

Industrial
Manslaughter
and the impact
on exploration

Legislation

Industrial Manslaughter

Case Studies

Application to Exploration



Overview: Mining and Quarrying Exploration

- **Mining and Quarrying Safety and Health Act 1999 and Coal Mining Safety and Health Act 1999**
 - Both include definitions which include activities or operations “in connection with exploring for or winning”
- **Work Health and Safety Act 2011**
 - Any activities which are not in connection with a “mine” or “coal mine”
- Recently there has been a move towards targeting corporations/persons conducting a business or undertaking (‘PCBUs’) for failing to eliminate and minimise risks in the workplace
 - E.g. industrial manslaughter and workplace bullying

Overview: Industrial Manslaughter

Mineral and Energy Resources and Other Legislation Amendment Act 2020 (MEROLA Act)

- Proclaimed on 25 June 2020 and came into effect on 1 July 2020.
- Applied across all resource sector legislation to align with WHS Act

Industrial manslaughter occurs where:

- A worker **dies** in the course of carrying out work at the mine, or is injured in the course of carrying out work at the mine and **later dies**; and
- the employer/senior officer's conduct **causes the death** of the worker; and
- the employer/senior officer's conduct is **negligent** about causing the death of the worker by the conduct.

Industrial Manslaughter Offences

Resources Sector

- These penalties include a maximum possible fine of just over **\$14 million** for organisations and up to **20 years imprisonment** for mining managers, directors and other senior staff.
- Mining organisations and directors will also not be covered by insurance for the penalties, as **industrial manslaughter is a criminal offence.**

Industrial Manslaughter: Who is liable?

- **Person conducting a business or undertaking:** whether the person conducts the business or undertaking alone or with others whether or not for profit or for gain
- **Senior officer:** Executive officer of a company or the holder of an executive position who takes part in making decisions affecting a substantial part of the PCBU's functions
 - Goes beyond what is defined in the *Corporations Act 2001* (Cth) as an 'Officer'
 - Examples: Director, company secretary, CEO, CFO, SSE, general managers, officeholders in unincorporated association, some managers

Case example: MCG Quarries

- Mr Scott Scovell was working as the operator in the crushing plant at Moranbah South Quarry when he was caught in the operating conveyor system and suffered fatal injuries.
- Complaints under the *Mining and Quarrying Safety and Health Act 1999* (Qld) against:
 - MCG Quarries Pty Ltd – operator of the quarry (fined \$400,000);
 - Mr William McDonald – executive officer (first sentenced to 18 months in jail, although appealed in 2020);
 - Mr Tony Addinsall – site senior executive on date of incident (fined \$35,000, with no conviction recorded); and
 - Mr Edward Coleman – site senior executive between 17 October 2010 and 14 February 2012.

Case example: Clermont

- The defendant company operated a quarry in Clermont.
- A 21-year-old man was working on a conveyor belt clearing rocks. He and another worker removed the protective guarding in place and used their hands to remove rocks while the conveyor was in operation. The hand of the worker got caught and pulled him into the conveyor structure. The worker sustained fatal injuries.
- The defendant company, a Site Senior Executive and a Supervisor were prosecuted under the *Mining and Quarrying Safety and Health Act 1999* (Qld) in relation to lack of training and failure to ensure guarding was in place on machinery prior to commencing operations, and received the following penalties:
 - Defendant company: \$180,000
 - Site Senior Executive: \$45,000
 - Supervisor: \$10,000

Case example: Jeffrey Owen

- First prosecution, conviction and jail sentence of an individual under Queensland's industrial manslaughter laws.
- Mr Owen – operator of Owen's Electric Motor Rewinds.
- Mr Owen used a forklift to remove a generator from the back of a truck, but it fell and landed on his friend, who was crushed to death.
- Determined that Mr Owen's conduct caused the death of his friend – negligent operation of the forklift.
- Sentenced to five years' imprisonment, suspended after 18 months.

