



**SUBMISSION to**

**MR C M MAXWELL, QC**

**on the**

**OCCUPATIONAL HEALTH AND SAFETY ACT REVIEW**

**Discussion Paper of 17 October 2003**

**Prepared by:**

**Victorian Minerals & Energy Council Inc.**

**28 November 2003**

# Occupational Health and Safety Act Review

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## EXECUTIVE SUMMARY

The Victorian minerals industry is a substantial employer of labour and an industry that takes the health and safety of its workforce very seriously; in fact it is the industry's number one priority. As the industry falls within the jurisdiction of the Occupational Health and Safety Act, VMEC is directly interested in the current review of that Act.

The major interest of the minerals industry in the review relates to concerns with the long-term uncertainty of maintaining experienced mining personnel in the Department of Primary Industries as the group responsible for regulating Victoria's mines. It is strongly recommended that the review of the OHS Act cement the administrative arrangement for the regulation of mines in legislation.

The industry is also concerned that the discussion paper fails to recognise the flaws in industry based vocational education and training competencies. It is common practice for safety to be seen as a separate skill rather than being fully integrated in each and every job. It is recommended that the review recognise this need and take steps to ensure that the Victorian VET system integrates safety and health in job competencies.

When considering the specific issues raised in the discussion paper the following general points are made:

Greater prescription in the OHS Act is not supported as prescription stifles innovation and leads to minimum compliance outcomes.

Broadening of the objectives of the OHS Act to include third parties such as visitors or neighbours is not supported.

Empowering inspectors to give advice about compliance is supported although there is a need to avoid conflicts between the regulatory and advisory roles. The "mines inspector model" of regulator and advisor has worked very effectively in mines for many years.

Best safety outcomes occur where OHS is an integrated line management function. Qualified safety professionals have an important role in providing advice and other specialist technical skills. We do not support proposals to prescribe safety professionals in the management structure.

Proposals for inspectors to assume semi judicial powers when investigating accidents and incidents are not supported as this will lead to litigious behaviours and safety investigations being conducted through lawyers.

The industry is also concerned with approaches that have a primary aim to seek retribution for accidents and incidents rather than a primary aim to improve safety and health outcomes.

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## 1 INTRODUCTION

Victoria has a very important minerals and energy industry that is not only significant nationally but also critical to many other industries in Victoria that depend upon low cost, reliable energy. It also provides significant employment in regional Victoria.

The minerals and energy industry of Victoria:

- Produces more than 65 million tonnes of coal per year;
- Produces about 4 tonnes of gold per year;
- Produces 85% of Victoria's electricity;
- Has an annual turnover in Victoria of more than \$600M; and
- The mining industry alone directly employs more than 5,000 Victorians (and more than 10,000 indirectly), the majority of these being located in regional Victoria.

The minerals industry is a substantial employer of labour that takes the health and safety of its workforce very seriously; in fact it is the industry's number one priority. The industry in Victoria falls within the jurisdiction of the Occupational Health and Safety Act (OHS Act). We are therefore directly interested in the review of the Victorian OHS Act.

The Victorian Minerals & Energy Council Inc (VMEC) is an industry association that represents the corporate minerals and energy industry of Victoria. The members of the Council are engaged in mineral processing, mining, exploration, or the provision of services to the industry.

This submission is made for and on behalf of the Victorian minerals industry.

## 2 VICTORIAN MINERALS INDUSTRY

### 2.1 Safety Vision

The safety and health vision of the Australian minerals industry and as adopted by VMEC is of an Australian minerals industry **free** of fatalities, injuries and diseases. The leaders of Victoria's minerals industry have endorsed this vision. The complete safety and health statement is included as Appendix A.

This aspirational vision has become the most important driver that the industry has and is integral in all of our pre-competitive industry activities.

### 2.2 Safety Performance

The industry has worked hard at improving its safety performance over recent years. We have been very successful in reducing LTI's but sadly fatalities still remain a major concern. We have clearly addressed the high frequency, low consequence injuries but the incidence of low frequency; high impact events that cause fatalities remain. Our current attention is focussed on reducing the number of these incidents that cause fatalities.

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The graphs of LTIFR and Fatalities both nationally and for Victoria are included as Appendix B. These graphs demonstrate the points made above.

