

Overcoming Mistrust: Safety, Management and Mining

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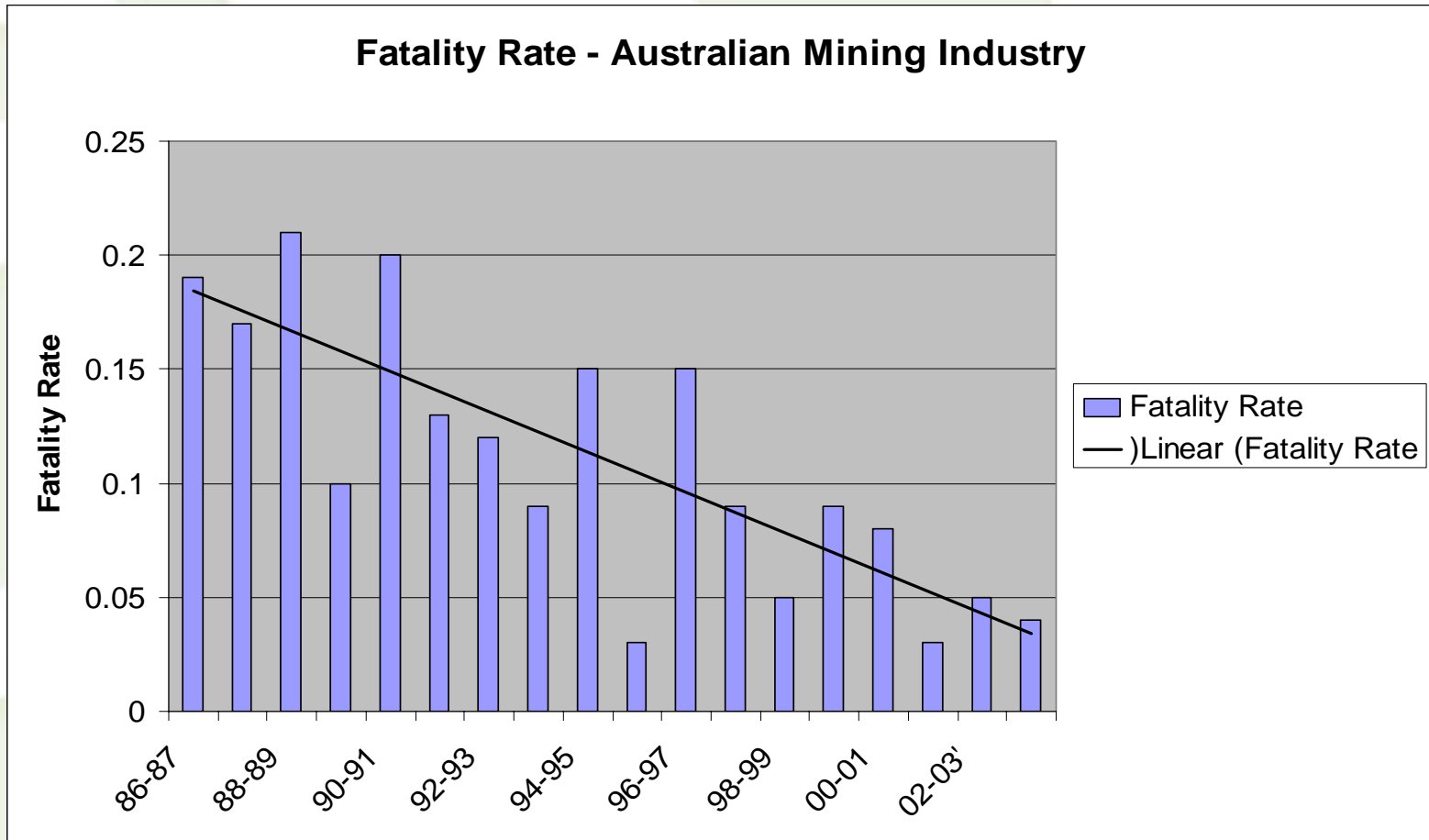
Trust: A context

- Three main actors: workers, employers, inspectorate
- In some respects operate independently but in others, inextricably connected:
 - regulation is negotiated between managers and inspectors
 - workplace OHS involves/should involve worker participation
- But interactions and negotiations can be positive or negative, constructive or destructive
- In the case of the Australian mining industry they are overwhelmingly negative or destructive
- The fundamental obstacle to constructive dialogue “a debilitating mistrust between the members of the tripartite process” (NSW Mine Safety Review 2005)

Trust between workers and Management

- Worker participation is crucial to improved OHS outcomes
- But history of acrimony, industrial disputes and polarisation
- Workplace Relations Act/WorkChoices have weakened power of trade unions
- But at same time many large companies have come to view OHS as part of “social licence to operate”
- These trends in tension: How will these conflicting forces play out?

