Committee Secretariat
Parliament House
Brisbane
Queensland 4000

[redacted]

26th February 2020

Dear Jacqui,

SDNRAIDC Inquiry Submission (Safety and Health)
Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Following my attendance at the recent public briefing in the Queensland parliamentary annexe on 17/02/2020 please find the attached submission and comments regarding the Mineral and Energy Resources and Other Legislation Bill 2020.

Yours faithfully,

Bernard Corden

[redacted]

SDNRAIDC Inquiry Submission (Safety and Health)

Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Everybody knows the boat is leaking, everybody knows that the captain lied

Leonard Cohen [1]

Introduction

Following the Queensland parliamentary inquiry into black lung and its subsequent report a project management office was established to review the recommendations. This involved development of a revised framework and amendments to current legislation via:

- Resources Safety and Health Queensland Bill 2019
- Mining and Energy Resources and Other Legislation Amendment Bill 2020

Despite the modified organisational structure and legislative framework, the following significant exogenous and endogenous issues remain unresolved and require additional extensive investigation, which should assist with the improvement of organisational culture throughout the resources sector:

- Harmonisation and national uniformity
- Gross negligence manslaughter
- The McJob gig economy - Sorry we missed you
- Substantial performance bonuses and extraordinary production targets
- Self-insurance and JAS-ANZ auditing schemes
- Regulatory or policy capture
- Certification of safety advisors
- The Brady Heywood review
- Serious accident frequency rate
- DNRME, WHS Queensland and Safe Work Australia
- Ratification of ILO conventions
- Friedman doctrine and corporate social responsibility
- Executive director indemnity and criminal liability insurance
- No last rights
- Transdisciplinarity

This will require extensive collaboration between many other federal and state statutory bodies and independent non-government organisations with the development of further prescribed requirements, which include codes of practice and supplementary departmental policies and guidelines. [2-5]

a) Harmonisation and national uniformity

A primary object of the Queensland Work Health and Safety Act 2011 is to provide for a balanced and nationally consistent framework to secure the health and safety of people at work. Indeed, the recent Boland review of model legislation proclaimed that support for the harmonisation objective remained strong, which was endorsed by the Australian Institute of Health and Safety. It was quite an extraordinary statement considering that after almost two decades, the chimera has merely absolved duty of care on behalf of corporate behemoths and national uniformity resembles a handful of pakahpu tickets in a Canal Street opium den. [6-11]

It has become increasingly complicated and vexatious with several jurisdictions embarking on a race to the bottom using additional statutes for mining and mineral resources sectors, petroleum and gas and electrical safety. These are often administered by alternative agencies, which generates conflict of interest and increases regulatory or policy capture risks. It is exacerbated by a minefield of industrial manslaughter legislation, which creates further obfuscation over the burden of proof covering negligence and recklessness. [12-18]

b) Gross negligence manslaughter

In Australia and overseas, industrial manslaughter prosecutions against corporations and their senior officers under general criminal codes have been traditionally unsuccessful. The superior social status of directors or executive leaders often insulates them from indictable offences, significant penalties or custodial sentences. Indeed, establishing the conjunction of actus reus and mens rea amongst multiple individuals belonging to an anthropomorphic entity is exceedingly complicated. Bereaved dependents and the media often express their dissatisfaction with the abject failure of the legislative framework, especially its inability to provide justice and act as a suitable deterrent. This places substantial pressure on state governments to implement industrial manslaughter offences. It requires legislation based upon the principles of aggregation, attribution and an enigmatic concept of corporate culture, which ensures the mental and physical elements of an offence can arraign senior officers and corporate entities. [19-26]

