴⁰ *Ibid.*, p. 24

Mr Hinds, CFMEU, had a view that 'check inspectors', as employed in Queensland and New South Wales should be employed in Tasmania.

"... a check inspector who is at a union level and elected by the rank and file but is wholly and solely used as an inspector... They are wholly and solely funded by the unions ... another level of safety ... not committing to company or the Government. We see them as neutral and they are able to do a full inspection without any pressures placed upon them by either the company or government or the regulators"²⁴¹

Mr Hinds stated that these check inspectors were well trained and that "it costs us thousands of dollars a year to train them."²⁴²

Mr Long had a decidedly different opinion:

"Unions are essentially industrial organisations and they have varying degrees of engagement with the mines...But we do not see any role whatever in unions in the sense of being inspectors...I guess the industry has difficulty in how a union official can be a union official one hour and a Workplace Standards Inspector the next. They are first and foremost union officials. There is always the difficulty of conflicting roles.

But that is not the key point. The key point is that inspectors need to be qualified trained professionals. If they are not mining engineers, then they should be people who are trained in workplace arrangements and have the technical ability to carry out audits and so forth, such as general inspectors. That was the recommendation that the Coroner made, I might add. He did not see any role for unions in that."²⁴³

Mr Newport believed that there should be a role for unions. He saw them being useful:

"As regards safety, they should be able to bring up any safety matter that is not addressed by the company. If the company's procedures don't give them the result they want, I think the union should become involved."²⁴⁴

Mr Michael Catchpole, CEO, Australian Institute of Mining and Metallurgy, did not see the need for union involvement in inspections.

"We would not see and I do not think our members would see that they have a role as a quasi inspectorate, which is really giving them either a statutory or regulatory role that we do not believe that they would necessarily have either the skills base or the entirely non-partisan

²⁴¹ Hinds, *Op. Cit.*, p.15

²⁴² *Ibid.*, p. 15

²⁴³ Long, *Op. Cit.*, p. 39

²⁴⁴ Newport, *Op. Cit.*, p. 14

approach to it. Rather, they have a significant role in helping define the model - upgrade or update regulation."²⁴⁵

However, he did regard unions as valuable "as part of the consultation."²⁴⁶

Mr Schulze's view is that:

"It is always healthy to have the union involved in tripartite with the management, the union and the inspectorate working together on the lease in terms of your safety meetings and how you develop the safety. Once you get the separation between those three parties you have a dog's breakfast in the whole running of the safety model, as well as if an accident happens then you have all this dog-eat-dog thing going on. That should not be and it never always was that way."²⁴⁷

He commented further:

"It is important that the unions be part of it on-site. They were always big in terms of the safety meetings that we used to have. You have to have the three bodies operating together at the coalface, not back in the bureaucratic sense. They can work it out better there and come to agreements and arrangements for safety there that don't have to be prescribed legislatively. That is the way it did happen and still should happen."²⁴⁸

Mr Dave Sandy stated:

"I am very clear that it is healthy to have unions involved in the regulation of mines in some form or other but I do not see them as actually being regulators, I see them as being representative of their membership - as they set out to do in the first place. So if a member of their union has a problem with safety on a mine site then they are a potential way of dealing with that problem. In that role they can be very powerful and they have access to both Workplace Standards under the current legislation and they have access to management and they have access to the media, all of which they know and they are very skilled at using for various things."²⁴⁹

He did not support their appointment as inspectors.²⁵⁰ He said that:

"The problem I do have is where you give unions the powers of an inspector. I think that is a huge conflict of interest and is very hard to separate. With most safety-related things there is an IR linkage. ... Even without unions you will find that in most cases there is an element

²⁴⁵ Catchpole, *Op. Cit.* p. 27

²⁴⁶ *Ibid.*, p. 27

²⁴⁷ Schulze, *Op. Cit.*, p. 9

²⁴⁸ *Ibid.*, p. 9

²⁴⁹ Sandy, *Op. Cit.*, p. 11

²⁵⁰ *Ibid.*, p. 11

of industrial relations in a safety issue. Whether it be a poor supervisor, a poor manager, a lack of consultation or whatever, there is usually some element in an unsafe situation that relates to industrial relations. To have a person whose primary interest is industrial relations but has powers to enforce safety or legislation I think is a conflict.”²⁵¹

Mr Brian Bradley, Director-General, Department of Consumer and Employment Protection, Western Australia also thought that it was not within the role of the union to be involved in inspections.²⁵²

Mr Knee agreed on the basis that:

“... that is the role of the regulator and it should not be confused with a union's role, which is, in my view, to represent its members. I have some fundamental philosophical difficulties with people making use of the criminal law to further ends which were not really contemplated by the criminal law. I have some difficulty particularly with what happens in some jurisdictions where they retain a revenue from fines. I have a real problem with that. I think there is every indication that such a system will end up corrupt, however it starts.”²⁵³

Mr Bell noted:

“We have an interesting relationship with the union. Sometimes we get on fine with them and sometimes we don't and that is the nature of the beast. That is the way it should be. I have said this a few times: I am happy when no-one likes us, when the union does not like us and when the companies do not like us. I am less than happy when one of them is too friendly with us.”²⁵⁴

Mr Billingham explained how the AWU in that region have district workers' representatives (DWR) and that:

“The DWR, which are AWU people, are paid by the department. The AWU does not put in any money; it just nominates them and virtually leaves them alone. They work out of our offices and, in effect, become another inspectorate for us.”²⁵⁵

They receive training from the department. He continued:

“I think that unions are important but whether or not you should give a union carte blanche to enter a mine site and make unannounced visits

²⁵¹ Sandy, *Op. Cit.*, p. 14

²⁵² Bradley, *Op. Cit.*, p. 43

²⁵³ Knee, *Op. Cit.*, p. 43

²⁵⁴ Bell, *Op. Cit.*, p. 19

²⁵⁵ Billingham, *Op. Cit.*, p. 21

and inspections, I do not think that would be very helpful or indeed safe.”²⁵⁶

It was clear that Mr Ormerod was not comfortable to extend the scope of union involvement to be comparative to that in New South Wales. In that State the legislation effectively enabled unions to prosecute and sometimes embarrass the regulators.²⁵⁷

Dr Lewin’s view of union officials’ involvement was that they should:

“... have a place but I would say they are just a subset of what I call health and safety representatives. I believe that as long as they are given the opportunity to be trained and to undertake those duties they will be effective. I would make it more broad than just union; I would say health and safety representatives, not limiting who is involved in that. They do have a place but I don't see them as a replacement for a regulator.”²⁵⁸

Cooperation of Inspectorates

Dr Lewin is hopeful that many of the problems faced by regulators could in fact be overcome by greater collaboration. His suggestion to the Committee was to:

“... have some coordination and cooperation agreements with other States where you move people around. It does two things; it helps you resource and manage regulatory activity that you need to manage, but also it broadens the horizons of the individuals because they see a whole range of different approaches and when they go back to another mine they can say, 'When I was over in Western Australia, that mine was doing this. You guys have the same risk. I don't believe it's managed effectively, you need to go and speak to them'. You are not telling them how to do it but that experience, that more worldliness, gives them the opportunity to provide the input to assist people. One of the constant complaints of industry is that the regulator is more a policeman and that they do not provide any coaching and guidance. Whilst I think that is the limited role for them, there is still that opportunity by having that experience.

