A patronising disposition of unaccountable power

An educated, healthy and confident nation is harder to govern

Tony Benn [1]



In November 2017, the former executive director of SafeWork South Australia, Marie Boland was appointed by Safe Work Australia to review the model work health and safety laws. The subsequent report was released in February 2019 and concludes the model laws are operating largely as intended and support for the harmonisation objective remains strong. It is quite an extraordinary statement given the primary object of the model Work Health and Safety Act is to provide for a balanced and nationally consistent framework and secure the health and safety of people at work. [2-8]

After almost two decades, the chimera of harmonisation and national uniformity resembles a dog's breakfast and has become increasingly complicated and vexatious. Several jurisdictions have embarked on a race to the bottom and implemented distinct health and safety statutes covering their mining and resources sectors, which are administered by alternative state government authorities. This can generate potential conflicts of interest and significantly increase the risk of regulatory or policy capture. It is further exacerbated by the minefield of industrial manslaughter legislation, which is fraught with complex legal technicalities covering the burden of proof pertaining to negligence and recklessness. Moreover, the International Labour Organization C176 *Safety and Health in Mines Convention 1995* remains unratified by the Australian Government Department of Jobs and Small Business. [9-19]

In Queensland there are currently 105 confirmed cases of mine dust lung diseases and a recent parliamentary inquiry revealed a catastrophic breakdown of a regulatory system that was intended to secure and protect the health and safety of coal miners. It is somewhat enigmatic but the disease uncannily disappears in New South Wales coal mines although absence of evidence is not evidence of absence. More recently, media reports confirm almost 100 tradesmen involved in the fabrication of engineered stone benchtops throughout Queensland have been diagnosed with silicosis. Some victims are categorised as terminally ill and an additional 800 employees are undergoing diagnostic testing at a cost of almost $1.5 million. Many patients will require lung transplants and it will place enormous strain on a struggling public health system. A senior physician has predicted the problem will escalate and the crisis could be become much worse than asbestos related diseases. [20-25]

Any estimation of expenditure covering workplace injuries and disease requires consideration of an extensive range of direct and indirect parameters and it is quite a complex exercise. However, since 1993 the allocation of costs endured by incapacitated employees has increased by a staggering 157% with a corresponding decrease of 88% for employers. It suggests other exogenous risks such as the gig economy, contingent labour hire and the exploitation of vulnerable workers may be significant contributory factors. [26-29]

After almost five decades it appears the legislative framework may even be irrelevant and the current structure can hardly be described as operating as intended unless it inadvertently advocates androcide or democide. Indeed, it is underpinned by the precautionary principle or Vorsorgeprinzip, a German sociolegal term that reflects the medical profession maxim…..*First, do no harm*. [30-34]

Substantive evidence, which includes significant issues such as, silicosis, the home insulation program, asbestos related diseases, the F-111 deseal reseal program, CFA Fiskville cancer clusters and the resurgence of black lung indicates health and safety performance across Australia is rather abysmal. Moreover, if the current framework is operating as intended industrial manslaughter legislation is an unnecessary encumbrance. This raises serious concerns about the structure of Safe Work Australia, especially its leadership, tripartite arrangements, alleged independence and excessive ministerial influence. Any patronising disposition of unaccountable power must always be challenged and ministers, senior executives, public serpents or any other quivering spineless panjandrums in search of a backbone and holding positions of economic, social and political influence must be asked the following five questions: [35-42]

1) What power have you got?
2) Where did you get it from?
3) In whose interests do you exercise it?
4) To whom are you accountable?
5) How do we get rid of you?

Any leader or minister who is unable to answer the final question does not live in a democratic system or believe in the process.

Tony Benn (1925 - 2014) [43]

References

1. Quote by Tony Benn [Internet]. Quotery. 2018 [cited 13 March 2018]. Available from: https://www.quotery.com/quotes/an-educated-healthy-and-confident-nation-is-harder-to-govern/

2. SafeWork SA - About us [Internet]. SafeWork SA. [cited 8 March 2019]. Available from: https://www.safework.sa.gov.au/about-us#

3. Boland M. Marie Boland Marie Boland Workplace Relations and Solicitor at Campbell Law [Internet]. Linkedin. [cited 8 March 2019]. Available from: https://www.linkedin.com/in/marie-boland-a1558072

4. Review of the model WHS laws [Internet]. Safe Work Australia. 2017 [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/review-model-whs-laws

5. Law and regulation [Internet]. Safe Work Australia. [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/law-and-regulation

6. Review of the model WHS laws: Final report [Internet]. Safe Work Australia. 2019 [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report

7. Bills K, Clarke D. https://www.sia.org.au/news-and-publications/news/overview-boland-review-model-whs-laws-final-report-health-and-safety [Internet]. Safety Institute of Australia. 2019 [cited 8 March 2019]. Available from: https://www.sia.org.au/news-and-publications/news/overview-boland-review-model-whs-laws-final-report-health-and-safety

8. Model Work Health and Safety Act [Internet]. Safe Work Australia. [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/doc/model-work-health-and-safety-act

9. Race to the bottom [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Race_to_the_bottom

10. Mining Act legislation [Internet]. Government of Western Australia - Department of Mines, Industry Regulation and Safety. [cited 8 March 2019]. Available from: http://www.dmp.wa.gov.au/Minerals/Mining-Act-legislation-14805.aspx

11. Legislation, standards and guidelines [Internet]. Queensland Government - Business Queensland. [cited 8 March 2019]. Available from: https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/legislation-standards

12. Legislation and compliance for petroleum and gas [Internet]. Queensland Government - Business Queensland. [cited 8 March 2019]. Available from: https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/petroleum-gas/regulation