The legislation also increases the risk of regulatory capture and favours specific business interests with self-serving biases and ideological motivated behaviour. It peddles more blame and fear and enervates any remaining skerrick of confidence in the existing framework. Moreover, it disrupts and complicates national uniformity and is incongruous with the Inter-Governmental Agreement for regulatory and operational reform.
There is no empirical evidence industrial manslaughter legislation creates safer workplaces. Even the Australian Industry Group claims it is a counterproductive, shallow and imprudent exercise. Indeed, the act is not culpable unless the mind is guilty, which was reinforced via the recent acquittal of the Hillsborough soccer stadium match commander. Prosecutions following several high profile rail transport disasters in the United Kingdom also proved unsuccessful. At the recent Dreamworld coronial inquest Ardent Leisure was subjected to excoriating criticism. However, the coroner did not return a finding of unlawful killing to a criminal standard and intriguingly referred the company to Queensland's Office of Industrial Relations for potential breaches of work, health and safety legislation. [27-32]

Industrial manslaughter legislation also presents significant challenges with deaths from psychosocial issues and latent industrial diseases such as asbestosis, black lung and silicosis. especially with limitation of actions via extinctive prescription. This is further complicated amidst a labyrinth of smaller enterprises in a gig economy with a significant reliance and regular transfer of contingent interstate labour between jurisdictions. [33-36]

c) The McJob gig economy - Sorry we missed you

Contingent labour hire is a widespread practice across the resources sector. It has revolutionised employment arrangements and has been furtively marketed by corporations and recruitment companies as a fashionable, amenable and flexible accord. The reality is somewhat different and ominously depicted in Ken Loach's recent chilling movie, *Sorry we missed you*. The entire concept is underpinned by vassalage, exploitation, intimidation and insecurity with vague terms and conditions of employment. It portends a dystopian future of a disenfranchised workforce hunting for the next gig with extremely limited career prospects. Responsibilities with contingent labour hire are often fragmented and confusion abounds as to whether arrangements are a contract of service or a contract for service. This generates legal and organisational uncertainty. The networks are quite intricate and courts adopt a multi factorial approach to confirm precise contractual relationships, which evaluates the degree of control, level of integration and the totality of interdependence. [37-43]

Labour hiring agencies experience extreme difficulty with supervision of its employees, especially across multiple sites, with host organisations more than willing to relay or transfer the associated risks. It becomes increasingly complex to synchronise activities, manage risks and coordinate decisions. Agency employees are often unfamiliar with the host site and its workforce, which significantly increases safety risks. Consultation mechanisms are also compromised through deliberate or inadvertent exclusion of agency employees from the host safety committee meetings. It creates a fertile environment for reactive accident theory. Moreover, many of its Dickensian symptoms, which include blame, fear and retribution, evolve and flourish accordingly. [44-45]

The problem was raised during the Queensland parliamentary inquiry into the resurgence of black lung, particularly during regional public hearings. Numerous miners provided evidence regarding intimidation and an inordinate priority of production over protection. It became quite evident that most workers, especially contingent labourers were reluctant to raise safety issues. Individuals who complained about dust levels were usually categorised as incessant whingers, persecuted, constructively dismissed or relegated to menial inferior roles. The intimidating militaristic tactics often included allocation of unfavourable duties or jankers, such as scrubbing out trucks or an undesirable assignment with the development ball gang. It discouraged and silenced many workers, especially contingent labourers who remain fearful of retribution. [46-47]

The uncertainty and legal complexities generated by the gig economy and its malevolent precariat creates negative behaviour patterns with increasing injury rates, escalating psychosocial risks and chronic health problems. This may be a significant contributory factor in the resurgence of coal workers' pneumoconiosis throughout Appalachia in the United States across the Bowen Basin in Queensland Australia. [48-49]

d) Substantial performance bonuses and extraordinary production targets

A primary objective of the bill is to improve safety culture in the resources sector via introduction of industrial manslaughter legislation although it is frequently reiterated that you cannot legislate cultural change. Strategies for improving culture across the resources sector were raised during the Brisbane public briefing on 17/02/2020 but failed to expand on the widespread practice of awarding substantial performance bonuses to meet extraordinary production targets. It is compounded by rewarding senior managers with golden parachutes following completion of specific projects. This inhibits reporting and often attracts crepuscular and intransigent mercenary rednecks drowning in debt with enormous mortgages and leased motor vehicles. Moreover, it corrupts genuine ethical leadership and extirpates immeasurable traits such as respect and humility. It also generates blame, fear, intimidation and motivates dishonesty. The problem is exacerbated via a shallow regimental definition of culture from an extremely narrow cognitive behaviourism perspective as…….*The way we do things around here*. [50-57]