Case example: All Seasons (Aust) Gourmet Produce NSW

- A new employee, Mr Ali, suffered a severe injury to his hand which resulted in amputation to three fingers when trying to clear a blockage in a vegetable cutting machine.
- All seasons entered a plea of guilty and was ordered to pay a fine of \$112,500.
- Mr Kakias (sole director and secretary of All Seasons) also entered a plea of guilty and was fined \$37,500.
- Mr Kakias did not directly ensure safety procedures were put in place and followed, but rather relied on the manager and supervisors for this and he was still penalised.

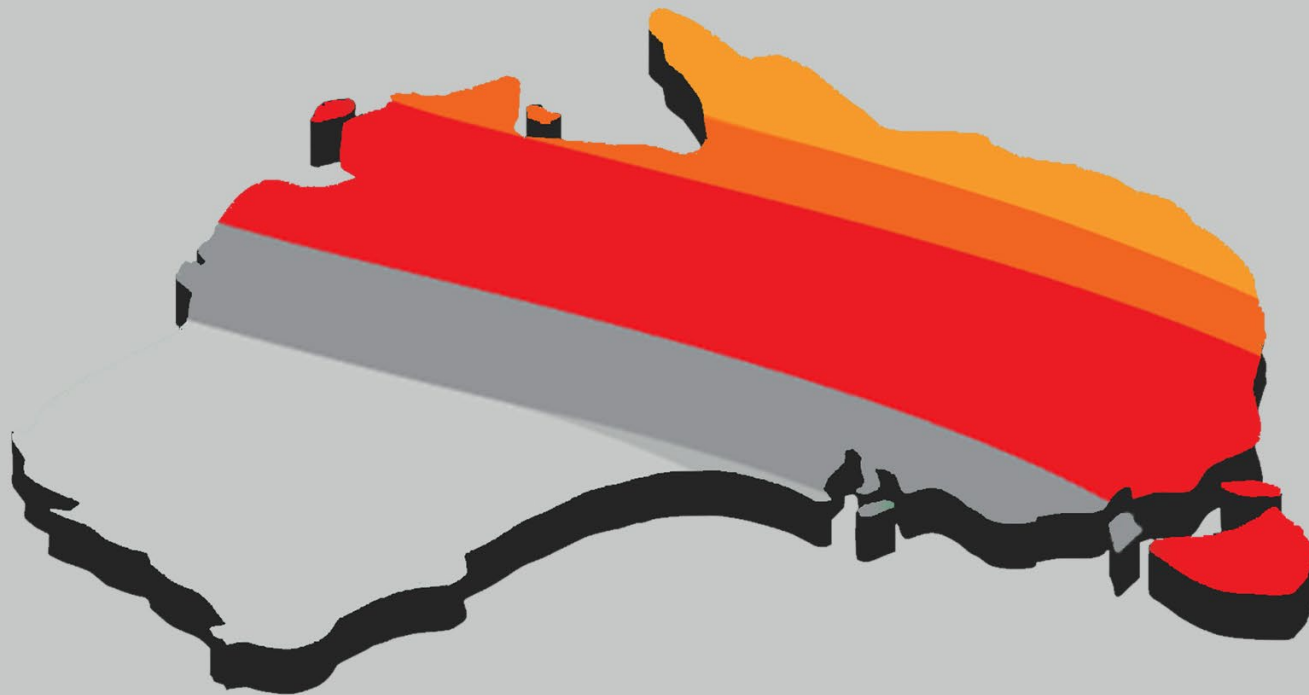
Exploration

What do you need to do?

- All appointed statutory positions must be employees
- Implement due diligence processes by taking reasonable steps to:
 - acquire and keep up-to-date knowledge of WHS matters;
 - gain (and maintain) an understanding of the nature of the operations of the organisation/mine/employer and the associated hazards/risks;
 - ensure the organisation uses appropriate resources to eliminate/minimise potential or actual WHS risks
- Be familiar with the WHS obligations, relevant Codes of Practice and industry standards applicable
- Know and understand potential hazards and control mechanisms
- Ensure there is a system in place to identify and manage WHS risks and oversee compliance with it
- Review incident plans and responses
- Conduct audits
- Continuously improve; systems, risk management, control measures, training, culture

SafeAssure – Who are we? What do we do?





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