### **3 REGULATION OF OHS AT MINES**

#### **3.1 VMEC Preliminary Submission**

On 21 October 2003 VMEC made a submission to the OHS Act Review related to the recent changes in the safety regulation of mines in Victoria and the long-term certainty of jurisdictional responsibilities.

On 29 November 2001 the Minerals Resources Development Act (MRD Act) was amended (through the Accident Compensation (Amendment) Act 2001) to remove the exemption of mines from the OHS Act. The OHS Act was amended in the same legislation to enable the Victorian WorkCover Authority (VWA) to appoint staff of the Department of Natural Resources and Environment (DNRE) as health and safety inspectors in mines and quarries. The Government introduced these amendments with the concurrence of VMEC and its members on the basis of an understanding that mines would continue to be regulated by the specialist staff of the Minerals and Petroleum Regulation Branch of the Department of Primary Industries (DPI or the DNRE at that time). Consequently, an agreement was reached between the Minister for WorkCover and the Minister for Energy and Resources and an MOU signed between the VWA and the DPI. The DPI inspectors were subsequently trained and accredited as WorkCover inspectors.

On 28 October 2002 new Occupational Health and Safety (Mines) Regulations were introduced and replaced the old mine safety regulations prepared under the MRD Act. This completed the jurisdictional transition.

This transition has for the most part been successful. The Victorian mines continue to be regulated by experienced mining people but under the same laws that apply to all other Victorian businesses.

However, the arrangement is only as good as the good will between the relevant Ministers and the two Government agencies involved.

#### **3.2 Recommended Legislative Change**

Members of VMEC are most concerned at the long-term uncertainty related to the regulation of Victoria's mines. Consequently, we strongly recommend that the review of the OHS Act cement the arrangement currently confirmed in a Ministerial agreement and an interdepartmental MOU in the new OHS Act legislation.

### **4 MINING RELATED REFERENCES**

#### **4.1 Fatigue Management and Work Hours**

In the discussion paper of the OHS Act Review specific reference to mining is first made in the "Changing Nature of Work" section of Chapter 4. In that section the

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Tasmanian “Struggle for Time” report by Kathryn Heiler is used as evidence of a connection between work hours and fatigue.

Whilst this study is used only as background to a more general discussion on the changing nature of work arrangements we caution its use as an authoritative reference proving a link between work hours and fatigue. Many have questioned the report and there are serious doubts as to the validity of the findings. Reports by other investigators using Tasmanian mine worker data have come up with completely opposite findings<sup>1</sup>. Similarly, authoritative research by Melbourne University on an analysis of workers compensation payments and work hours in the Australian minerals industry for the period 1990 to 2000 found no statistical link between work hours and injury<sup>2</sup>.

### 4.2 District Workers Reps

A second specific reference to mining is made in the “Roving HSRs” section of Chapter 7. In this reference the Queensland Mine Safety Act system of district workers representatives is used as an example to pose the question “would such a system be appropriate for Victoria?”

The minerals industry’s experience with these positions has been mixed. However, it should be noted that the Queensland coal industry is heavily unionised and primarily dominated by one union, there are also a raft of other statutory positions in the mines that are strongly influenced by union structures. In addition, the Queensland mines are regulated under a specific Act targeted at the coal industry. We question the appropriateness of such district workers representatives in the Victorian context where only a few sites are unionised, statutory positions are not used and outcome based regulations are used as a matter of Government policy.

In addition, we do not see how a third party district workers representative or “deputy” inspector would add value. We believe it is far better that energies are placed in the primary stakeholder relationships between employer and employee. Company based health and safety representatives are the only valid third party, apart from the WorkCover inspectors.

## 5 SKILLS TRAINING

### 5.1 VET Training and Safety

One of the failings of the discussion paper is that it has not explored the value of integrating safety into Vocational Education and Training (VET) skills training programs. Over the past two decades a large amount of money, time and human resources have been placed into establishing competency standards of the skills required in almost all industries across the nation.

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<sup>1</sup> Shiftwork Solutions, Employee Data Assessment, Tasmanian Minerals Council, June 2002.

<sup>2</sup> Mitchell Hooke, Leadership in Safety Risk Management, Victorian Minerals Industry Safety Conference, VMEC, September 2003.

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Industry Training Advisory Boards or ITABs have been established to identify the competencies required, develop the skills training needs and arrange for delivery and assessment of the competencies by accredited trainers.