They are the two parts: resources can be shared and the regulator's experience and capabilities are increased by their experience.”²⁵⁹

He was critical of what he currently describes as:

“... very little cooperation and coordination between the States. The chief inspectors might disagree with me on that and I have had a

²⁵⁶ Thompson, *Op. Cit.*, p. 82

²⁵⁷ Ormerod, 29 July 2008, *Op. Cit.*, p. 13

²⁵⁸ Lewin, *Op. Cit.*, p. 9

²⁵⁹ *Ibid.*, p. 7

debate with a number of them about this. I do not see that they share resources, ideas, systems and processes very well. That leads to a duplication of effort, people doing the same things in different jurisdictions. You have a competition for the precious resources that the industry tends to gobble up. From a regulatory point of view you are competing for the same people but with different pay scales. One of the problems with the NOPSA project was how do you attract good quality people or improve the lot of the regulators to maintain that.

You may ask why I have focused a lot on the regulators. I have a strong belief that you can have pretty average or mediocre law but if you have good quality regulators who understand how to regulate the risks then you will get better outcomes. If you have regulators with a lower capability, even if you have good acts and legislation in place, you still will not necessarily get good outcomes. Ultimately you want both. You want good law and good quality, capable regulators.”²⁶⁰

In regard to cooperating with other states, Mr Daly similarly observed:

“One of the problems at the moment is that we have each State with its own regulations, be it duty of care or be it prescriptive, and its own bureaucracy to manage that. There is a lot of merit in having a national system where you have the same overall umbrella of regulations or approach, and the inspectors basically being able to cover a little bit. It’s a poor analogy, but the Federal Police type of thing versus State Police. I think one of the things we have noticed through the Mineral Council already is this territorialism, and that’s going to be hard to get over politically.”²⁶¹

It would seem that many of the Tasmanian inspectorate’s problems could be dissipated by a national change. With regard to how inspectorate resources should be shared, Ms Rooke commented:

“Western Australia accounts for half of the mining sector in Australia. We are a large portion of it. I do not believe we are big enough to house all of that knowledge and expertise and have people engaged full-time in certain roles. Again, under the National Mine Safety Framework what would be an ideal model from my point of view would be to have, whether or not they are employed by the State jurisdictions, the ability to second expertise in when and as you need it, particularly if we go down the line of a safety case model. You need different expertise at different points in time. You do not necessarily need a full-time regulator in, say, electrical matters. You may not need someone with that specific or technical expertise full-time. But if there was someone in Queensland or in Tasmania that you could second into the State or vice versa, then that just utilises expertise and resources so much more effectively.”²⁶²

²⁶⁰ Lewin, *Op. Cit.*, p. 2

²⁶¹ Daly, *Op. Cit.*, p. 60

²⁶² Rooke, *Op. Cit.*, p. 6

There is obviously a need for some people to stay in the state, but Dr Lewin suggests that:

“... maybe if you had a team of six or eight people and periodically two of those would be travelling, the others staying in the State and work with other regulators coming from other States. I think it is a matter of coordinating it but there is also the issue of doing less but doing it better - targets. If everyone is thinking about the same things, the same risks, then they can work together on that.”²⁶³

Mr Sears informed the Committee that:

“Ideally I suppose it would be good if someone went over for three months and someone came here. The funding we have at the moment is certainly good for this year and, as I said, we are getting a budget for next year and onwards to make it permanent. I have not spoken to Roy or any of the others about this, but I would like them to also visit other sites and benchmark what is happening interstate as to how we run this group, for example and to learn from them exactly what are they doing, are they focusing on auditing or are they focusing on inspecting cranes and other systems and so on.

In the funding that I have put up there is a large training component and there is a sufficient amount of money allocated for technical conferences so that the group can relate to other people, network, and get that information that is so vital to running a good unit. You are quite right, that helps to keep the employees satisfied and not looking over the fence.”²⁶⁴

However, Mr Billingham was not confident in the success of a national pool:

“I do not know how you would staff a national pool. This is one of the ideas the Commonwealth is floating for the National Mine Safety Framework. It was interesting that at a meeting in Hobart a couple of weeks ago we got a steering committee and a secretariat. The secretariat raised all these things - and that is fine, so had we - but then the steering committee knocked a lot of that stuff back but it still keeps reappearing all the time because the Federal bureaucrats do not like taking things out and it all has to stay in there. There was no support anywhere that I saw at that meeting from any State in Australia for the Commonwealth to have any role in appointing or supplying mines inspectors.

The industries are too disparate. The industries in New South Wales, Queensland and Tasmania are all different.”²⁶⁵

²⁶³ Lewin, *Op. Cit.*, p. 7

²⁶⁴ Sears, *Op. Cit.*, p. 56

²⁶⁵ Billingham, *Op. Cit.*, p. 24

Mr Bell suggested that another option would be:

“... to hire a consultancy...There is a raft of consultants in Queensland, but they’re all making vast sums of money. If you used a consultant for not too many days, you could be paying about \$3000 a day, so you could pay someone yourself and have them there all the time.”²⁶⁶

Mr Billingham said that he thought that the swapping of inspectors was “a wonderful idea but I don’t know how you do it.”²⁶⁷

²⁶⁶ Bell, *Op. Cit.*, p. 26

²⁶⁷ Billingham, *Op. Cit.* p. 26

Road Safety

Evidence was presented that identified a significant issue with safety on the roads of the West Coast caused by the large trucks coming to and from the mines.

