This article examines the potential role of industry associations in improving OHS performance. Although industry associations sometimes seek to protect their members by adopting a "lowest common denominator approach", this is far from inevitable and some industry sectors have an enlightened self-interest in improving the collective OHS performance of their members. Drawing from the experience of the nuclear power and chemical industries internationally, this article seeks to draw lessons about the potential role that industry associations can play in improving health and safety, and the links between industry association activities and government regulation. The focus of the latter part of the article is on how these lessons might be applied by the Australian mining industry (whose associations have devoted more energy and initiative than most) to enhancing the OHS performance of its members.

The role of industry associations in improving OHS performance

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istrates Court of South ...ritten system of work for had been in place. The ...ed two people carrying s still very hot or boiling, ...of the presence of the hot town the drain. After the had advised staff not to ...er had cooled or to leave next shift.

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the court acknowledged ...ntal in the preparation of ...ken some steps to ensure ...e with the OHS Act. to take all reasonably

practicable steps, as evidenced by the fact that the manual had not been implemented. He should also have taken steps after the first incident to ensure that the risk was assessed and controlled. Soon after the second incident, the hotel had been sold. The new owner had updated the existing OHS manual and implemented the updated version.

The court also remarked that both kitchen hands had been young workers and that special risk factors had to be considered when managing the safety of children and young workers. The need to provide safe systems of work and adequate information, instruction, training and supervision was of paramount importance.

At the sentencing, the court confirmed that the original company was no longer trading and the director had retired. Any fine imposed on the company would be paid by the director. Both defendants were convicted. The company was fined $22,500 in respect of each of the two breaches, totalling $45,000. The director was fined $3,750.
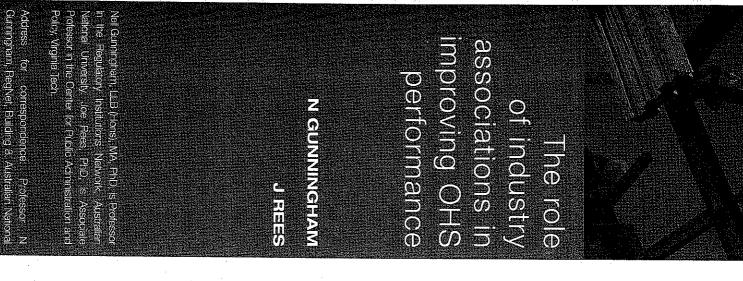
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Letters to the Editor

...ate. Any subscription publication is enriched by readers' opinions. ...les in the journal and on current issues related to OHS ensure heightened and can provide an extended perspective on the journal's objectives. ...vide this opportunity. We'd like to hear from you.

...takes place in many rooms.[1] Government tes can do much to pressure reluctant and the recalcitrant to comply with standards, as well as to assist and educate petent. Arguably, they may even facilitate ders in going beyond compliance. they do not have a monopoly on power ol. On the contrary, those agencies have source limitations, lack the "inside ?" to fully understand the OHS challenges g complex organisations, are less trusted try insiders, and, without the support of ceholders, can never hope to ensure compliance. Their contribution, while is constrained by all of these factors.

le examines how industry associations r play a positive role in improving OHS outcomes, what that role might be, how best be discharged, and how carefully OHS law can enhance rather than that role. This implies a pluralistic to regulation which recognises that the state is limited and that the capacities of ps must be effectively harnessed towards OHS outcomes.

ach taken in this article is to examine the al experience of the two most advanced association initiatives — in the nuclear

power and chemical industries — and to see what lessons can be learned and the extent to which these might be applied to the circumstances of the Australian mining industry. While this industry is, in many respects, more advanced in its approach to OHS than many others, it would still benefit from applying international best practice.

The roles of industry associations

Industry associations can take a variety of different forms, but most commonly involve sector-specific associations that represent the interests of their members locally, nationally or internationally. They often act as advocates on key policy issues relevant to the sector, such as environmental regulation or the promotion of common safety standards. A central concern is to ensure that sector interests are represented to government and the community more broadly. While this sometimes takes the form of protecting the interests of their lowest performing members (for example, resisting government efforts to introduce tougher social or economic regulation), there is considerable potential for them to take on far more constructive roles (such as those examined below).