However, in almost all circumstances, the mining industry included, safety has been seen as a separate skill. This is a great failing of the system. Safety should be an integral part of each and every job and not seen as a function in its own silo.

### **5.2 National Industry Skills Council**

The Federal Government is currently making radical changes to the VET arrangements administered by the Australian National Training Authority (ANTA). These changes include the closure of about 30 national bodies and grouping the industry sectors into 10 industry skills councils. These industry skills councils are to commence in 2004. They are run by the industry sectors involved for those sectors and funded by the Commonwealth. The first of the new bodies to be approved is the Resources and Infrastructure Industry Skills Council (R&IISC) which was approved by ANTA in October this year and is due to commence operation on January 2004.

The role of the R&IISC is to take a strategic view of the VET needs of the coal, metalliferous, construction materials, drilling and civil infrastructure industries and in particular provide advice to industry and Government on the future skills needs.

### **5.3 Integrated Safety Skills**

The establishment of these new industry skills councils offers a great opportunity to ensure that safety and health is fully integrated in the competencies required for all skills in industry.

It is recommended that the review recognise this need and although not required in amendments to the OHS Act make recommendations that the Victorian VET system integrate safety and health in job competencies.

Such actions could lead to a quantum change in safety and health performance in Australia.

## **6 RESPONSE TO SPECIFIC ISSUES RAISED**

VMECs considered response to all of the specific issues raised in the discussion paper are detailed in the Table 1 below:

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

Issues raised in discussion paper

	THE SAFETY CONSENSUS	VMEC POSITION
Clause 33	<p>Should s.6 be amended to state that the objects of the Act include –</p> <ul style="list-style-type: none"> <li>• protecting persons (other than workers) against risks to their health or safety arising from the conduct of an undertaking in a workplace ;</li> <li>• eliminating, at the source, risks to the health, safety and welfare of persons (other than workers) arising from the conduct of an undertaking in a workplace?</li> </ul>	<p>We do not support a broadening of the objects to include third parties.</p> <p>The EPA is accountable for the regulation of environmental health impacts from industry, inclusion in the OHS Act is not warranted.</p>
	SAFETY AND PRACTICABILITY	VMEC POSITION
Clause 85	<ul style="list-style-type: none"> <li>• Should the duties of hazard identification, risk assessment and risk control be imposed by the Act, rather than by individual sets of regulations applicable to particular industries or categories of risk?</li> </ul>	<p>Inclusion in the Act would be of little value due to generality. Regulations provide best scope for specifics related to particular industries such as mining.</p>
Clause 89	<ul style="list-style-type: none"> <li>• How should the scope of the duties imposed by the Act be affected by what the duty holder <ul style="list-style-type: none"> <li>(a) knew;</li> <li>(b) ought reasonably to have known,</li> </ul> at the time in question?</li> <li>• What factors are relevant to determining what the duty holder ought reasonably to have known?</li> <li>• Should the ingredient of knowledge be an element in the definition of the duties, or should it be addressed in the context of defences to prosecutions?</li> </ul>	<p>To include a knowledge test in the duty would make such duty clause overly complex.</p> <p>Contemporary industry practice should be sufficient.</p> <p>This is best addressed by defences to prosecutions.</p>
	COMMUNICATION, COMPREHENSION AND COMPLIANCE	VMEC POSITION
Clause 108	<ul style="list-style-type: none"> <li>• Should WorkSafe inspectors be empowered/required to give advice to duty holders about compliance?</li> </ul>	<p>Most definitely YES, but they need to avoid conflicts of interest with their regulatory role.</p>