Mayor Gerrity spoke of the frequency of these trucks travelling on west coast roads being unable to avoid crossing double white lines and the lack of passing lanes available to motorists. He told the Committee:

“Transport is a big problem at the moment, as you are probably aware... You would be aware that every truck that does out goes out illegally, they all have to cross the double white lines. They all have to because there is no other way out of it. We get booked for going across double white lines but they have to cross double white lines. Just the volume that is going out at the moment – DIER expect to transport 1.15 million tonnes by the end of 2010, compared with the 450 000 tonnes in 2005-06”.²⁶⁸

He commented that rail was a good alternative to this but that “... no effort seems to be put into rail on the west coast”.²⁶⁹

Skills Shortage

A further suggestion from Committee members is that some university places should be bonded to ensure that important skills can be maintained within the State and that financial assistance in the form of reduced HECS fees or Commonwealth funding would be beneficial in this regard.

²⁶⁸ Gerrity, *Op. Cit.*, p. 25

²⁶⁹ *Ibid.*

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Billingham, Mr Roger, Chief Inspector of Mines, Queensland, Transcript of Meeting, Brisbane, 24 September 2008

Bradley, Mr Brian, Director-General, Department of Consumer and Employment Protection, Western Australia, Transcript of Evidence, Perth, 22 September 2008

Brown, Hon Clive, National Mine Safety Framework Steering Group, Transcript of Evidence, Hobart, 29 July 2008

Catchpole, Mr Michael, CEO, The AusIMM, Transcript of Meeting, Melbourne, 26 September 2008

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Clyde, Mr Scot, General Manager, Copper Mines Tasmania, Transcript of Evidence, Queenstown, 11 August 2008

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Daly, Mr Matthew, General Manager, Henty Gold Mines (Barrick), Transcript of Evidence, Queenstown, 11 August 2008

Flanagan, Mr Robert, Australian Workers' Union, Transcript of Evidence, Hobart, 14 August 2008

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Gozzi, Mr Bob, Transcript of Evidence, 14 August 2008

Gula, Mr Stuart, General Manger, Oz Minerals, Transcript of Evidence, Queenstown, 11 August 2008

Halfacre, Mr Robin, Transcript of Evidence, Burnie, 29 September 2008

Hinds, Mr Chris, State Executive Officer, CFMEU, Transcript of Evidence, Launceston, 13 August 2008

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Hopkins, Professor Andrew, Professor of Sociology at ANU, Transcript of Meeting, 26 September 2008 via phone link

Jackson, Mr Allan General Manager Health, Safety and Environment, Rio Tinto, Transcript of Evidence, Perth, 22 September 2008

Kemp, Mr Phil, Occupational Health and Safety Manager, Copper Mines Tasmania, Transcript of Evidence, Burnie, 29 September 2008

Knee, Mr Martin, Western Australian State Mining Engineer, Transcript of Meeting, Perth, 22 September 2008

Lemberg, Mr John, General Manager – Operations, Rio Tinto Alcan, Transcript of Evidence, Launceston, 13 August 2008

Lewin, Dr Andrew, HSEC Lead Auditor, BHP Billiton, Transcript of Evidence, Hobart, 29 July 2008

Llewellyn, Mr David MP, Minister for Energy and Resources, Letter received 30 October 2008 at Attachment 2

Long, Mr Terry, CEO, Tasmanian Minerals Council, Transcript of Evidence, Hobart, 14 August 2008

McGushin, Dr Gerry, GP, Transcript of Evidence, Hobart, 14 August 2008

Marshall, Mr Trevor, Principal Inspector Mines, Workplace Standards Tasmania, Transcript of Evidence, 13 October 2008

Newport, Mr Peter, Transcript of Evidence, Hobart, 13 October 2008

Ormerod, Mr Roy, General Manager, Workplace Standards Tasmania, Transcript of Evidence, Hobart, 29 July 2008

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Sarder, Ms Monika, Manager, Policy and Advocacy, The AusIMM, Transcript of Meeting, Melbourne, 26 September 2008

Sears, Mr Fred, Chief Mining Engineer, Workplace Standards Tasmania, Transcript of Evidence, Hobart, 13 October 2008

Shaw, Ms Andrea, Shaw Idea Pty Ltd, Transcript of Meeting, Melbourne, 26 September 2008

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Thompson, Mr Clive, Transcript of Evidence, Hobart, 14 August 2008

Valk, Mr Neil, General Manager, Barrick Osborne Mine, Transcript of Meeting via video link 24 September 2008

Webber, Mr John, Principal, Balance Consulting Australia, Transcript of Evidence, 14 August 2008, Hobart

White, Mr Chris, Chamber of Minerals and Energy of Western Australia, Transcript of Meeting, Perth, 22 September 2008

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List of Witnesses**Attachment 1**

Beeke, Nigel, Cement, Concrete and Aggregates Australia
Bell, Stewart, Department of Mines and Energy, Queensland
Billingham, Roger, Chief Inspector of Mines, Queensland
Bradley, Brian, Department of Consumer and Employment Protection,
Western Australia
Brown Dr Tony, Mineral Resources Tasmania
Brown, Hon Clive, National Mine Safety Framework
Catchpole, Michael, Australiasian Institute of Mining and Metallurgy, Victoria
Clark, Jason
Clegg, John, NOPSA
Clyde, Scot, Copper Mines of Tasmania
Cook, Grant, OHS, Queensland Resources Council
Dalliston, Greg, CFMEU, Queensland
Daly, Matt, Henty Gold Mines (Barrick)
Dudley, Todd, North East Bioregional Network
Flanagan, Robert, Australian Workers Union
Fox, John, Workplace Standards Tasmania
Gerrity, Darryl, West Coast Council
Gibson, Alice, National Mine Safety Framework
Gordon, Rory, Rio Tinto, Queensland
Gozzi, Bob
Gula, Stuart, Oz Minerals
Halfacre, Robin (Shorty)
Hinds, Chris, Construction, Forestry, Mining and Energy Union
Hood, Libby, Chamber of Minerals and Energy, Western Australia
Hopkins, Prof Andrew, ANU, Victoria
Jackson, Allan, Rio Tinto, Western Australia
Jarvis, Jenny, Rio Tinto Alcan
Kemp, Phil, Copper of Mines of Tasmania
Knee, Martin, Department of Consumer and Employment Protection, Western
Australia
Lamb, John, Century OZ Minerals Mine, Queensland
Lemberg, John, Rio Tinto Alcan
Leonard, Michael, Department of Infrastructure, Energy and Resources