Such associations have a wide reach. For example, the Australian Chamber of Commerce and Industry, the peak council of Australian business associations, has a member network of "over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations".[2]

For present purposes, the most important characteristic of industry associations is their capacity "to unify the industry around a distinctive set of shared values, beliefs, and practices [and to] build ... a distinctive kind of community".[3] Put differently, they can raise OHS standards by developing an effective normative framework for their members and by seeking to institutionalise responsibility. As one senior executive put it:

"As an industry, health and safety can no longer be a 'priority' — it must instead become a 'value', a part of the way we do business. Priorities change depending on daily requirements while values remain in place regardless of external pressures that periodically arise."[4]

Good examples of how industry associations might do this are provided by the chemical industry's Responsible Care program and the nuclear power industry's Institute of Nuclear Power Operations (INPO). What we find in each case is the emergence of a common meaning system — a new industrial morality — at the industry level. This has involved the development of an industry-wide normative framework, a set of industrial principles and practices that defines "right conduct" and spells out the industry's public commitment regarding safety, health and environmental issues. In effect, the industry association provides a very clear model of "the way we always do business around here".

It enables industry officials to question their customary approach, including their taken-for-granted economic assumptions (production comes first), to weigh the alternatives, and to think through the consequences of their choices. For example, consider the nuclear power industry's industrial morality. "Excellence in operating nuclear plants" is the polestar and, to this end, it articulates "standards of excellence" that embody a conception of the industry at its best. And one of the central purposes of those standards, as a Secretary of Energy once put it, is to help "resist the natural business tendency to reduce the resources dedicated to fostering safe and excellent practices".[5]

Certainly, not all industries have successfully developed such a morality. Indeed, many industrial moralities amount to little more than self-serving industry rhetoric, and many industry associations have devoted far more energy to opposing legislation that might threaten the interests of their poorest performing members than to more constructive initiatives. For example, many have perceived the introduction of OHS legislation as threatening productivity and profit, and therefore to be resisted in almost all circumstances. Nevertheless,

others (such as INPO, at least in its first decade) have been remarkably effective in guiding and controlling industry conduct in a socially positive direction.[6] Those that are effective have a number of distinctive features that are of particular importance. These features have been examined at length elsewhere, but can be summarised as follows.[67]

The first is the creation, over time, of clearly defined targets. These need not necessarily be introduced early on. Indeed, it may be better to encourage enterprises to find their way, rather than committing to non-attainable targets or ones which, in retrospect, are uneconomical. Far better, in these circumstances, to at least begin with good faith obligations of a general nature and process-based obligations (for example, in terms of developing and implementing an OHS management system). However, where practicable, the adoption of specified quantifiable targets, both for individual companies and across the entire industry sector, is highly desirable. Without them, there is the risk that an industry association initiative may become vacuous and lose credibility.

The second feature is accountability and transparency. Those who are held accountable than they must explain and justify any questionable actions. This tends to both discipline and constrain decision-making. But how can accountability best be achieved? One of the principal mechanisms by which accountability can be fostered is transparency. Arguably, the first step towards transparency is the public announcement of the principles and practices that participants accept as a basis for evaluating and criticising their performance. With increasing transparency, in short, accountability is more readily maintained.

The next critical step towards achieving transparency is the development of an information system for collecting data on the progress of implementing the initiative. The process usually divides into two parts: (1) reporting and collecting data; and (2) collating and analysing data. Self-reporting is the most common form but raises concerns of conflict of interest: companies may be tempted to be less than

national level. The relevant associations rely largely on promulgating norms of industrial conduct, peer pressure, technical assistance and transfer, data collection and self-reporting by members to institutionalise responsibility and ensure compliance.[8] Ehrenfeld and Nash found that Responsible Care has prompted some important changes in company organisation, practices and, in some cases, values, but that the changes vary considerably across companies.[9] However, not all studies have been positive.[10] Nonetheless, industry insiders report that peer pressure (generated via Responsible Care leadership groups), the benchmarking of safety, health and environmental performance (based on self-reporting by each participating company in Responsible Care and the "league tables" which are produced on the basis of that information), and positive publicity (publishing the names of the top 15 companies in the industry newsletter) have been particularly effective.

This largely anecdotal impression is reinforced by the much more rigorously documented evidence concerning the impact of the nuclear power industry association's voluntary initiatives in the United States:

"For example, the meaning of 'good' and 'bad' nuclear plants is constructed in terms of [INPO's] ten performance indicators, and by giving the industry the information to quantitatively compare the performance of individual nuclear units with performance of the entire nuclear industry, INPO enabled utility officials to interpret their nuclear plant's performance in a new light, not how each stands alone, but where they stand relative to an industry-wide field of performance. Each nuclear plant thus became related to the others in a new way, a new context of shared experience rather like a hundred once-solitary joggers grouped into a single race. Furthermore, with the industry's chief executives gathered in a single room, each year INPO uses those indicators to classify their social world of nuclear power in a distinctive way — hierarchically — as each nuclear plant is endowed with an official

status (ranging from the 'excellent' 1 to the 'marginal' 5), a status publicly proclaimed before everyone's eyes. 'When the ratings all began to come out at the CEO meetings,' as one CEO puts it, 'suddenly we weren't all equal anymore.' Then what? It set into motion mimetic pressures on all the nuclear plants to imitate the practices of the exemplary plants, because, as institutional theorists would explain it, organisations tend to imitate other organisations that they regard as more successful.[26,11]

While it has been argued above that both the nuclear power and chemical industries are models that others can learn from, it must also be acknowledged that they are in some respects atypical. Both have confronted environmental or OHS challenges of such magnitude as to threaten their viability or, at the very least, their social licence to operate.[12] And it was these challenges that substantially drove their OHS initiatives.