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

	<ul style="list-style-type: none"> <li>• Should there be any advice-provider outside the private sector, whether –             <ul style="list-style-type: none"> <li>(a) as a division of WorkSafe; or</li> <li>(b) as a separate agency?</li> </ul> </li> <li>• Should private sector OHS consultants be able/required to obtain accreditation from WorkSafe, and if so how should such an accreditation scheme work?</li> <li>• Should WorkSafe be responsible in any other way for monitoring the quality and reliability of the advice given by OHS consultants?</li> </ul>	<p>This is a possible solution but not necessary. The traditional “Mines Inspector” model has worked well in the minerals industry where advice and enforcement are managed effectively by inspectors.</p> <p>NO, this is seen as a restraint on trade. Also, Government should avoid becoming liable for the advice of such consultants.</p> <p>NO, the State should avoid becoming responsible for what is essentially the responsibility of the operator.</p>
	<b>NEW CATEGORIES OF DUTIES</b>	<b>VMEC POSITION</b>
Clause 247	<ul style="list-style-type: none"> <li>• Should a person nominated by an employer under s.21(4)(ca) be required to undertake a course of training relating to occupational health and safety which is approved by or conducted by the Authority?</li> </ul>	This proposal is not supported. There are already numerous methods of gaining skills in OHS available to industry.
Clause 261	<ul style="list-style-type: none"> <li>• Should the Act clarify the responsibilities of labour hire agencies and group training agencies and host employers, perhaps by including the notion of “joint responsibility” and confining the duty of labour hire agencies to matters over which they have control?</li> </ul>	The responsibility of contractors is already covered by the Act.
Clause 277	<ul style="list-style-type: none"> <li>• Should volunteers be specifically recognised in the OHSA? Should they be covered by the duties imposed by s.21?</li> </ul>	We have no opinion on this matter.
Clause 287	<ul style="list-style-type: none"> <li>• Does the OHSA adequately deal with workplace bullying and violence?</li> </ul>	YES, the general duties cover the entire working environment.
	<b>CONSULTATION, PARTICIPATION AND REPRESENTATION</b>	<b>VMEC POSITION</b>
Clause 296	<ul style="list-style-type: none"> <li>• Should OHSA contain provisions –             <ul style="list-style-type: none"> <li>- emphasising the primacy of consultation, and its purposes;</li> <li>- imposing express duties to consult and, if so, on which parties</li> </ul> </li> </ul>	The consultation provisions with employees, HSRs and Safety Committees are more than adequate. We do not support greater prescription nor the concept of including other than employees and the employer in the

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

	<p>- identifying/prescribing (in addition to those already mentioned) other sets of circumstances in which consultation must take place?</p> <ul style="list-style-type: none"> <li>• Should there be a code of practice providing more detailed guidance on consultation processes, to be applicable across all sectors</li> </ul>	<p>process.</p> <p>We do not support prescription. Consultation can and must take many and varied forms to cope with the vast differences between and within companies.</p>
Clause 303	<ul style="list-style-type: none"> <li>• Should a discrete employer duty to consult be developed? Is it appropriate to qualify the duty by the test of practicability? Should the consultation duty apply to all phases of the risk management cycle?</li> </ul>	<p>Such duty already exists in the HSR and Safety Committee provisions.</p>
Clause 319	<ul style="list-style-type: none"> <li>• Are designated work groups workable? Are they capable of providing all workers with adequate representation? If not, should they be abolished? How then, would workers elect an HSR?</li> <li>• Is there is a need to broaden the scope of the definition of “employee”? Can/should the concept of “persons at work” be introduced?</li> <li>• Should the employer’s duty to consult extend to subcontractors? How should consultation be conducted where multi-tiered subcontracting arrangements are in place?</li> </ul>	<p>The existing provisions for DWGs are workable and sufficiently flexible to be practical.</p> <p>YES, after all, supervisors and managers are also employees.</p> <p>Operators are already required to consult with the employees of contractors. Contractors with the employees of subcontractors and so on. A practicability test needed to ensure the chain is manageable.</p>
Clause 321	<ul style="list-style-type: none"> <li>• Is the election of a health and safety representative the best means of ensuring employee participation in OHS management at the workplace?</li> <li>• Should the NSW approach to the appointment of HSRs be adopted?</li> <li>• Should provision be made for direct consultation with employees?</li> </ul>	<p>Often direct consultation with the employees is the most effective means of engagement.</p>
Clause 326	<ul style="list-style-type: none"> <li>• Should there be provision for the election of more than one HSR per DWG? Under what circumstances? Should an HSR of a DWG be permitted to represent –</li> </ul>	<p>There should only be one HSR per DWG.</p>