13. Regulatory capture [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Regulatory_capture

14. Preventing Policy Capture Integrity in Public Decision Making [Internet]. OECD. 2017 [cited 8 March 2019]. Available from: https://read.oecd-ilibrary.org/governance/preventing-policy-capture_9789264065239-en#page3

15. New industrial manslaughter laws to protect Queenslanders [Internet]. Worksafe Queensland. 2017 [cited 8 March 2019]. Available from: https://www.worksafe.qld.gov.au/forms-and-resources/newsletter/esafe-newsletters/esafe-editions/esafe/october-2017/new-industrial-manslaughter-laws-to-protect-queenslanders

16. Calculus of negligence [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Calculus_of_negligence

17. Recklessness (law) [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Recklessness_(law)

18. C176 - Safety and Health in Mines Convention, 1995 (No. 176) [Internet]. International Labour Organization. 1995 [cited 8 March 2019]. Available from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C176

19. International labour organization [Internet]. Australian Government - Department of Employment. 2015 [cited 8 March 2019]. Available from: https://www.jobs.gov.au/annual-report-2014-15/international-labour-organization

20. Mine dust lung diseases [Internet]. Queensland Government - Business Queensland. 2019 [cited 8 March 2019]. Available from: https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/accidents-incidents/mine-dust-lung-diseases

21. Coal Workers' Pneumoconiosis (CWP) (initial terms of reference) [Internet]. Queensland Parliament. 2016 [cited 8 March 2019]. Available from: https://www.parliament.qld.gov.au/work-of-committees/former-committees/CWPSC/inquiries/past-inquiries/CWPSC

22. Coal Mining Safety and Health Act 1999 [Internet]. Queensland Government - Queensland Legislation. 1999 [cited 8 March 2019]. Available from: https://www.legislation.qld.gov.au/view/html/2017-09-28/act-1999-039

23. Evidence of absence [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Evidence_of_absence

24. Horn A. Silicosis death dust audit reveals 'major epidemic worse than asbestos' [Internet]. ABC News. 2019 [cited 8 March 2019]. Available from: https://www.abc.net.au/news/2019-02-21/silicosis-death-dust-audit-reveals-major-epidemic-worse-asbestos/10830452

25. RACP welcomes COAG consideration of Silicosis at its meeting today [Internet]. RACP. [cited 8 March 2019]. Available from: https://www.racp.edu.au/news-and-events/media-releases/racp-welcomes-coag-consideration-of-silicosis-at-its-meeting-today

26. Cost of injury and illness statistics [Internet]. Safe Work Australia. [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/cost-injury-and-illness/cost-injury-and-illness-statistics

27. Featherstone T. Where is the gig economy taking us? [Internet]. The Sydney Morning Herald. 2018 [cited 8 March 2019]. Available from: https://www.smh.com.au/business/small-business/where-is-the-gig-economy-taking-us-20180904-p501p1.html

28. Contingent work [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Contingent_work

29. Changes to help protect vulnerable workers [Internet]. Fair Work Ombudsman. 2017 [cited 8 March 2019]. Available from: https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/changes-to-help-protect-vulnerable-workers

30. Androcide [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Androcide

31. Democide [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Democide

32. Precautionary principle [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Precautionary_principle

33. Vorsorgeprinzip [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://de.wikipedia.org/wiki/Vorsorgeprinzip

34. Sokol D. “First do no harm” revisited [Internet]. The BMJ. 2013 [cited 8 March 2019]. Available from: https://www.bmj.com/content/347/bmj.f6426.full

35. Other occupational respirable dust issues (extended terms of reference) [Internet]. Queensland Parliament. 2017 [cited 8 March 2019]. Available from: https://www.parliament.qld.gov.au/work-of-committees/former-committees/CWPSC/inquiries/past-inquiries/CWPSC-OccRespDust

36. Hangar I. Report of the Royal Commission into the Home Insulation Program [Internet]. Royal Commission into the Home Insulation Program. 2014 [cited 8 March 2019]. Available from: http://www.homeinsulationroyalcommission.gov.au/Documentation/Documents/ReportoftheRoyalCommissionintotheHomeInsulationProgram.pdf

37. Hamilton V. Asbestos Related Disease facts and figures Australia 2018 [Internet]. Asbestos Council of Victoria. 2018 [cited 8 March 2019]. Available from: https://gards.org/asbestos-related-disease-facts-and-figures-australia-2018/

38. Inquiry into RAAF F-111 Deseal-Reseal workers and their families [Internet]. Parliament of Australia. 2009 [cited 8 March 2019]. Available from: https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/deseal_reseal/report.htm

39. Coal Workers' Pneumoconiosis (CWP) (initial terms of reference) [Internet]. Queensland Parliament. 2016 [cited 8 March 2019]. Available from: https://www.parliament.qld.gov.au/work-of-committees/former-committees/CWPSC/inquiries/past-inquiries/CWPSC

40. Safe Work Australia - Our people [Internet]. Safe Work Australia. [cited 8 March 2019]. Available from: https://www.safeworkaustralia.gov.au/about-us/our-people

41. Jones J. ‘The patronising disposition of unaccountable power’ A report to ensure the pain and suffering of the Hillsborough families is not repeated [Internet]. House of Commons Assets Publishing. 2017 [cited 8 March 2019]. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656130/6_3860_HO_Hillsborough_Report_2017_FINAL_updated.pdf

42. Nichols J. Tony Benn and the Five Essential Questions of Democracy [Internet]. The Nation. 2014 [cited 8 March 2019]. Available from: https://www.thenation.com/article/tony-benn-and-five-essential-questions-democracy/

43. Tony Benn [Internet]. Wikipedia. [cited 8 March 2019]. Available from: https://en.wikipedia.org/wiki/Tony_Benn