e) Self-insurance and JAS-ANZ auditing schemes

The resurgence of black lung throughout the Queensland coal mining industry raises serious concerns regarding the ineffectiveness of the state government self-insurance and JAS-ANZ independent auditing schemes. Both arrangements failed to identify the material risk of respirable coal dust in underground coal mines during routine certification or regular surveillance audits. [58-62]

The problem is systemic and the DNRME must liaise with the Queensland state government self-insurance scheme representatives and senior JAS-ANZ officials regarding the performance of conformity assessment bodies and competency requirements of auditors to reinforce integrity of the process. The reliability of independent auditing was also a significant issue in the federal government's shambolic home insulation program and the Dreamworld theme park disaster. The collapse of Carillion plc in the United Kingdom involved extensive input from the big four corporate services conglomerates Pricewaterhouse Coopers (PwC), Ernst and Young (EY), Deloitte and KPMG. During one of many intense exchanges throughout the parliamentary inquiry a labour party minister stated…*He wouldn't allow KPMG to do an audit on the contents of his fridge*. The symbolic saccharine coated ritual provided a predetermined outcome for the client and substantial remuneration for the auditor. [63-69]

f) Regulatory or policy capture

Regulatory capture is a byzantine calumny that is simple to identify and categorise but quite difficult to prove. It is easily repudiated, elusive and rarely leads to any significant punitive action unless blatant political corruption is evident. It occurs via a labyrinth of complex processes, which include substantive legislation to favour specific business interests and self-serving biases with ideological motivated behaviour. Other damaging mechanisms, which can significantly increase the risk include insufficient government funding, ruthless budget cuts or ossification of statutory legislation. [70-73]

A significant amount of criticism during the Queensland black lung parliamentary inquiry involved ethics and genuine independence of the regulatory authority. This was initially raised in June 2008 and merely involved sanitisation with a coat of distemper from the Queensland ombudsman. It concluded the Department of Mines and Energy compliance activities were acceptable and did not raise any cause for concern. However, there was a reasonable perception of regulatory capture throughout the inspectorate. This was recently corroborated by Jeremy Buckingham and supported via extensive research from Graham Readfearn on behalf of the Australia Institute. It indicates revolving doors are spinning like a roulette wheel in an era of casino capitalism, especially across the resources sector with the transfer of senior and influential personnel between regulatory authorities and regulated entities throughout Business Queensland. [74-77]

The risk increases when regulators adopt conciliatory and cooperative approaches via persuasion and negotiation in preference to adversarial and punitive enforcement. Conflict of interest also arises if the government agency has a fundamental responsibility for the productivity and economic success of the regulated industry. This was raised during the public inquiry into the Piper Alpha oil rig disaster. The Cullen report recommended statutory responsibility for offshore safety be transferred to the Health and Safety Executive. It would reduce regulatory capture risks and curtail the production versus protection dichotomy. The rig operator, Occidental Petroleum was found guilty of having inadequate maintenance and safety procedures but no criminal charges were ever brought against the company. [78-81]

Several high profile incidents in the United States raised serious concerns regarding regulatory authority performance and consanguineous relationships with regulated entities. In 2010, following the Upper Big Branch underground coalmine explosion in West Virginia, the state governor requested an independent investigation into the disaster. The report revealed the US Department of Labor Mine Safety and Health Administration failed to use its legislative power to ensure compliance with federal laws. The role of the state regulatory authority was repeatedly undermined and demoralised by the influence of Massey Energy. This was accomplished via its brutal chief executive and corporate [redacted] Don Blankenship, a former director at Fluor Corporation, which was recently rewarded with a major coal seam gas project in Queensland. Following the 2010 Deepwater Horizon disaster BP's Tony Hayward resigned and eventually secured a lucrative sinecure with Glencore as an independent non-executive chairman. The global mining conglomerate operates an extensive range of coal mining and minerals resources projects throughout Queensland and an order of chivalry is imminent. [82-91]