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

	(a) employees in another DWG; (b) employees in the same workplace who are not in a DWG?	NEVER NEVER
Clause 335	<ul style="list-style-type: none"> <li>• What should the legislation say in spelling out the functions of health and safety representatives?</li> <li>• Should the legislation impose any specific duties on HSRs? If so, what should the content of those duties be?</li> </ul>	The existing powers are more than adequate to define the functions of HSRs. No additional prescription is warranted.
Clause 338	<ul style="list-style-type: none"> <li>• Is concern about exposure to personal liability a disincentive to employees putting themselves forward for election as health and safety representatives?</li> <li>• If so, should the legislation provide (for example) that nothing done or omitted to be done by a health or safety representative in his or her capacity as such will create any liability which he or she would not otherwise have in his or her capacity as an employee?</li> </ul>	This is not an issue of substance. HSRs are unlikely to be liable unless they breach the functions specified in the Act. This is unnecessary as the HSRs are already required to undertake the duties of employees.
Clause 341	<ul style="list-style-type: none"> <li>• What is the proper role of an HSR? Is there a need to clarify the roles and functions of the HSR?</li> </ul>	The Act clearly details the functions of HSRs. No further prescription is required.
Clause 351	<ul style="list-style-type: none"> <li>• Should the OHS Act enable an authorised representative of an industrial organisation to enter a workplace in which at least one of its members is working? Under what circumstances?</li> <li>• Should the OHS Act prescribe a role for representative organisations in consultative structures and processes at workplace level?</li> </ul>	The Act should not be used to authorise such entries. It is most important that IR and safety be separated.  Most definitely not.
Clause 356	<ul style="list-style-type: none"> <li>• Would roving or regional HSRs be an appropriate and effective means of responding to small, fragmented, dispersed and/or temporary workplaces? Would such a system be feasible in Victoria?</li> </ul>	Most definitely not. It is important that employers and employees deal with OHS, not third parties with no direct interest in the business.
Clause 357	<ul style="list-style-type: none"> <li>• Should the election and resignation of HSRs be notified to the Authority or some other body? How can training of HSRs be enhanced? How can HSRs be kept informed by WorkSafe?</li> </ul>	NO, it is inappropriate for the Authority to assume these accountabilities. There are more than adequate training programs available in the market.
Clause 362	<ul style="list-style-type: none"> <li>• Do JHSCs play an effective strategic role in Victorian workplaces?</li> <li>• How can the functions of the JHSC be performed in small, mobile and/or transient workplaces?</li> </ul>	YES, they play an effective role in large enterprises. Flexibility is required to enable the employer and employees to resolve this question. Greater

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

		prescription would be inappropriate.
Clause 364	<ul style="list-style-type: none"> <li>• Should the OHS Act mandate the engagement of a qualified workplace health and safety officer? Should the duty be qualified by practicability or should it be based upon a threshold number of employees (or some other indicator)?</li> </ul>	NO, best safety outcomes often occur when the management of OHS is a line management function. The engagement of OHS professionals should be left with companies to determine and not mandated.
	<b>ROLE OF INSPECTORS</b>	<b>VMEC POSITION</b>
Clause 393	<ul style="list-style-type: none"> <li>• Should the role and functions of inspectors be defined in health and safety legislation? If so, what should their enumerated functions be?</li> <li>• If the purposes for which inspectors’ powers may be exercised are to be specified in health and safety legislation, what should those purposes cover? Should inspectors have different powers for different purposes?</li> </ul>	Prescription is not supported. Inspectors require flexibility to accommodate all circumstances. Prescription in legislation is not supported.
Clause 400	<ul style="list-style-type: none"> <li>• Should inspectors retain the power to enter workplaces without a warrant or consent? If so, in what circumstances?</li> </ul>	Yes, but they may only enter if prepared to obey <u>all</u> site safety requirements to avoid putting themselves and others in danger.
Clause 412	<ul style="list-style-type: none"> <li>• Should inspectors have the power to require persons to answer questions? If so –</li> <li>• Should inspectors be able to compel persons to attend before an inspector to answer questions or furnish information?</li> <li>• Should persons be required to verify answers given by providing a statutory declaration or affidavit?</li> <li>• Should the privilege against self-incrimination apply and legal professional privilege excuse a person from answering a question or furnishing information?</li> <li>• Should the privilege against self-incrimination apply to corporations?</li> </ul>	<p>The existing powers are adequate, inspectors should not assume judicial powers.</p> <p>Inspectors should be able to request. To compel will simply cause all interactions to be through lawyers. This would be counter productive and lead to many minor issues being litigated.</p> <p>NO. In addition, all parties are entitled to procedural fairness.</p> <p>YES. In addition, all parties are entitled to procedural fairness.</p> <p>YES. In addition, all parties are entitled to procedural fairness.</p>