Nevertheless, there is considerable evidence that, today, large companies across a diversity of industries are increasingly reputation-sensitive and vulnerable to informal sanctions from banks, insurance companies, financial markets, local communities and non-governmental organisations (among others) in the event that they are perceived to be breaching their social licence to operate.[13] Take the Australian mining industry. The need for mining companies to protect their social licence is important because community expectations of corporate OHS performance are much higher than they were even a decade ago. The mining industry worldwide is "faced with a pattern of low credibility and social opposition, which derives from a general perception that mining is a dirty business".[14] Fatalities and serious injuries contribute significantly to that negative image, and the industry has sometimes struggled to maintain its legitimacy and social acceptance. Those who can build their reputation capital and protect their licence to operate can turn this into a competitive advantage: benefiting from greater access to government and planning

approvals, greater worker and community acceptance, less regulatory scrutiny, and preferred access to prospective areas and projects.[15]

Accordingly, the model developed by the nuclear power and chemical industry associations resonates more broadly for a range of other industry sectors that are reputation-sensitive and confronting increasing social licence pressures. The following section of this article examines how the lessons from INPO and Responsible Care might be extrapolated more broadly by examining key issues through the lens of the increasingly reputation-sensitive Australian mining industry.

Applying the chemical industry and INPO experience to the Australian mining industry

Historically, the mining industry has had an exceptionally high incidence of work-related injury and disease, and disasters with multiple fatalities. It also faces OHS challenges exceeding those of most other industry sectors. Over the last decade, statistics show a significant improvement in the mining industry's OHS performance (at a rate that is substantially higher than most other industries), but a plateau has been reached and still more needs to be done.[16] Relevant industry associations are in a prime position to influence the relevant "next steps", particularly since many of these involve going beyond compliance with existing regulatory requirements.

However, when judged against the INPO benchmark and the criteria set out above, the mining industry associations in Australia have not, so far, positioned themselves to effectively nurture an industry OHS morality. This is not to suggest that they have not made substantial progress in improving OHS, for demonstrably they have. Occupational health and safety is a far more central organisational concern than it was a decade ago, and initiatives such as industry association OHS conferences at the state/territory level, the CEO

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Safety and Health Forum, the development of good practice guidelines, the industry-sponsored MINEX (national minerals industry excellence awards), the Australian Minerals Industry Framework for Sustainable Development ("Enduring Value"), and other mechanisms for sharing OHS innovations, together with individual initiatives by a number of major companies, help to explain that shift.

The Minerals Council of Australia (MCA), which represents Australia's exploration, mining and minerals processing industry (particularly the largest companies which produce more than 85% of Australia's annual mineral output), has taken a leadership role in developing a statement of vision and beliefs, establishing a safety and health committee, and identifying an ambitious and clearly defined industry target: that no minerals fatality, injury or disease is acceptable.[17] It has also embarked on the task of building an industry OHS morality by identifying a broader set of 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 OHS of themselves and others; and

— safety and health performance can always be improved.

The MCA also publishes annual safety and health performance data to: encourage the industry to seek continuous improvement in safety and health performance; determine the minerals industry's performance and trends; compare the safety and health performance of the major sectors of the industry; provide a benchmark for comparison with other major mining countries; recommend strategies to improve the industry's safety and health performance; help individual enterprises to benchmark their performance; compare industry data with data from other recognised Australian

Compensation Commission); and demonstrate the mineral industry's continuing commitment to improving safety and health performance.[17]

Nevertheless, there is more that could be done in terms of measuring and comparing OHS performance at company and site level, and in terms of collecting data on the progress of implementing industry-based standards. In particular, publicly accessible industry benchmarking could serve to ratchet up poorer safety performers to the level of the best operators through a combination of modelling and external pressure. Relating individual company-level OHS performance to industry best practice is particularly valuable because "it is in some ways extremely difficult for a firm's risk managers to be confident that they are performing up to an acceptable or industry standard. This is because it is often hard to tell how one's competitors are managing their punitive risks".[18]

If the mining industry were able to create credible performance indicators such as to enable the creation of a "league table", it might prove a highly effective motivator of improved safety performance

— just as the Toxic Release Inventory in the US galvanised a number of major companies to substantially improve their environmental performance.[19] However, identifying appropriate performance indicators that facilitate comparison across different companies, and which preclude underreporting, is a problem that the industry has so far failed to resolve, and mine safety reviews routinely bemoan the inadequacy of standard performance measures (especially lost-time injury frequency rates) and standard industry databases.[20,21] As powerful as this mechanism potentially might be, until the industry can go beyond seriously flawed statistics (such as lost-time injury frequency rates) to develop credible lead and lag indicators, the capacity for such initiatives in the Australian mining industry remains very limited.