Lewin, Dr Andrew, BHP Billiton
Long, Terry, Tasmanian Minerals Council Ltd
Marshall, Trevor, Workplace Standards Tasmania
McGushin, Dr Gerry
Newport, Peter
Ormerod, Roy, Workplace Standards Tasmania
Reid, Peter
Roocke, Nicole, Chamber of Minerals and Energy, Western Australia
Sandy, Dave, Australian Bulk Minerals
Sarder, Monika, Australiasian Institute of Mining and Metallurgy, Victoria
Schulze, Peter
Sears, Fred, Workplace Standards Tasmania
Shaw, Andrea, Shaw Idea Pty Ltd, Victoria
Taylor, Kevin, Rio Tinto Alcan
Thompson, Clive
Vaccaneo, Stuart, CFMEU, Queensland
Valk, Neal, Barrick Osborne Mine, Queensland
Webber, John, Balance Consulting Australia Pty Ltd
White, Chris, Chamber of Minerals and Energy, Western Australia
Smith, Mark, Workplace Standards Tasmania
Tunstall, Andrew, Workplace Standards Tasmania

Written submissions taken into evidence**Attachment 2**

Australian Bulk Minerals
Australian Workers Union
Australiasian Institute of Mining and Metallurgy, Victoria
Balance Consulting Australia Pty Ltd
Barrick Osborne Mine, Queensland
Cement, Concrete and Aggregates Australia
CFMEU, Queensland
Chamber of Minerals and Energy, Western Australia
Clark, Jason
Construction, Forestry, Mining and Energy Union
Copper Mines of Tasmania
Department of Consumer and Employment Protection, Western Australia
Department of Mines and Energy, Queensland
Gordon, Rory, Rio Tinto, Queensland
Gozzi, Bob
Halfacre, Robin (Shorty)
Henty Gold Mines (Barrick)
Hopkins, Prof Andrew, ANU, Victoria
Jackson, Allan, Rio Tinto, Western Australia
Kemp, Phil, Copper of Mines of Tasmania
Lamb, John, Century OZ Minerals Mine, Queensland
Lewin, Dr Andrew, BHP Billiton
McGushin, Dr Gerry
Mineral Resources Tasmania
National Mine Safety Framework
Newport, Peter
NOPSA
North East Bioregional Network
Oz Minerals
Queensland Resources Council
Reid, Peter
Rio Tinto Alcan
Schulze, Peter

Shaw, Andrea, Shaw Idea Pty Ltd, Victoria

Tasmanian Minerals Council Ltd

Thompson, Clive

West Coast Council

Workplace Standards Tasmania

Documents taken into evidence**Attachment 3**

Your Mine Your Safety – Public Consultation Pack

National Mine Safety Framework Legislation Framework

Designing Standards: Towards Best Practice

Steering Committee on Mine Safety Legislation Reference Group on Mine Safety Legislation – Out of Session Paper Agenda Item: A New Mine Safety Model for Tasmania

Extract from research on the Mount Lyell Disaster

OHS Regulation – National Research Centre – About OHS Regulation in Australia

Letter dated 26 September 1991 from the Department of Resources and Energy to the Department of Primary Industry regarding the Binalong Landcare Group Visit

Letter dated 28 April 1995 from Binalong Bay Coastcare to Break O’Day Council regarding Future Works

Letter dated 13 November 2006 from Mineral Resources Tasmania to Alan Graham regarding Quarry Old Gardens Road, Bay of Fires

Letter dated 13 November 2006 from Mineral Resources Tasmania to Alan Graham regarding Recent works at the Quarry, Old Gardens Road, Bay of Fires

Letter dated 28 November 2006 from Mineral Resources Tasmania to Alan Graham regarding recent works at mining lease 3M/1990 at Sloop Lagoon near the Gardens

Letter dated 13 April 2006 from Mineral Resources Tasmania to Todd Dudley regarding operating hours at mining lease 16M/94 Basin Creek

Letter dated 4 September 2006 from Ken and Susan Stonehouse to Warren Jones, Director of Environmental Management and Pollution Control Board regarding Quarry at Basin Creek near St Helens

Letter dated 2 May 2002 from Mineral Resources Tasmania to Wayne Virieux regarding sand mining adjacent to the St Helens Point Conservation area (12)

Letter dated 2 December 2002 from Mineral Resources Tasmania to Dennis Fieldwick regarding Mineral Resources Development Act 1995 and Regulations – Lease Application 1759P/M, 6 Hectares

Letter dated 16 July 2003 from the Break O’Day Council to Todd Dudley regarding sand extraction operation Fieldwicks Pty Ltd, St Helens Point

Letter dated 28 October 2003 from Mineral Resources Tasmania to Todd Dudley regarding Mining Lease 1759P/M – Windmill Lagoon

Undated letter from Department of Primary Industries, Water and Environment (Peter Fischer) to Todd Dudley regarding sand extraction at St Helens Point

Letter dated 2 December 2003 from the North East Bioregional Network to The Ombudsman regarding illegal sand mining at St Helens Point

Question 13 asked by Mr Morris and answered by Judy Jackson MHA in the House of Assembly, dated 14 May 2004, regarding the sand mining project at St Helens Point

Presentation to the Legislative Council Select Committee – John Lemberg, 13 August 2008

Transcript of Professor Quinlan – Coroner’s Inquest (Beaconsfield)

Rio Tinto – HSEQ Management System – January 2008-09-26 Standard – Rio Tinto HSEQ Management System

Brochures:

- Understanding Duty of Care
- Understanding NOPSA and How it Operates
- What is a Safety Case
- Issue of Provisional Improvement Notices by Health and Safety Representatives
- Understanding the Role of Health and Safety Representatives
- Notifying and Reporting Accidents and Dangerous Occurrences
- Improvement and Prohibition Notices

Off-Shore Petroleum Act 2006

Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996

NOPSA Corporate Plan 2008-2011

NOPSA – HSR Handbook – A guide for health and safety representatives in Australia’s offshore petroleum industry

Coal Mining Safety and Health Act 1999

Coal Mining Safety and Health Regulations 2001

C176 Safety and Health in Mines Convention, 1995

R183 Safety and Health in Mines Recommendation, 1995

Digging Deeper – When Consultancy Project Vol 1 & 2 (CD)

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Submission to the Mines Safety and Inspection Act 1994 Review (January 2008)

Submission to the National OHS Review (July 2008)

Briefing Notes – The AusIMM – Tasmanian Legislative Council Select Committee on Mining Industry Regulation

Mineral Resources Tasmania – Annual Review

The Industrial Mineral Deposits of Tasmania

Tasmanian Geological Survey Bulletin 72 – The Geology and Mineral Deposits of Tasmania: a summary

LEGISLATIVE COUNCIL SELECT COMMITTEE**MINING INDUSTRY REGULATION****MINUTES***WEDNESDAY, 16 APRIL 2008*

The Committee met at 4.02 pm in the Ante Chamber, Parliament House, Hobart.

Members Present : Ms *Forrest*, Mrs *Smith* and Mr *Wilkinson*.