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

<p>Clause 424</p>	<ul style="list-style-type: none"> <li>• Should the power to require production of documents be available where an inspector has not entered premises within the meaning of sections 39(1)(a) or (b)? Should that power extend to documents held by third parties whose workplaces per se are not the subject of the inspector’s inquiries but who have documents relevant to the inspector’s inquiry?</li> <li>• Should inspectors have the power to seize original documents?</li> <li>• Should the Act prescribe the mode by which an inspector’s requirement to produce documents must be made and served on a person?</li> <li>• Should the Act specifically provide for an avenue of review of an inspector’s requirement to produce documents?</li> <li>• Should the privilege against self-incrimination and legal professional privilege apply to requirements for the production of documents?</li> </ul>	<p>NO, such documents can be accessed through the courts. Alternately, the inspector can visit the premises in question.</p> <p>We have no opinion on this matter. NO, sufficient powers already exist.</p> <p>NO, directions can already be appealed through the courts, although it is appreciated that this is seldom done. YES, the privilege against self-incrimination and legal professional privilege should apply.</p>
<p>Clause 436</p>	<ul style="list-style-type: none"> <li>• Should inspectors be given immunity from civil liability for acts and omissions in the course of their statutory duties?</li> </ul>	<p>We support immunity against acts or omissions in good faith in undertaking their duties. We would not support blanket immunity.</p>
	<p><b>ENFORCEMENT</b></p>	<p><b>VMEC POSITION</b></p>
<p>Clause 458</p>	<ul style="list-style-type: none"> <li>• In what ways could the provisions relating to PINs be changed to make PINs a more effective means of enforcing compliance with health and safety legislation?</li> <li>• Should an HSR have the right of appeal against an inspector’s decision to cancel or modify a PIN?</li> </ul>	<p>The current provisions provide HSRs with more than adequate recourse for highlighting problems.</p> <p>Most definitely not.</p>
<p>Clause 460</p>	<ul style="list-style-type: none"> <li>• Should the power to direct cessation of work be extended to matters outside the HSR’s designated work group?</li> <li>• Should workers have a statutory right to refuse to perform unsafe work?</li> </ul>	<p>Most definitely not.</p> <p>Workers already have a common law right to refuse such work. Further legislation is unwarranted.</p>

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

<p>Clause 469</p>	<ul style="list-style-type: none"> <li>• In what ways could the provisions relating to PINs be changed to make PINs a more effective means of enforcing compliance with health and safety legislation?</li> <li>• Should the mandatory seven day grace period for improvement notices be removed?</li> <li>• Should the status of “directions” under s. 45 be clarified?</li> <li>• Should the Act confer an express power to revoke or modify notices?</li> <li>• Should inspectors be able to issue notices that cover multiple sites?</li> <li>• Should s. 44(4) be repealed?</li> </ul>	<p>The existing provisions are adequate.</p> <p>NO, prohibition notices provide the instrument for dealing with matters of immediate danger. We do not support a change to s45. YES, the Act should confer such a power.</p> <p>YES, in situations where the circumstances are uniform. YES, we agree that s44(4) be repealed.</p>
<p>Clause 476</p>	<ul style="list-style-type: none"> <li>• Should infringement notices be introduced to improve compliance with the legislation?</li> <li>• For what current offences are infringement notices an appropriate alternative to prosecution?</li> <li>• Is the current maximum penalty for infringement notices adequate?</li> </ul>	<p>We do not support OHS becoming a money raising venture for Government. None.</p> <p>Current maximum penalties relate to a different instrument and are not valid for infringement notices.</p>
<p>Clause 488</p>	<ul style="list-style-type: none"> <li>• Should industrial organisations be able to bring prosecutions for health and safety offences?</li> <li>• Should any other person be able to bring prosecutions for offences?</li> </ul>	<p>Most definitely not.</p> <p>No, the inspectors have this authority.</p>
<p>Clause 501</p>	<ul style="list-style-type: none"> <li>• Are the current maximum penalties for offences under health and safety legislation and regulations adequate?</li> <li>• Are the omnibus offence and penalty provisions in health and safety legislation, i.e. section 47 OH&amp;S, s 45 DG and s 26 E(PS), appropriate or should the legislation set out the various offences and penalties in a more particular fashion?</li> </ul>	<p>YES.</p> <p>The existing provisions are more than adequate.</p>
<p>Clause 502</p>	<ul style="list-style-type: none"> <li>• Should the repeat offender provisions be retained or modified in any way?</li> </ul>	<p>We have no opinion on this matter.</p>
<p>Clause 514</p>	<ul style="list-style-type: none"> <li>• Should the Authority be able to accept enforceable undertakings as</li> </ul>	<p>YES.</p>

