



**SD07** A CLIMATE FOR CHANGE  
Sustainable Development Conference



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OHS Regulatory Reform -  
Role of the National Mine Safety Framework



[www.minerals.org.au/sd07](http://www.minerals.org.au/sd07)



## Recognition – Co-author

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## Outline of Presentation

- 1. Rationale for Reform - consistency and improved safety**
- 2. Safety performance - further room for improvement**
- 3. NMSF - only 'show in town' for implementing change**
- 4. Public Consultation - Recurring Themes**
- 5. Key inconsistencies of concern to industry**
- 6. The way forward - what needs to be done**



# Rationale for Reform

## **Improved safety and health outcomes**

- not a lowering of OHS standards

## **Elimination of impediments to sharing and learning**

- avoiding strict liability and a “blame” culture

## **OHS laws which imbed principles of equity, transparency, practicality, justice and consistency**

- a “just culture” where everyone is accountable for their actions

## **Elimination of inconsistencies between jurisdictions:**

- legislation
- regulatory practice
- standards, codes of practice, and guidelines
- Enforcement

## **Improved capacity to reduce risks**

- understanding and controlling the risks



# Safety performance

## **Performance still short of our goal of zero harm**

- > Fatalities have halved in last decade
- > LTIFR on quarter of a decade ago
- > A plateau in performance
- > Contractors and maintenance workers represent 50% and 25% of fatalities respectively

## **2006-07 performance**

- > Worst outcome in six years (14 fatalities)
- > Not learning from mistakes
- > Systems in place, but not always implemented
- > No silver bullet, need a multi faceted approach
- > “Chronic unease”



# NMSF

## Background

- > **MCMPR endorsed nationally consistent OHS approach in mining industry - political commitment critical**
- > **NMSF comprises 7 strategies - legislation, competency , compliance, enforcement, data, consultation and research**
- > **Initial responsibility for implementation with Chief Inspectors of Mines**
- > **Tri-partite Steering Group formed to develop and implement strategies**
- > **Working Groups focused on legislation, consultation and data**
- > **Public consultation process**
- > **Opportunities for you to have your say at:**  
**<http://www.industry.gov.au/minesafetyhaveyoursay>**
- > **Strategies relating to competence, compliance and enforcement critical to reform**



# Legislation Strategy - Principles

- > **Clear and enforceable** framework
- > Clear and specific **duty of care** obligations for all
- > **Risk based** management systems to address all hazards
- > **Preventative** approach based on sharing and learning
- > **Consultative arrangements** in development of policies and practices
- > Employees able to collectively select **safety and health representatives**
- > **Workforce empowered** to identify and report hazards
- > Mechanisms in place for **assessment, monitoring, audit and review**
- > **Employees** to be trained, accredited and competent
- > Regulatory powers for **incident investigation**
- > Application of **graduated enforcement** measures
- > Transparent and open **regulatory authorities** with adequate competent, experienced and skilled personnel.



# Consultation Strategy

- > **Consultation is central to positive safety outcomes**
- > **Fundamental, but underpinned by statutory duty to consult**
- > **Employer has duty to consult on decisions affecting OHS**
- > **Flexibility needed to suit wide variety of circumstances**
- > **Act provides for**
  - **establishment of Committees**
  - **selection of Health and Safety Representatives**
  - **any other arrangements**
- > **Regulations expand on duties established in the Act including**
  - **the “how to” in terms of employee representation, committee functions and training**
  - **Codes of Practice provide practical guidance**



## Data Strategy

- > **Nationally consistent mine health and safety data set**
- > **What to collect?**
- > **Definitions to be adopted?**
- > **Who will collect?**
- > **Comparative analysis across all States and Territories**
- > **Australian Standard 'Workplace injury and disease recording standard' adopted**
- > **Start with a small set of indicators and build on it later**
- > **Not going to replace all data collected by States and Territories**
- > **Initially data will be collected for:**
  - Fatalities, Lost time injuries ,Restricted duty injuries, Medical treatment injuries, Near misses or high potential incidents



## Public consultation - recurring themes (1)

- > **Differing legislative structures across jurisdictions**
- > **Legislative review fatigue**
- > **Consistency of implementation of legislation**
- > **Maintaining consistency between jurisdictions over time**
- > **Need for cultural change**
  - within inspectorates re regulatory practice
  - within company management structures re engaging in consultation
- > **Importance of consistent definitions**
- > **Core competencies for inspectors**
- > **Adverse impact of strict liability on sharing information and attracting good managers**



## Public consultation - recurring themes (2)

- > **Adequate training for HSRs, regulators, and company personnel analysing and reporting incidents**
- > **Consistent approach to both enforcement policy and application**
- > **Complexities between contractor and clients as to the ‘person in control’**
- > **Concern with fear of discrimination or retaliation associated with workforce empowerment**
- > **Interface issues with other legislation, agencies and responsibilities**
- > **Who should be involved in incident investigation**
- > **Union right of representation and right of access**



## Key inconsistencies of concern to industry

- > **Legislation**
- > **Regulatory Practice**
- > **Standards and guidelines**
- > **Enforcement**



# Legislation

- > **Complexity and volume**
  - Too many Acts, Regulations, Codes and guidelines
- > **Prescription**
  - Unnecessary and inconsistent
- > **Obligations imposed to be proportionate to degree of control, accountability and responsibility held**
  - Inconsistently applied



# Regulatory practice

**What regulators do is going to make the biggest difference to safety outcomes:**

- > **How they influence operators**
- > **Coach and mentor**
- > **Give guidance and training**
- > **Consistency in decision making**
- > **A focus on higher level risks**
- > **Share expertise across jurisdictions (sit in each others shoes)**
- > **Transparent guidelines for regulators**
- > **Arms length and independent - not influenced by third parties**
- > **Seek continuous improvement**
- > **Consistent application of the law between jurisdictions and within inspectorates**
- > **Competent and skilled regulators adequately resourced**



## Standards and guidelines

- > **Lack of national approach**
  - in development and implementation
- > **Status of guidelines**
  - de facto regulations, minimum standards, or reference material



## Enforcement

- > **Graduated enforcement measures**
  - not always applied
- > **Enforcement management model**
  - no nationally employed approach
- > **Regulatory response to non-compliance**
  - inconsistent
- > **Initiation of prosecution and prosecution processes**
  - inconsistent



## The way forward: What needs to be done?

- > **Lock in Ministerial support for the strategies on legislation, consultation and data**
- > **Develop the remaining strategies in particular regulator competencies, enforcement and compliance assistance**
  - these primarily relate to the role of the regulator
- > **Continued oversight by the NMSF Steering Group to build trust between governments, industry and unions in further developing and implementing the Framework, and to maintain focus and commitment on the common goal of improved safety outcomes.**



## The way forward: What needs to be done?

**Industry will continue to articulate the importance of:**

- > Establishing independent competent regulators**
- > Encouraging regulators to adopt a more consistent approach within and between jurisdictions**
- > Removing impediments to the timely sharing of information and experience**
- > Minimising legislative prescription, focusing instead on driving down all risks**
- > Adopting graduated enforcement policies, and limiting prosecution to cases of gross negligence and willful misconduct**