In Attendance : Mrs Sue McLeod, Clerk-Assistant (Secretary)

Order of Parliament :

The Order of the Parliament appointing the Committee dated 15 April 2008, having been circulated, was taken as read.

Election of the Chair :

Ms *Forrest* was elected Chair and took the Chair.

Mr *Finch* took his place.

Business :**Resolved :**

- (a) That witnesses be heard under Statutory Declaration.
- (b) That evidence be recorded verbatim unless otherwise ordered by the Committee.
- (c) That advertisements be inserted in the early general news pages of the three daily Tasmanian newspapers on Saturday, 19 April 2008 and that receipt of written submissions be conditioned for closure on Friday, 30 May 2008. The draft advertisement was agreed to.
- (d) That the Secretary send invitations to make submissions to :

Minister for Resources
Minister for Workplace
Mining ventures
Unions

West Coast Council
 King Island Council
 Break O Day Council
 West Coast Council

Other Business :

Resolved, That –

- Members advise the Secretary of any further suggestions for invitations to make submissions.
- Background information be provided in relation to other states, particularly Western Australia and Queensland.

At 4.13 pm the Committee adjourned until a date to be advised.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

THURSDAY, 12 JUNE 2008

The Committee met 9.30 am in Committee Room 3, Parliament House, Hobart.

Members Present : Mr Finch, Ms *Forrest*, Mr Harriss (appointed 11 June 2008) and Mr *Wilkinson*.

In Attendance : Mrs Sue McLeod, Clerk-Assistant (Secretary)
 Ms Allison Waddington (Minutes/Secretary)

Confirmation of Minutes :

The Minutes of the meeting held on Wednesday, 16 April 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Letter dated 28 April 2008 from Alasdair Martin, General Manager, Beaconsfield Mine Joint Venture advising the Board of the Minerals Council will provide a submission on their behalf.

- Email dated 7 May 2008 from Joe Gaspersic, Gaspersic Contracting Pty Ltd advising submission will be forwarded through CCAA of which they are a member.
- Letter dated 20 May 2008 from Rod Chandler, Workers Rehabilitation and Compensation Tribunal advising they will not be making a submission.
- Email dated 21 May 2008 from Aysha Williams, Magistrates Secretary, Burnie Magistrates Court advising Magistrate Jones is overseas and will be unable to participate in the inquiry.
- Email dated 21 May 2008 from Nigel Beeke, Executive Officer, Cement, Concrete and Aggregates Australia advising written submission to follow and request to present verbal evidence.
- Email dated 27 May 2008 from Andrew Shaw, Shaw Idea Pty Ltd advising will not be making a submission but happy to make a verbal presentation.
- Email dated 29 May 2008 from John Mitas, Chief Inspector of Mines and Quarries, Department of Primary Industries, advising he will not be making a submission.
- Email dated 30 May 2008 from Alice Gibson, National Mine Safety Framework (NMSF) requesting extension of time to prepare written submission.
- Letter from Hon Sue Smith MLC resigning from the Legislative Council Select Committee on Mining Industry Regulation.

The Committee resolved that the three emails and attachments from Mr Clive Brown be received '*in camera*'.

Submissions and Requests to Present Verbal Evidence :

Resolved, That the following submissions and requests be received –

- 1) Construction, Forestry, Minister & Energy Union
- 2) Bob Gozzi
- 3) Private Witness
- 4) Copper Mines of Tasmania
- 5) West Coast Council
- 6) Cement, Concrete and Aggregates Australia
- 7) Peter Reid
- 8) Mr 'Shorty' (Robin) Halfacre
- 9) Mr Gerry McGushin
- 10) Tasmanian Minerals Council Ltd
- 11) The Australian Workers Union
- 12) North East Bioregional Network

- 13) Phill Kemp, Copper Mines of Tasmania
- 14) Balance Consulting Australia Pty Ltd
- 15) Australian Bulk Minerals (ABM)
- 16) Workplace Standards Tasmania
- 17) National Mine Safety Framework (NMSF)
- 18) Rio Tinto Alcan

Future Program :

The Committee discussed its future program.

***Resolved* That -**

- Public hearings be held in Queenstown, Burnie and Hobart during the week commencing 11 August 2008, including a site visit to Savage River Mines and Renison.
- The Committee meet with the Chamber of Minerals, Rio Tinto, BHP and the relevant department in Western Australia, and if possible a site visit, in September 2008.
- If possible, a meeting be arranged with Kathryn Heiler, author of "The Struggle for Time".
- All those providing submissions be advised of the hearing dates.

At 10.15 am the Committee adjourned until a date to be advised.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

TUESDAY, 29 JULY 2008

The Committee met 8.55 am in Committee Room 2, Parliament House, Hobart.

Members Present: Ms Forrest, Mr Harriss and Mr Wilkinson

Apologies: Mr Finch

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Allison Waddington (Minutes/Secretary)

Confirmation of Minutes:

The Minutes of the meeting held on Thursday, 12 June 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received -

- Letter dated 25 June 2008 from Clive Thompson regarding submission to Mining Industry Regulation Committee.

Request to Present Verbal Evidence:

Resolved, That the following request be received –

- 19) Dr Andrew Lewin, HSEC Lead Auditor, BHP Billiton

Public Hearings:

HON CLIVE BROWN and ALICE GIBSON on behalf of the National Mine Safety Network were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The Committee suspended at 10.38 am.

The Committee resumed at 10.45 am.

DR ANDREW LEWIN was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR ROY ORMEROD, Workplace Standards Tasmania, was called, made the Statutory Declaration and was examined.

The witness withdrew.

Tabled Documents:

- Your Mine Your Safety – Public Consultation Pack (17)
- National Mine Safety Framework Legislation Framework (17)
- Designing Standards: Towards Best Practice (17)
- Steering Committee on Mine Safety Legislation Reference Group on Mine Safety Legislation – Out of Session Paper Agenda Item: A New Mine Safety Model for Tasmania (16)

Other Business:

- Itinerary for 11-13 August public hearings and site visit confirmed.
- Considered draft itinerary and costs for interstate site visits in Western Australia and Queensland scheduled for September.