**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

	<p>an alternative to prosecution for criminal offences under the Act or the regulations? If yes:</p> <ul style="list-style-type: none"> <li>• What limitations, if any, should be prescribed by legislation on the scope and terms of undertakings?</li> <li>• Should the Authority be able to require a duty holder to take remedial measures over and above the measures necessary to remedy the contravention? For example, to implement broad-ranging health and safety management systems?</li> <li>• Should enforceable undertakings be able to operate indefinitely or should legislation provide for a maximum term?</li> <li>• Should the Authority be able to extract a monetary penalty from an alleged offender as a term of an enforceable undertaking?</li> </ul> <ul style="list-style-type: none"> <li>• Should the Authority be able to recover the costs of investigating the contravention as one of the terms of the enforceable undertaking?</li> <li>• Should enforceable undertakings be confidential or public documents?</li> <li>• How should enforceable undertakings be monitored?</li> </ul> <ul style="list-style-type: none"> <li>• What should happen if a duty holder fails to comply with the terms of an undertaking?</li> <li>• In what circumstances should undertakings be able to be varied or withdrawn?</li> <li>• How should the interests of third parties, in particular injured workers and the relatives of deceased workers, be taken into consideration? How should the issue of compensation for workplace injuries or deaths be dealt with, if at all, in enforceable undertakings?</li> <li>• Should the DPP have any role in the Authority’s decision to enter into an enforceable undertaking?</li> </ul>	<p>The terms of undertakings are best left to the Parties and the Courts. Yes.</p> <p>A maximum term is necessary for enforceable undertakings. No, the aim is to achieve safer outcomes, not funds for Government.</p> <p>NO.</p> <p>They should be confidential.</p> <p>They should be monitored by the Parties and Courts.</p> <p>There should be an adverse judgement made in the Courts.</p> <p>When new evidence becomes available.</p> <p>We have no opinion on this matter.</p> <p>NO, this is a matter for the Authority and the Courts.</p>
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**TABLE 1 - RESPONSE TO SPECIFIC ISSUES RAISED**

<p>Clause 517</p>	<ul style="list-style-type: none"> <li>• Should the Act enable the Authority to obtain an injunction (interim and/or permanent) to restrain a person from conducting an activity which poses an immediate risk to health and safety? If so?</li> <li>• Should the Authority be required to give an undertaking as to damages upon an application for an injunction?</li> <li>• If not, what other remedies, if any, should be available to the Authority or an Inspector where there is a failure to comply with a prohibition notice? For example, should inspector have powers similar to those provided under section 45 of the South Australian Act?</li> </ul>	<p>Prohibition notices are more than adequate for this purpose.</p> <p>Not relevant as injunctions are not required.</p> <p>The Authority already has powers to prosecute in situations where there is a failure to comply with a PN. No additional powers are warranted.</p>
<p>Clause 519</p>	<ul style="list-style-type: none"> <li>• Should the Act allow courts to make punitive adverse publicity orders?</li> </ul>	<p>NO.</p>
<p>Clause 522</p>	<ul style="list-style-type: none"> <li>• Should the Act allow courts to make community service and corporate probation orders?</li> </ul>	<p>Yes, but the aim should always be to improve safety not seek retribution.</p>
<p>Clause 529</p>	<ul style="list-style-type: none"> <li>• Should the liability of officers of offending bodies corporate be subject to the limitations currently contained in s.52(1)?</li> <li>• Which of the two approaches (NSW or Queensland) (if either) should be adopted in place of s.52?</li> </ul>	<p>Yes, the existing provision is adequate.</p> <p>Neither.</p>

**MINERALS COUNCIL OF AUSTRALIA**  
**SAFETY & HEALTH STATEMENT**

*Endorsed by the Safety & Health Policy Committee of the Victorian Chamber of Mines at its first meeting 10<sup>th</sup> March 1999*

**Safety and Health Vision**

An Australian minerals industry **free** of fatalities, injuries and diseases.

**Safety Awareness**

The state of mind where we are constantly aware of the possibility of injury and act accordingly at all times.

(Adapted from Dr Neil George, circa 1939)

**Safety and Health Beliefs**

All fatalities, injuries and diseases are preventable.