The recent Boeing 737 Max disasters involving Lion Air and Ethiopian Airlines provided further substantive evidence of regulatory capture with an unhealthy or even unethical relationship between Boeing and the Federal Aviation Administration. This was exacerbated by regulatory officials who merely rubber stamped subsequent reconfiguration or modification of aircraft design specifications and the use of manoeuvring augmentation characteristics system software. Reckless executives and captured regulators merely socialise the loss via traditional delay, deny and die tactics to protect reputations and secure remaining assets. The Boeing chief executive officer, Dennis Muilenburg has since resigned and was afforded a golden parachute. Meanwhile the bereaved dependents are left chasing smoke in their quest for justice…….*You don't need a weatherman to know which way the wind blows.* [92-99]

g) Certification of safety advisors

A recent submission from the Australian Institute of Health and Safety (AIHS) to the Resources Safety and Health Queensland Bill 2019 inquiry merely promotes its remunerative certification scheme…….*The Institute considers that encouragement or even legislative reference to the preferred use of certified OHS professionals would improve the quality of safety outcomes*. However, during the Queensland black lung parliamentary inquiry the AIHS failed to provide any submissions to the select committee or afford official representation at the numerous public hearings in Brisbane and throughout regional Queensland. This was raised on several occasions with the AIHS chairperson and chief executive officer and the proffered excuse was a lack of technical expertise although it offered a remunerative certification scheme. [100-105]

The AIHS has significant input into the work health and safety curricula via its OHS Body of Knowledge and consanguineous relationship with the Australian OHS Education Accreditation Board. The framework consists of a science, technology, engineering and maths (STEM) paradigm with an inordinate emphasis on objectivism, legislation, behaviourism, reactive metrics and rational decision making, which ignores the enigmatic power of the collective unconscious. It is merely chalk and talk single loop training or rote learning that disregards the inherent subjective nature of risk. This destroys critical thinking, communities of practice, incidental learning and tacit knowledge. Indeed, values are caught not taught and we know much more than way can say. The human brain does not make decisions, it merely hosts conversations. [106-113]

More recently during the official launch of the AIHS Body of Knowledge Ethics and Professional Practice, the executive director with SafeWork South Australia proclaimed that the regulatory authority will be targeting the performance and competency of independent safety consultants. Indeed, the regulator is currently considering prosecution of a workplace health and safety consultant for offering unqualified advice or guidance. It was quite an extraordinary statement, especially considering the executive is also board member with the AIHS, which provides a remunerative certification scheme. Moreover, the executive director also represents the South Australian state government with Safe Work Australia, which develops national policy via the Safe Work Australia Act 2008 to create healthier, safer and productive workplaces. Indeed one of the necessary accompaniments of capitalism in a democracy is political corruption. [114-119]

This distasteful, shameless and somewhat mercenary promotion of its mediocre services with the presumptive solicitation of a remunerative certification scheme will hardly improve safety outcomes. Much like the construction industry white card induction, it will eventually be subcontracted to accredited third party providers. This will degenerate into a meaningless displacement activity that provides accredited safety crusaders with freedom to drink the AIHS brand of Kool Aid and the entire charade will merely: [120-122]

- Increase regulatory capture risks and generate a kentledge of additional bureaucracy
- Provide safety crusaders with worthless post nominal qualifications
- Generate a lucrative revenue stream for the AIHS fiefdom

h) The Brady Heywood review

In July 2019 following a series of fatalities throughout the Queensland mining industry, the minister for Natural Resources, Mines and Energy announced an expert review to identify changes required for the improvement of health and safety performance throughout its mines and quarries. The subsequent report from a forensic structural engineer represents an obstinate and widespread science, technology, engineering and maths (STEM) paradigm with an additional emphasis on legislation, cognitive behaviour and reactive metrics. [123-126]