Adjournment:

At 12.50 pm the Committee adjourned until Monday 11 August 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

MONDAY 11 AUGUST 2008

The Committee met at 1.27 pm in the Private Function Room, Chancellor Inn, Batchelor Street, Queenstown.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Mrs Jill Mann, Assistant

Confirmation of Minutes:

The Minutes of the meeting held on Tuesday, 29 July 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received-

- Letter dated 4 August 2008 from David Bartlett MP, Minister for Planning and Workplace Relations in relation to Roy Ormerod, General Manager, Workplace Standards Tasmania meeting with Committee on 29 July 2008.
- Letter dated 1 August 2008 from Roy Ormerod, General Manager, Workplace Standards Tasmania enclosing information requested by Committee:
 - WRMC – Comparative Performance Monitoring Report for period 2005-2006
 - Trial of Authorised Union Inspectors – Evaluation Report
 - Mine Safety Audit Reports

Submission:

Resolved, That the following submission be received –

(20) Peter Schulze

Public Hearings:

SCOT CLYDE, GENERAL MANAGER, COPPER MINES OF TASMANIA was called, made the Statutory Declaration and was examined.

The witness withdrew.

DARRYL GERRITY, MAYOR, WEST COAST COUNCIL was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 3.20 pm.
The Committee resumed at 3.34 pm.

PETER REID was called, made the Statutory Declaration and was examined.

The witness withdrew.

MATT DALY, GENERAL MANAGER, HENTY GOLD MINES (BARRICK) was called, made the Statutory Declaration and was examined.

The witness withdrew.

STUART GULA, GENERAL MANAGER, OZ MINERALS was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 6.05 pm.
The Committee resumed at 6.10 pm.

Other Business:

Resolved, That the Committee meet with stakeholders and visit mine sites in Western Australia and Queensland from 17-25 September 2008

At 6.20 pm the Committee adjourned until Wednesday 13 August 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

WEDNESDAY 13 AUGUST 2008

The Committee met at 8.32 am in the Committee Room, Burnie Council Chambers, 80 Wilson Street, Burnie.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Mrs Jill Mann, Assistant

Public Hearings:

PETER SCHULZE was called, made the Statutory Declaration and was examined.

The witness withdrew.

DAVE SANDY, MANAGING DIRECTOR, AUSTRALIAN BULK MINERALS was called, made the Statutory Declaration and was examined.

The witness withdrew.

Documents Tabled:

Extract from research on the Mount Lyell Disaster (Peter Schulze (20))

The Committee suspended at 10.15 am and travelled to Launceston.

The Committee resumed at 1.05 pm in the Conference Room, Henty House, One Civic Square, Launceston.

NIGEL BEEKE, EXECUTIVE OFFICER, CEMENT, CONCRETE AND AGGREGATES AUSTRALIA was called, made the Statutory Declaration and was examined.

The witness withdrew.

CHRIS HINDS, STATE EXECUTIVE OFFICER, CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION was called, made the Statutory Declaration and was examined.

The witness withdrew.

TODD DUDLEY, PRESIDENT, NORTH EAST BIOREGIONAL NETWORK was called, made the Statutory Declaration and was examined.

The witness withdrew.

Other Business:

The Committee discussed further the program for the interstate visit and reconsidered its resolution of 11 August.

Resolved, To travel to Perth and Brisbane from 21-25 September 2008 to meet with stakeholders, but not to visit mine sites.

Public Hearings:

JOHN LEMBERG, GENERAL MANAGER – OPERATIONS, KEVIN TAYLOR AND JENNY JARVIS, on behalf of RIO TINTO ALCAN were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

Documents Tabled:

- OHS Regulation – National Research Centre – About OHS Regulation in Australia (6)
- Letter dated 26 September 1991 from the Department of Resources and Energy to the Department of Primary Industry regarding the Binalong Landcare Group Visit (12)
- Letter dated 28 April 1995 from Binalong Bay Coastcare to Break O’Day Council regarding Future Works (12)
- Letter dated 13 November 2006 from Mineral Resources Tasmania to Alan Graham regarding Quarry Old Gardens Road, Bay of Fires (12)
- Letter dated 13 November 2006 from Mineral Resources Tasmania to Alan Graham regarding Recent works at the Quarry, Old Gardens Road, Bay of Fires (12)
- Letter dated 28 November 2006 from Mineral Resources Tasmania to Alan Graham regarding recent works at mining lease 3M/1990 at Sloop Lagoon near the Gardens (12)
- Letter dated 13 April 2006 from Mineral Resources Tasmania to Todd Dudley regarding operating hours at mining lease 16M/94 Basin Creek (12)
- Letter dated 4 September 2006 from Ken and Susan Stonehouse to Warren Jones, Director of Environmental Management and Pollution Control Board regarding Quarry at Basin Creek near St Helens (12)
- Letter dated 2 May 2002 from Mineral Resources Tasmania to Wayne Virieux regarding sand mining adjacent to the St Helens Point Conservation area (12)
- Letter dated 2 December 2002 from Mineral Resources Tasmania to Dennis Fieldwick regarding Mineral Resources Development Act 1995 and Regulations – Lease Application 1759P/M, 6 Hectares (12)
- Letter dated 16 July 2003 from the Break O’Day Council to Todd Dudley regarding sand extraction operation Fieldwicks Pty Ltd, St Helens Point (12)
- Letter dated 28 October 2003 from Mineral Resources Tasmania to Todd Dudley regarding Mining Lease 1759P/M – Windmill Lagoon (12)
- Undated letter from Department of Primary Industries, Water and

Environment (Peter Fischer) to Todd Dudley regarding sand extraction at St Helens Point (12)

- Letter dated 2 December 2003 from the North East Bioregional Network to The Ombudsman regarding illegal sand mining at St Helens Point (12)
- Question 13 asked by Mr Morris and answered by Judy Jackson MHA in the House of Assembly, dated 14 May 2004, regarding the sand mining project at St Helens Point (12)
- Presentation to the Legislative Council Select Committee – John Lemberg, 13 August 2008 (18)

At 5.15 pm the Committee adjourned until Thursday 14 August 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

THURSDAY 14 AUGUST 2008

The Committee met at 8.55 am in Committee Room 2, Parliament House, Hobart.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)

Public Hearings:

JOHN WEBBER, PRINCIPAL, BALANCE CONSULTING AUSTRALIA PTY LTD was called, made the Statutory Declaration and was examined.

The witness withdrew.

ROBERT FLANAGAN, on behalf of THE AUSTRALIAN WORKERS' UNION was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 11.06 am.

The Committee resumed at 11.15 am.

TERRY LONG, CHIEF EXECUTIVE OFFICER, TASMANIAN MINERALS COUNCIL was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 12.15 pm.
The Committee resumed at 2.00 pm.

DR GERRY MCGUSHIN was called, made the Statutory Declaration and was examined.

The witness withdrew.

BOB GOZZI was called, made the Statutory Declaration and was examined.

The witness withdrew.
The Committee suspended at 3.37 pm.

Mr Harriss withdrew.

The Committee resumed at 3.55 pm.

CLIVE THOMPSON was called, made the Statutory Declaration and was examined.