No task is so important that it cannot be done safely.

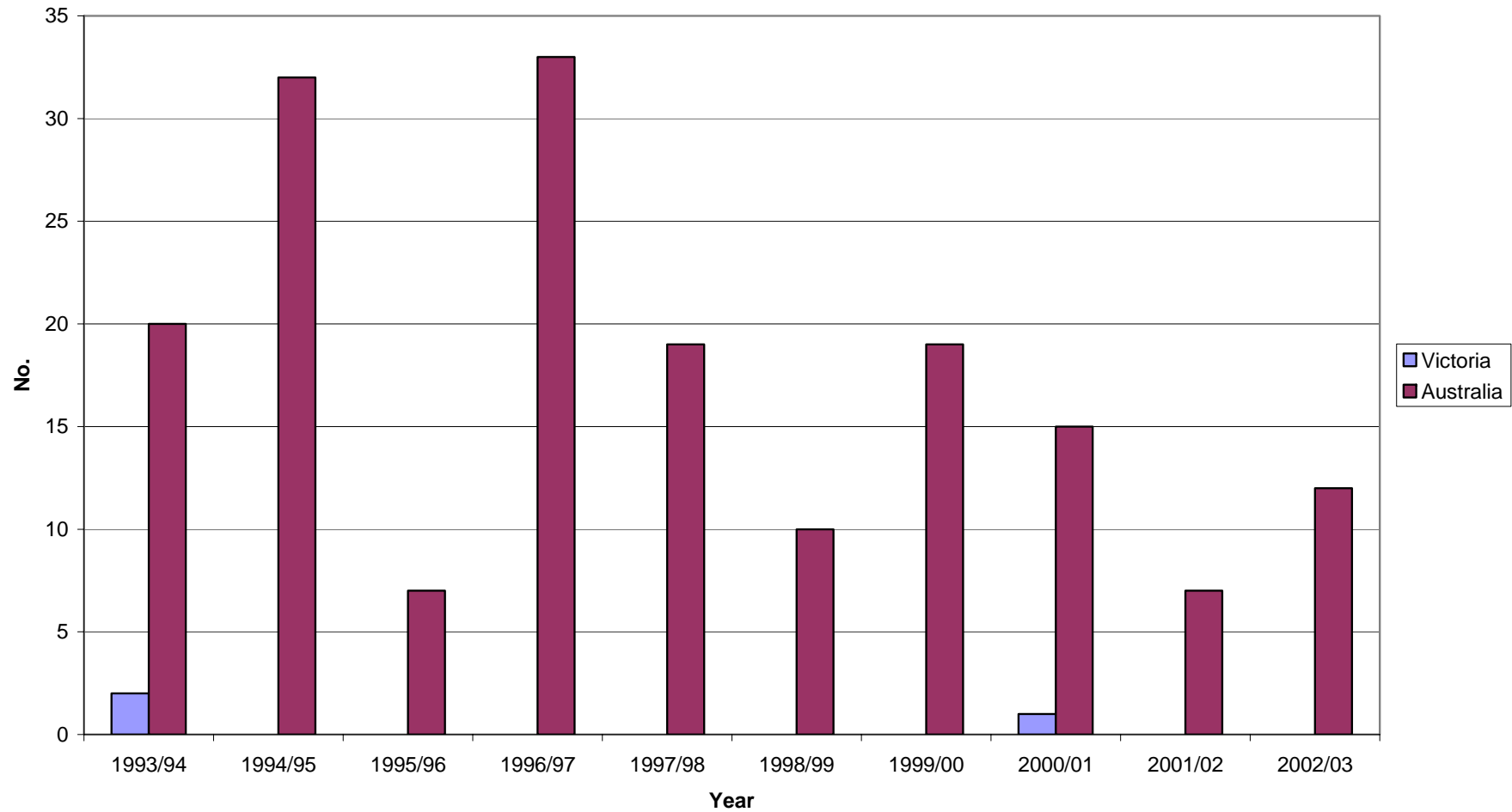
All hazards can be identified and their risks managed.

Everyone has a personal responsibility for the safety and health of themselves and others.

Safety and health performance can always improve.

# APPENDIX B – SAFETY PERFORMANCE

## Minerals Industry Fatalities



# APPENDIX B – SAFETY PERFORMANCE

## Minerals Industry Lost Time Injuries