It raises the concept of drift into failure, which is sinister falsehood and incongruous with findings from Queensland parliament's black lung inquiry. In Australia, it was widely accepted by mine operators, executive and senior management, regulatory officials, industry associations, union representatives and miners that the disease had been successfully eradicated. This was despite substantive evidence covering its prevalence across the Appalachian coalfields, especially following the Upper Big Branch disaster in Raleigh County, West Virginia. It is highly unlikely that coal workers' pneumoconiosis or black lung was ever eradicated or suddenly re-emerged throughout Queensland's coalfields. It occurred via a systemic and catastrophic breakdown of a regulatory system that intended to preserve and protect the safety and health of coalminers and could barely be described as a drift into failure. This is best summarised by the traditional medical aphorism…..*Absence of evidence is not evidence of absence.* [127-132]

The report describes distinctive characteristics of high reliability organisations that can prevent this alleged drift into failure and inadvertently implies a utopia of perfection can be achieved via these five unique attributes. This mechanistic pursuit of formulaic excellence ignores the concept of embodiment, which denies fallibility and disregards incident learning or tacit knowledge. Indeed, safety and reliability can be defined as dynamic non-events and are best approached as wicked problems by maintaining a constant and cautious state of chronic unease. [133-139]

It discusses human error from a cognitive behaviourism black box psychology perspective although fails to provide a formal definition of culture and conveniently disguises the entrenched ideology and corrosive impact of zero harm. This fatwa is widespread across the resources sector. Slogans are embroidered into high visibility clothing and supplemented via beguiling billboard propaganda at site entrance security gates. Despite corporate business ethics with the deification of the Friedman doctrine…..*Safety is our No.1 priority*. [140-144]

The recommendations are hardly transformational or transcendental and are merely offering more of the same by placing systems on top of systems repairing potholes in the road and counting how many sheep we have left. The situation is a wicked problem requiring an alternative route using a transdisciplinary approach with further extensive exploration of the fertile hidden ground between the objective and subjective. [145-146]

i) Serious accident frequency rate

Zero harm is an asinine shibboleth that remains steadfastly endorsed by most regulatory authorities, the Australian Institute of Health and Safety and many other non-government organisations. However, what gets measured does not always get done and the metric is invariably manipulated to align with the prevailing dogma, especially if extraordinary targets are linked to substantial performance bonuses. This is reflected via the regulatory authority language and triagic descriptor of zero serious harm. It is reinforced by a recommendation to adopt a new safety performance metric, the serious accident frequency rate (SAFR). Irrespective of the packaging, pornography is pornography and despite precautionary guidance, the reactive proposal is merely putting lipstick on a pig [redacted] [147-152]

j) DNRME, WHS Queensland and Safe Work Australia

The recent Boland review proclaimed that support for the harmonisation objective remained strong and was endorsed by the Australian Institute of Health and Safety. This hardly reflects the current legislative framework within Queensland, which has numerous statutes with prescribed health and safety requirements. These are administered by several different state government agencies and include: [153-158]

- Electrical Safety Act 2002
- Work Health and Safety Act 2011
- Coal Mining Safety and Health Act 1999
- Explosives Act 1999
- Mining and Quarrying Safety and Health Act 1999
- Petroleum and Gas (Production and Safety) Act 2004

Several anomalies exist covering application of specific legislation to major hazard facilities and the complexity of the entire framework is quite bewildering. A myriad of acts and regulations on the statute eventually extirpates respect for legislation and Cicero's infamous dictum resonates…..*More law, less justice*. This will be further complicated with additional statutory requirements covering the establishment of an independent resources regulator and prescribed arrangements for industrial manslaughter via: [159-167]