Mr Harriss took his place at 4.25 pm.
Mr Wilkinson withdrew at 4.30 pm.

The witness withdrew.

Tabled Documents:

Transcript of Professor Quinlan – Coroner’s Inquest (Beaconsfield) (11)

Other Business:

Resolved, That the Committee request a copy of the Mellick Report from the Premier.

The Committee also discussed its future program and agreed to hear further evidence from Workplace Standards after the interstate visit and from any other witnesses in early September, if possible.

At 4.45 pm the Committee adjourned until Monday, 22 September 2008 in Perth, Western Australia.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

MONDAY, 22 SEPTEMBER 2008

The Committee met at 9.05 am in the Meeting Room, Chamber of Minerals and Energy, 12 St George's Terrace, Perth.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Mrs Jill Mann (Assistant)

Meetings:

The Committee met with Nicole Roocke, Director, Libby Hood and Chris White on behalf of the West Australian Chamber of Minerals and Energy.

The witnesses withdrew.

The Committee suspended at 10.35 am.
The Committee resumed at 10.52 am.

The Committee with Allan Jackson, General Manager Health, Safety and Environment, Rio Tinto.

The witness withdrew.

The Committee met with Brian Bradley, Director-General and Martin Knee, State Mining Engineer on behalf of the Department of Consumer and Employment Protection.

The witnesses withdrew.

The Committee suspended at 12.50 pm.
The Committee resumed at 3.00 pm.

The Committee met with John Clegg, CEO, NOPSA.

Mr Harriss withdrew.

The witness withdrew.

Tabled Documents:

- Rio Tinto – HSEQ Management System – January 2008-09-26 Standard – Rio Tinto HSEQ Management System
- Brochures -
 - Understanding Duty of Care
 - Understanding NOPSA and How it Operates
 - What is a Safety Case
 - Issue of Provisional Improvement Notices by Health and

- Safety Representatives
 - Understanding the Role of Health and Safety Representatives
 - Notifying and Reporting Accidents and Dangerous Occurrences
 - Improvement and Prohibition Notices
- Off-Shore Petroleum Act 2006
- Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996
- NOPSA Corporate Plan 2008-2011
- NOPSA – HSR Handbook – A guide for health and safety representatives in Australia’s offshore petroleum industry

At 4.42 pm the Committee adjourned until Wednesday, 24 September 2008 in Brisbane.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

WEDNESDAY, 24 SEPTEMBER 2008

The Committee met at 9.00 am in the Meeting Room, Department of Mines and Energy, Level 5, 41 George Street, Brisbane.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Mrs Jill Mann (Assistant)

Meetings:

The Committee met with Rory Gordon, General Manager, Health Safety and Environment Australia, Rio Tinto.

The witness withdrew.

The Committee suspended at 10.15 am.
The Committee resumed at 10.40 am.

The Committee met by phone with John Lamb, General Manager, Century OZ Minerals Mine.

The witness withdrew.

Resolved, That the evidence in relation to the Beaconsfield and Renison deaths be received 'in camera'.

The Committee suspended at 11.45 am.
The Committee resumed at 12.05 pm.

The Committee met with Stuart Vaccaneo and Greg Dalliston on behalf of the Queensland CFMEU.

The witnesses withdrew.

Tabled Documents :

- Coal Mining Safety and Health Act 1999
- Coal Mining Safety and Health Regulations 2001
- C176 Safety and Health in Mines Convention, 1995
- R183 Safety and Health in Mines Recommendation, 1995
- Summary from the Chief Inspectors of Mines, Injury Statistics, Fatalities, High Potential Incidents – Annual Report 06/07.

The Committee suspended at 1.12 pm.
The Committee resumed at 2.12 pm.

The Committee met with Stewart Bell, Executive Director, Safety and Health Division, Department of Mines and Energy and Roger Billingham, Chief Inspector of Mines, Queensland.

The witnesses withdrew.

The Committee suspended at 3.24 pm.
The Committee resumed at 3.35 pm.

The Committee met with Grant Cook, OHS, Queensland Resources Council.

The witness withdrew.

The Committee suspended at 4.28 pm.
The Committee resumed at 4.33 pm.

The Committee met Neal Valk, General Manager, Barrick Osborne Mine via phone link.

The witness withdrew.

Minutes :

The Minutes of the Meetings held on Monday, 11 August, Wednesday, 13 August and Thursday, 14 August 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received -

- Email dated 22 August 2008 from Jennifer Jarvis, Rio Tinto, regarding 2006 Review of Workplace Health Safety in Tasmania.
- Letter dated 2 September 2008 from Cameron Crowther, Senior Policy Advisor, Office of the Honourable Geoff Wilson MP, Minister for Mines and Energy regarding acknowledgement of letter on behalf of Hon Geoff Wilson MP.
- Letter dated 5 September 2008 from the Office of David Bartlett MP acknowledging the Committee's correspondence.

At 5.12 pm the Committee adjourned until Thursday, 25 September 2008 in Melbourne.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

THURSDAY, 25 SEPTEMBER 2008

The Committee met at 1.40 pm in Meeting Room No. 4, Parliament House, Spring Street, Melbourne.

Members Present: Mr Finch, Ms Forrest, and Mr Harriss

Apologies: Mr Wilkinson.

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Mrs Jill Mann (Assistant)

Meetings:

The Committee met with Andrea Shaw, Shaw Idea Pty Ltd.

The witness withdrew.

Documents Tabled:

- Digging Deeper – When Consultancy Project Vol 1 & 2 (CD)
- Digging Deeper – 10 Platinum Rules – First steps for action.

The Committee met with Monika Sarder, Manager, Policy and Advocacy and Michael Catchpole, CEO on behalf of The Australasian Institute of Mining and Metallurgy.

The witnesses withdrew.

Documents Tabled:

- Submission to the Mines Safety and Inspection Act 1994 Review (January 2008)
- Submission to the National OHS Review (July 2008)
- Briefing Notes – The AusIMM – Tasmanian Legislative Council Select Committee on Mining Industry Regulation

The Committee met with Professor Andrew Hopkins, Professor of Sociology, ANU via phone link.

At 4.20 pm the Committee adjourned until Monday, 29 September 2008 in Burnie.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

MONDAY, 29 SEPTEMBER 2008

The Committee met at 11.00 am in the Committee Room, Burnie Council Chambers, 80 Wilson Street, Burnie.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Allison Waddington, Assistant

The Chair tabled a submission from Peter Newport regarding Barminco Procedures February 2008.

Public Hearings:

ROBIN HALFACRE was called, made the Statutory Declaration and was examined.

The witness withdrew.

