**RECOMMENDATION; DEFINITION of REASONABLY FORESEEABLE as found by the QUEENSLAND COURT OF APPEAL be INCLUDED and APPLIED in the COAL MINING SAFETY HEALTH ACT 1999 and REGULATIONS 2001.**

**REASON**

**The Queensland Court of Appeal found that the meaning of “Reasonably Foreseeable” under the Coal Mining Safety and Health Regulations is**

**[27] In summary****, a reasonably foreseeable event for the purposes of s 296 is one which can be envisaged by a person of imagination and intelligence, but which is not far-fetched or fanciful.**

**https://www.queenslandjudgments.com.au/caselaw/qca/2005/127**

**The term “Reasonably Foreseeable” is the only term using the word “Reasonably or Reasonable” in the Coal Mining Act and Regulations which have been subject to its application and meaning in a Queensland Court of Law.**

**Reasonably Practicable and Reasonably Achievable**

***Division 1 Control and management of risk***

***29 What is an acceptable level of risk***

***(1) For risk to a person from coal mining operations to be at an acceptable level, the operations must be carried out so that the level of risk from the operations is—***

***(a) within acceptable limits; and***

***(b) as low as reasonably achievable.***

**During the first Days of Hearings in August, Peter Newman Chief Inspector was asked a question by Counsel Assisting. This is the question and reply**

***Q. Tell me, we have 40 HPIs to look at in this inquiry and the data already presented indicates that there are more than those, is the standard that's set by the prescriptive requirements of 343 and 344 aspirational or is it reasonably achievable?***

***A. It's definitely reasonably achievable. Otherwise, underground mines would be in a constant state of exceeding the 2.5 per cent.***

**The evidence presented at the Grosvenor Inquiry has demonstrated that preventing an unacceptable Methane risk to Mine Workers and not having a Methane Explosion resulting in horrific permanently disabling burns to 5 Mineworkers on the LW 104 face was not ACHIEVABLE by Grosvenor Mine Management, let alone REASONABLY ACHIEVABLE,**

**A Methane Explosion resulting in horrific permanently disabling burns to 5 Mineworkers and/or Multiple Fatalities was an entirely REASONABLY FORESEEABLE Event.**

**A Reasonably Foreseeable Event which can be envisaged by a person of imagination and intelligence, but which is not far-fetched or fanciful.**

**The inability of Grosvenor Mine Management to Reasonably Achieve has been continuous and ongoing both in Development and Longwall Mining Operations from 2016 till the 6th of May 2016.**

**If anything, Grosvenor Mine Management inability to Reasonably Achieve an acceptable level of risk has grown since 2016. This is apparent by number the Methane HPI in Longwall Operations between July 2019 and May 6th 2020.**

**This is on top of the period in 2018 when Grosvenor Mine alone was responsible for 60% of Methane HPI’s in Queensland Coal Mines.**

**The Queensland Coal Mine Inspectors has never decided that the continuing Unacceptable Level of Risk to Coal Mine Workers Health and Safety**

**ACHIEVABLE**

**Achievable is mentioned only once in the Coal Mining Safety and Health Regulations**

***Division 2 Ventilation system***

***343 Ventilation system must provide for general body concentrations for particular contaminants and gases***

**PRACTICABLE**

**Practicable is mentioned 43 times in the Coal Mining Safety and Health Regulations.**

**GENERAL REGULATIONS**

***Part 3 Accidents, high potential incidents, diseases and injuries***

***15 Investigating accidents and incidents***

***Subdivision 4 Electrical drawings and plans***

***32 Drawings of electrical installations***

***33 Plan of coal mine’s communication system and main electrical installation***

***Part 8 Mine plans and other information about mines***

***58 Accuracy of plans and information***

***Division 2 Mobile plant***

***73 Checking mobile plant***

***Part 12 Work and work environment***

***89 A Dust monitoring and reporting procedure***

**OPENCUT REGULATIONS**

***Part 2 Open-cut examiner***

***107 Reducing unacceptable level of risk***

***(2) If it is practicable, the examiner must ensure the thing is made safe immediately.***

**UNDERGROUND REGULATIONS**

**Of this 25 are in the Underground Regulations.**

**There are 3 uses of Practicable in**

**“*Division 2 Inspections under safety and health management system”***

**There are further uses of Practicable in**

**Division 3 Second workings**

***319 Changing standard operating procedure***

***320 Notices to inspector***

**There are further uses of Practicable in**

**Division 5 Routine and emergency sealing**

***328 Changing sealing method***

***329 Emergency sealing***

**There are further uses of Practicable in**

***Part 11 Ventilation***

***342 Reports by ventilation officer***

***344 Other things for which ventilation system must provide***

***Division 7 Monitoring atmosphere***

***362 Air distribution***

**PETER NEWMAN Current Chief Inspector of Coal Mines**

***Q. In a so-called gassy mine - and I think it might be accepted we're dealing with gassy mines in this inquiry - there is another form of control which works in aid of ventilation, is there not, and that's the gas drainage?***