Broader OHS reporting, taking account of the development of OHS parameters under the Global Reporting Initiative, UN-sponsored guidelines on

Council for Mining and Minerals Sustainable Development Framework (which includes a common approach for reporting performance), and other means of rewarding achievement (such as those that are being explored by the United Kingdom Health and Safety Executive) also merit further exploration.[22-25] The development of a health and safety performance management index, which is capable of assisting stakeholders to assess how well an organisation is managing its risks and responsibilities toward workers and the public, would be of particular value.[26]

Finally, even if better reporting mechanisms at company and site level are developed, there will be a need for monitoring and enforcement and, in particular, for clear and independent publicly available third party audits. These will be necessary both to provide public confidence in the results of OHS reporting and to mitigate shirking. The favoured form of monitoring and oversight is an audit conducted by an independent professional. Such audits can provide systematic, documented, periodic and objective reviews of whether OHS requirements are being met and whether systems are being adhered to. Here the model is the "compliance verification system" that the Canadian Chemical Producers' Association has adopted, under which a team of four conduct a verification of a member company's operations. In each case, two of these verifiers are people with extensive industry experience, and two are outsiders (for OHS, there is a compelling case that at least one should be a worker representative). This team seeks evidence as to whether, and to what extent, the company is in compliance with the guiding principles and codes of Responsible Care. It looks for evidence of a management structure, a benchmarking process, an internal auditing process, and a mechanism for follow-up and continuous improvement.

Once credible performance indicators (as well as monitoring, measuring and third party oversight mechanisms) are developed, various other options become available. Not least is the opportunity to link the industry's own reporting initiative to various forms of state/territory regulation. In broad terms,

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These initiatives appl For example, with particular opportuni of a "two track" sys approach, those w demonstrably mee established under, reporting mechanism third party audits) regulatory flexibility a priority" in a manne regard to the latter companies believe th achieving ambitious a persuaded. There will the law in draggin minimum legal standa a point where such contemplated. What w is achieving demonstra is transparent to the ou organisations. Withou operate, which is argu may still be under cha

Conclusion

This article has argued and should play a r performance of their associations will have a doing so. However, those which are vulne consequence events (v public spotlight and

tough regulation), and those which are reputation-sensitive and have a need to protect their social licence, may see a compelling case for improving the collective OHS performance of their members.

Drawing from the experience of the nuclear power and chemical industries internationally, this article has identified a number of characteristics of those initiatives that have been most successful in improving industry OHS outcomes. At the core of these initiatives is a capacity to nurture a common meaning system — a new industrial morality — at the industry level. While there is no single formula about how best to do this, the most successful schemes have a number of features in common. First, there is the creation, over time, of clearly defined targets. Second, there is the development of accountability and transparency. This is achieved through a credible and transparent information system for collecting data on the progress of implementing the initiative, as well as mechanisms for monitoring performance (for example, through third party auditing). Although industry associations and their members have tended to resist the latter, without it, claims made by a company about its OHS performance may lack credibility.

The Australian mining industry, which has more reason than most to improve its OHS performance and indeed has taken some impressive steps to do so, has nevertheless not yet reached the level of sophistication at industry association level as the nuclear power and chemical industries have at an international level.[28] Although the MCA in particular has taken a leadership role, it still has some way to go in nurturing an industry OHS morality. In particular, there is more that could be done in terms of measuring and comparing OHS performance at company and site level, and in terms of collecting data on the progress of implementing industry-based standards. For example, publicly accessible industry benchmarking could serve to ratchet up poorer safety performers to the level of the best operators through a combination of modelling and external pressure. And, if the industry were able to create credible performance indicators such as to enable the creation of a "league table", it might

prove a highly effective motivator of improved safety performance. Finally, even if better reporting mechanisms at company and site level are developed, there will be a need for monitoring and enforcement and, in particular, for clear and independent publicly available third party audits. Only then might it be possible for the mining industry to seek, with credibility, a "two track" regulatory system, designed to facilitate and reward leading companies in moving beyond compliance, while providing the necessary threats and incentives to drag industry laggards up to a minimum legal standard.

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