PHIL KEMP, Occupational Health and Safety Manager, Copper Mines Tasmania was called, made the Statutory Declaration and was examined.

The witness withdrew.

Confirmation of Minutes:

The Minutes of the Meetings held on Monday, 22 September, Wednesday, 24 September and Thursday, 25 September 2008 were confirmed as a true and accurate record.

Correspondence:

- Email dated 26 September 2008 from Neal Valk, Osborne Mines, in relation to LOM Aus Summary spreadsheet.
- Email dated 26 September 2008 from Andrea Shaw in relation to Queensland Mines Inspectorate.
- Email dated 24 September 2008 from Greg Dalliston, CFMEU attaching the Act review submissions.

Other Business:

Resolved, That –

- the Chair attend the OZ Mine Safety Future 2008 Conference on 24-26 November 2008 in Brisbane on behalf of the Committee.
- Mineral Resources Tasmania and Peter Newport be requested to provide verbal evidence on the 13th or 14th October.

At 2.00 pm the Committee adjourned until Monday, 13 October 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

MONDAY, 13 OCTOBER 2008

The Committee met at 1.08 pm in Committee Room 2, Parliament House, Hobart.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance:

Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Allison Waddington, Assistant

Confirmation of Minutes:

The Minutes of the Meeting held on Monday, 29 September 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Email dated 3 October 2008 from John Clegg, Chief Executive Officer, National Offshore Petroleum Safety Authority, providing additional briefing material.
- Letter (undated) from the Minister for Planning and Workplace Relations advising the names of departmental officers who will be attending the Committee's public hearings on 13 October 2008.

Public Hearings:

PETER NEWPORT was called, via phone link, made the Statutory Declaration and was examined.

Mr *Wilkinson* withdrew at 2.00 pm.
Mr *Wilkinson* took his place at 2.10 pm.

The witness withdrew.

DR TONY BROWN, DIRECTOR, MINERAL RESOURCES TASMANIA AND MR MICHAEL LEONARD, DIRECTOR, MAJOR INFRASTRUCTURE PROJECTS, DEPARTMENT OF INFRASTRUCTURE, ENERGY AND RESOURCES were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The Committee suspended at 2.50 pm.
The Committee resumed at 3.05 pm.

MR ROY ORMEROD (GENERAL MANAGER), MR FRED SEARS (SENIOR INSPECTOR MINES), MR JOHN FOX (SENIOR INSPECTOR), MR TREVOR MARSHALL (PRINCIPAL INSPECTOR MINES), MR MARK SMITH (SENIOR MINING INSPECTOR) AND MR ANDREW TUNSTALL (PRINCIPAL MINING INSPECTOR) FROM WORKPLACE STANDARDS TASMANIA were called, made the Statutory Declaration and were examined.

Mr *Finch* withdrew at 3.35 pm.
Mr *Finch* took his place at 3.40 pm.

Mr *Finch* withdrew at 3.43 pm.

The witnesses withdrew at 4.52 pm.

Tabled Documents:

- Mineral Resources Tasmania – Annual Review (39)
- The Industrial Mineral Deposits of Tasmania (39)
- Tasmanian Geological Survey Bulletin 72 – The Geology and Mineral Deposits of Tasmania: a summary (39)

Other Business:

The Committee discussed issues for inclusion in the draft report.

Resolved, That the Chair phone Roy Ormerod to discuss the Department's proposed way forward.

Adjournment:

At 5.07 pm the Committee adjourned until a date to be determined.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

FRIDAY, 14 NOVEMBER 2008

The Committee met at 9.15 am in Committee Room 2, Parliament House, Hobart.

Members Present: Mr Finch, Ms Forrest, Mr Harriss and Mr Wilkinson

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Allison Waddington, Assistant

Confirmation of Minutes:

The Minutes of the Meeting held on Monday, 13 October 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Email dated 19 August 2008 from Bob Gozzi, Chairman, TCCI OHS Committee, regarding request for premiums graph.
- Letter dated 30 October 2008 from the Minister for Energy and Resources providing additional information requested by Committee.

Draft Report:

Resolved: That Emily Freeman attend future meetings.

The Committee considered the Draft Report (as at 7 November 2008). The Chair advised that she had met with Mr Roy Ormerod as requested.

Adjournment:

At 10.45 am the Committee adjourned until a date to be determined.

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

THURSDAY, 5 MARCH 2009

The Committee met at 11.13 am in Committee Room 2, Parliament House, Hobart.

Members Present: Mr *Finch*, Ms *Forrest*, Mr *Harriss* and Mr *Wilkinson*

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Emily Freeman (Research Assistant)

Confirmation of Minutes:

The Minutes of the Meeting held on Friday, 14 November 2008 were confirmed as a true and accurate record.

Draft Report:

The Committee considered the Draft Report (as at 20 February 2009) page by page, commencing at page 10.

The Committee suspended at 1.00 pm.
The Committee resumed at 1.24 pm.

Draft Report:

The Committee further considered the Draft Report (as at 20 February 2009) page by page, commencing at Chapter 3.

The Secretary is to provide the amended Final Draft Report to Members for consideration at the next meeting.

Adjournment:

At 6.00 pm the Committee adjourned until 8.00 am on Wednesday, 11 March 2009 .

LEGISLATIVE COUNCIL SELECT COMMITTEE

MINING INDUSTRY REGULATION

MINUTES

WEDNESDAY, 11 MARCH 2009

The Committee met at 8.07 am in Committee Room 3, Parliament House, Hobart.

Members Present: Mr *Finch*, Ms *Forrest*, Mr *Harriss* and Mr *Wilkinson*

In Attendance: Mrs Sue McLeod, Clerk-Assistant (Secretary)
Ms Emily Freeman (Research Assistant)

Confirmation of Minutes:

The Minutes of the Meeting held on Thursday, 5 March 2009 were confirmed as a true and accurate record.

Draft Report:

The Committee considered the Draft Report (as at 10 March 2009). Amendments were made to the Executive Summary.

The Committee suspended at 9.37 am.
The Committee resumed at 10.11 am.

Draft Report:

The Committee further considered the Draft Report (as at 10 March 2009).

The Committee suspended at 11.00 am.
The Committee resumed at 4.04 pm in the Ante Chamber.

Draft Report:

The Committee further considered the Draft Report (as at 10 March 2009).

Resolved, That the Report, as amended, be agreed to.

Other Business:

Resolved, That –

- the Report be Tabled in the Legislative Council tomorrow, Thursday, 12 March 2009;
- a press release be prepared for the Chair.

Adjournment:

At 4.25 pm the Committee adjourned *sine die*.