***A. That's correct.***

***Q. Is that one of the critical controls that works in support of the ventilation system?***

***A. That's correct.***

***Q. In other words, it assists the ventilation system to reach a compliant standard and keep it that way?***

***A. Well, it brings down the in situ gas content to a level that the ventilation system is then able to dilute the methane in the workings.***

***TRA.500.001.0053***

***Q. Those two things, then, ought to work hand in hand to achieve the requirements that are set out in sections 343 and 344?***

***A. Absolutely***

***Q. Tell me, we have 40 HPIs to look at in this inquiry and the data already presented indicates that there are more than those, is the standard that's set by the prescriptive requirements of 343 and 344 aspirational or is it reasonably achievable?***

***A. It's definitely reasonably achievable. Otherwise, underground mines would be in a constant state of exceeding the 2.5 per cent.***

**The term “Reasonably Foreseeable” is only mentioned in**

**Regulation 296 Escapeways.**

***(1) The site senior executive for an underground mine must ensure the mine has at least 2 trafficable entrances (escapeways) from the surface that are separated in a way that prevents any reasonably foreseeable event happening in 1 of the escapeways affecting the ability of persons to escape through the other escapeway.***

The Supreme Court and the subsequent Queensland Court of Appeal involved the Grasstree Anglo Coal Australia Mine and Management, the Mines Department and the CFMEU.

**The meaning that Anglo Coal Management and the Queensland Mines Inspectorate and the Anglo Expert Witness including Professor David Cliff used, were found to be incorrect.**

**WHY THIS DECISION IS IMPORTANT**

**TO AVOID** **MINE DESIGN SUCH AS PIKE RIVER COAL MINE (NEW ZEALAND)**

**The design of coal mines with its inherent basic flaws such as the Pike River Mine, (with only one trafficable/walkable intake) is illegal under the Queensland Coal Mining Legislation following the Supreme Court and Queensland Court of Appeal Decisions**

Grasstree Mine was a new Coal Mine under “Construction” in the early 2000’s.

The only egress/access from the coal seam and mine workings to the surface were Two (2) vertical shafts, one intake and one return that were/are approximately 250 metres deep.

Egress and Access were via the main Winder in the Intake Men and Materials Shaft and a smaller winder in the return shaft.

There was absolutely no way Coal Mine Workers could escape from the Mine except by the winders. Neither shaft was equipped with a ladderway.

If the Management had of planned and installed a ladderway with Stairs and regularly spaced platforms which could only have fitted in the return shaft it would still not have complied.

1. Approximately 3 years of formal meetings, discussions, several Mine Record Entries, correspondence between the Industry Safety and Health Representatives (ISHR’s), the proposed Underground Mine Manager, and most Senior Mines Inspectors.
2. Mines Department unilaterally changed the existing formal Interpretation of Section 296 from requiring at least 2 separate trafficable intakes from the surface into the Mine to one that reflected Anglo’s interpretation.
3. Two years of planning about the Legal processes allowed under the Coal Mining Act and the strategy that would allow the ISHR’s to successfully use the relevant Powers available to suspend operations due to an unacceptable level of risk.
4. The time when the main mine fan was commissioned and formed one ventilation circuit was the designated time.
5. To cut a long saga short, when I shut the Mine originally , after 3 days the then Chief Inspector of Coal negated my Mine Record Entry and allowed Mining Operations to resume.
6. The CFMEU Mining and Energy Division Qld commenced legal action in the Supreme Court.
7. The Qld Govt decided to not actually participate in the Supreme Court action, and it became a law case with the Union and Anglo.
8. Both Greg Dalliston (ISHR) and I had to give extensive evidence. None of our evidence was contested at appeal.
9. When the Supreme Court handed down its decision, within 2 hours I had attended site and gave the then SSE and Mine Manager another Mine Record Entry and **Section 167 Directive preventing workers going underground due to an Unacceptable Level of Risk to the Safety and Health of Coal Mine Workers.**

• It was 6 months before normal mining operations recommenced.

The terms “***reasonably believes***” and “**reasonable suspects**” are defined in the Coal Mine Safety and Health Regulations 2001

***“reasonably believes means believes on grounds that are reasonable in the circumstances”.***

***“reasonably suspects means suspects on grounds that are reasonable in the circumstances”.***

However, terms such as Reasonably Achievable and Reasonably Practical are used in all Risk Management Processes utilized at every Coal Mine I have been exposed to in 7 years as an Industry Safety and Health Representative.

**Reasonably Foreseeable**

*Regulation 296 Escapeways*

***[27] In summary, a reasonably foreseeable event for the purposes of s 296 is one which can be envisaged by a person of imagination and intelligence, but which is not far-fetched or fanciful.***

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***SUPREME COURT OF QUEENSLAND***

***CFMEU v State of Qld and Anglo Coal [2005] QCA 127***

***PARTIES:***

***CONSTRUCTION, FORESTRY, MINING & ENERGY UNION***

***(applicant/respondent)***

***v***

***STATE OF QUEENSLAND***

***(first respondent)***

***ANGLO COAL (GRASSTREE MANAGEMENT) PTY LTD ACN 078 099 313***

***(second respondent/appellant)***