

Peter Newman

Chief Inspector of Coal Mines Qld

Re Complaint Investigation Report – Peak Downs dated 30th April 2020

Dear Peter;

This is the first formal follow up as promised on the matter of my Peak Downs Complaint.

This correspondence will deal with your comments regarding the “Asset”

During your evidence at the Ministerial Board of you answered under oath that you did not obtain any legal advice before making Interpretations of the Coal Mining Act and Regulations and then putting it into effect on at least one occasion.

- 1) Did you as Chief Inspector get any legal advice prior to your formal reply to me on the 30th of April?

Another reason this is critical in my view is based on whether you even have the basic demonstratable Competency to even apply the Act and Regulations.

As you may or may not be aware, I was an ISHR from 1999 to 2007 and during all of that period lived in Emerald, some 50 km from the Crinum Mine.

My memory is that Mr Gavin Taylor was the Underground Mine Manager under the 1999 Act and then Mr McCamley

You stated during your testimony you filled the position “Production Manager” at the Crinum Mine.

- 2) What years was this?

My memory is that under Mr Taylors time under the 1999 Coal Mining Act and the Management Structure post 1999 Act and then Mr McCamley, that there was not a position of “Production Manager”. They had made the decision to break the Management Structure along the lines of Development, Longwall, and Outbye/Support

In fact. I was unaware you had worked at Crinum in any capacity as I never actually met you on any Inspection either at Crinum or any other Mine in Qld between 1999 and 2007.

- 3) Have you ever in fact ever held a position of Underground Mine Manager or even Site Senior Executive at either an Underground or Open Cut Coal Mine in Queensland under the 1999 Act?
- 4) Have you ever undertaken the current Law Exam for Underground Mine Managers in Qld?

During your evidence you also state you spent a considerable continuous part of your career in New South Wales before taking up the position of CIOCM.

Just for fullness I note that the Law Exam in essence demonstrates sufficient understanding at time of Assessment to apply the 1999 Coal Mining Act and Regulations not provide legal Interpretations.

During the Board Of Inquiry Regional Inspector of Mines gave evidence, part of which he admitted he issued a MRE which he admitted was incorrect Interpretation and application of the Law.

I have been made aware that Inspector Smith has sat the Law Exam for 1st Class Managers and failed on at least one occasion.

Do either yourself or Inspector Smith have any demonstrable proof of even passing the Law exam?

I am also aware you as the recently appointed Chair of the Board of Examiners have made a Unilateral decision to cease Qld Mining Law exams under Mutual Recognition.

This has been in place for well over a decade and was introduced by then Chief Inspector Taylor after a due consideration by the CSMHAC and its recommendation

This begs the obvious questions?

How many OCE's, ERZC's, 2nd Class and First Class Tickets just been waved through under your remit

How many Mines Inspectors who did not hold Qld Certificates have now been recognised?

I cannot think of a more dangerous or reckless actions ever been undertaken on the apparent whim of the current Chief Inspector, that totally disregards the reasons for this Law Exam being brought into existence

I wish to draw your attention to the following part of your reply

Key Concern 5- BMA/BHP has created some sort of Entity outside the Coal Mining Act that by its own admission is issuing Directions to the Peak Downs Mine and therefore the SSE about how the Site Safety and Health Obligations are to be discharged. Such Directions unless issued by a least the Coal Mine Operator are in direct contravention of the Coal Mining Act. Further, there is no mention anywhere of the Asset being the Coal Mine Operator

Results/Comments-

☐ BMA have an appointed Operator under the Coal Mining Act, an appointed SSE as required under the Act and a Management Structure with persons in that structure being appointed to those roles, all having responsibility and accountability to ensure the provisions of the Coal Mining Act and Regulations are implemented for their operations. Only these persons are able to give directions at the site under the requirements of the Coal Mining Act and Regulations

A business owner or representative, not having an appointed role under the legislation, is not precluded from making other operational and business decisions that may impact the mine, where those decisions do not impact the Health and Safety of CMW's, and/or contravene the obligations of the Coal Mine Operator, SSE or other statutory officials from discharging their duties under the Coal Mining Act and Regulations.

☐ The Coal Mine Operator is an appointed role under the Coal Mining Act. This does not preclude an organisation referring to Assets within their organisation or as some businesses have appointing

personnel to roles within their business organisation, having accountability for the business performance of certain Assets. Such terms include Asset President, VP Coal Assets etc.

☒ As discussed with you in November in 2019 and later in January 2020, many organisations refer to their Mine, CHPP, or other production entity as an Asset. It is not uncommon to use this reference in an organisational sense. It is not mentioned in this sense in the Coal Mining Act or Regulation, however, this does not preclude its reference by an organisation. It is those appointed under the Coal Mining Act and Regulations, as previously described, that carry the responsibility and accountability, to give Directions as they relate to Health and Safety matters

In short, I find it impossible to understand how anyone who professes to understand the Mining Act could ever come up with such a response.

It is against all the findings of the Moura Inquiry and its recommendations and the wording, intent and drafting Instructions etc of the Coal Mining Act.

In fact, the positions of SSE in particular and Operator were specifically framed to avoid the position of Asset that you endorse.

You are explicitly allowing the situation where the SSE answers to somebody else on site.

The Mines Department Investigation findings for the Daniel Springer fatality at Goonyella Riverside actually finds this.

Mines Department took no action to address this basic and disgusting fundamental and blatant non compliance that directly resulted in Mr Springer losing his life

As someone with some demonstrated expertise in the Act and Regulations as recognised by the Supreme Court decision, I find your reply is an absolute disgrace.

DID YOU GET INDEPENDENT LEGAL ADVICE?

Or did you just declare this your Interpretation?

Is your reply in fact just an editing (cut and pasting) of whatever the Asset President and BMA sent you on whatever enquiries you made of them?

Given that

- 1) I am unaware of any demonstrable Competency held by yourself except by Mutual Recognition
- 2) Your lack of any experience holding position of Underground Mine Manager or even an SSE under the 1999 Act
- 3) Your refusal to provide any of the relevant MRE's you promised me via phone and refused to provide in writing
- 4) Your evidence at the Ministerial Bard of Inquiry

I totally reject for findings into Key Concern 5.

It does not in any way comply with the Requirements of the Act.

As with any of your replies via correspondence you never provide the material you promise over the telephone.

In this case I refer to any MRE's including one you did personally you told me following a Site Inspection.

My belief you can in no way justify your "Assertions" regarding Key Concern 5.

I am attending the Ministerial Board of Inquiry on Wednesday and available to meet with you at any time and location of your convenience to discuss this matter in person.

If you have the documentation to back your assertion including the formal Investigation into my complaint it should be a relatively simple matter to go through the full Investigation with me?

I would appreciate a reply as soon as possible

Yours in Safety

Stuart Vaccaneo