AUSTRALIAN SAFETY PERFORMANCE



Case Study: Minerals Inc in NSW

- Corporate emphasis on high OHS performance
- Mines use common OHS management tools: monitoring, PTOs, standards, audits, systems, reporting, etc
- yet, despite these commonalities, there are clear differences in the way, and the extent to which, they have responded to the OHS challenge
- the mere existence of a set of OHS management tools, even highly sophisticated ones, is insufficient to guarantee best practice processes and outcomes.
- Variation between OHS performance at best and worst mines is substantial
- Strong correlation between worst OHS performing mines and lack of trust/bad industrial relations

Consequences of low trust

- Poor incident reporting because management motives suspect: “we’ll get nailed for something”
- Resistance to PTO because of lack of understanding and fear of adverse consequences
- Systems and safe work procedures not followed because “nobody tells me how to do my job”/ “management is full of s***”

Explaining Variation

- Deeply embedded cultures at individual mines
- Isolated workforce, long history of conflict, lock outs etc
- Taken for granted views passed from one generation to next
- Managers come and go but the workforce remains

Responses to Low Trust

Option 1- Get rid of the Union

BHP Billiton in the Pilbara:

- unresolved tension between its deep seated commitment to individualism in workplace relations and establishing a better relationship with the workforce
- Consequence was management took their eye of the ball in OHS terms
- Appalling industrial relations, poor OHS

Option 2: Marginalise the Union

- Disengage with union officials
- Communicate directly to workforce

“we have taken safety away from the union, and had no safety committee for over a year. If you give power to the workers, then unions become superfluous –its hard for them to hit you on safety. It’s a huge battle to win their hearts and minds”.

Does seem possible to achieve high OHS without trade union involvement **provided** company is committed to OHS



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Option 3: Close down and start again

- Close mine and dismiss old workforce
- Open “new” mine (but mining the same seam from the other end)
- Cherry pick new workforce
- Start with a clean slate
- Evidence (small sample) suggests can result in high productivity, high safety.

Option four: Incremental Change Building Trust

- a high level of communication and consultation between workers and management on OHS issues,
- responding promptly complaints/suggestions and providing feedback (even where no action was taken),
- devolving OHS decision-making power down the management hierarchy, and
- emphasising much greater worker ownership of OHS issues.
- Halting production if safety or health is at risk
- But very difficult to change entrenched cultures

Other lessons

- Senior management leadership is necessary but not sufficient
- Mine management leadership necessary but not sufficient
- “Managers come and go but we’ll still be here”.
- Culture of the individual mine, and changing that culture (of which building trust is a crucial part) is fundamental

Trust and the Mines Inspectorate

- Trust between NSW inspectorate and industry at an all time low
- Stems from post-Gretley prosecution policy
- Involves prosecuting both companies and individuals (eg mine managers) in circumstances, where, at most, there is negligence to the civil standard
- We have arrived at a point where individuals are held culpable "for failure to live up to an idealized reasonable person standard" (Hopkins)

Newcastle Wallsend Coal Company Pty Ltd v Inspector McMartin [2006] NSWIRComm 339, per Marx J

- “[I]t is fundamental that the criminal law must be administered in an appropriate fashion. The legislature has chosen to emphasise the importance of occupational health and safety matters by creating absolute offences. If the prosecution of offences is undertaken in an arbitrary, capricious and irresponsible fashion, the laws themselves are brought into disrepute for reasons that are obvious. This is especially so in the area of occupational health and safety prosecutions where it is the custom of the prosecutor to seek a moiety of the penalty, that is payment of one half of any amount imposed by way of penalty”.

Perceptions

- Current enforcement policy widely viewed as deeply unfair by employers
- Many believe prosecutions take place where there is no real blameworthiness
- Irrespective whether this perception is objectively reasonable or an over-reaction
- What is perceived to be real is real in its consequences

Consequences of lack of trust

- Lack of constructive dialogue
- Companies redirect their effort to reducing vulnerability to prosecution
- Reluctance to share information
- Inhibits in-firm accident investigation, prevention and remedial action
- Unwilling to consult regulators for fear of prosecution
- Culture of regulatory resistance
- Risk of creating “chronically mistrustful organisations”
- Contrast US criminal justice system with airline safety-

The Compliance Trap?

- Lack of political support for the moral seriousness of the offence
- Business offenders interpret moral leveraging (eg personal liability) as unfair
- “big businesses that perceive regulatory enforcement as illegitimate are likely to lobby for the political emasculation of the regulator” (Parker)
- Most regulators will take the easy option of enforcing the law “softly”
- Can we ever get out of this dilemma?

Solutions

- Prosecution remains crucial at tip of enforcement pyramid
- Important to prosecute senior management as well as corporations
- But key is maintaining legitimacy- achieved by prosecuting only
 - for recklessness/intent not negligence ('the real bad apples')
 - past track record
 - risk based not consequences