- Resources Safety and Health Queensland Bill 2019
- Mining and Energy Resources and Other Legislation Amendment Bill 2020

Following the Gretley mining disaster in the New South Wales Hunter Valley region an unauthorised state government minister inadvertently countersigned documents sanctioning the prosecution of the global mining conglomerate Xstrata. This administrative bungle had significant legal implications with the potential dismissal of serious charges against several companies and their senior management in the Industrial Relations Commission. The anomaly was only resolved via legal chicanery following the threat of industrial action and a national strike throughout the coal industry. [168-171]

In deep north Queensland a memorandum of understanding has been established, between the Queensland Treasury Office of Industrial Relations and the Department of Natural Resources, Mines and Energy. Although it is not a legally binding document it was countersigned by Dr. Simon Blackwood who has since retired from the Queensland public service and Rachael Cronin on behalf of the Department of Natural Resources and Mines. It requires amendment to reflect recent changes to organisational structures and should be regularly reviewed to ensure alignment with current versions of statutory legislation. The document attempts to establish better clarity covering interjurisdictional issues and improve consultation, cooperation and communication between relevant statutory agencies. However, the legalese lexicon merely increases complexity and renders the curious findings of the recent Boland review even more enigmatic and somewhat inexplicable. It hardly reflects and aligns with the primary object of the Queensland Work Health and Safety Act 2011. [172-178]

In the current climate of free market fundamentalism or corporate power and neoliberalism the perception of regulatory capture is widespread across many industrial and commercial sectors. It has a corrosive influence, which impedes efficiency and erodes trust. A conflict of interest will invariably arise if any government agency has a fundamental responsibility for the productivity and economic success of the regulated industry. This was raised following the Piper Alpha disaster and the Cullen report recommended statutory responsibility for offshore safety be transferred to the Health and Safety Executive. This would reduce regulatory capture risks and curtail the production versus protection dichotomy. [179-184]

In 2008 a report from the Queensland Ombudsman covering regulation of mine safety could not substantiate regulatory capture between the mining inspectorate and its regulated entities, which was corroborated during the recent Queensland parliamentary inquiry into black lung. However, this report recommended establishment of a truly independent statutory authority with relevant policies enshrined into legislation to restore public confidence in the statutory body and reinforce its functional integrity. It also proposed relocation of the authority to central Queensland with prescribed restrictions on statutory positions to curtail overfamiliarity with regulated entities and reduce regulatory capture risks. Nonetheless, additional prescriptive provisions are required to prevent the widespread disconcerting practice of revolving doors, which involves the frequent transfer of influential personnel between the regulatory authority and regulated entities or vice versa. [185-187]

Craig Allen, the deputy director general with the Office of Industrial Relations is the nominated Queensland state representative with Safe Work Australia in accordance with prescribed requirements of the Safe Work Australia Act 2008. This provides a framework for development of a national policy to create healthier, safer and productive workplaces, which is supplemented by the National Work Health and Safety Strategy. Despite the recent spate of fatalities throughout the sector and the resurgence of black lung, there is no official representation or delegate from Queensland's Department of Natural Resources, Mines and Energy. This anomaly should be addressed via Safe Work Australia and the federal attorney general who holds current ministerial responsibility for the agency. Another critical issue that requires prompt attention to reflect the primary object of the model Work Health and Safety Act is the ratification of numerous International Labour Organization (ILO) conventions, especially ILO C176 Safety and Health in Mines. [188-196]

k) Ratification of ILO conventions

The ratification of ILO Convention C155 was fundamental to harmonisation of safety legislation. Nonetheless despite recommendations from the Industry Commission, the federal government under John Howard, a staunch neoliberal acolyte, deliberately stonewalled its endorsement. This raised increasing concern over compliance with other fundamental conventions and international obligations and it was begrudgingly and belatedly approved in March 2004. However in January 2006, the federal government with control in the senate, dissolved the National Occupational Health and Safety Commission. [197-203]

Despite the corporate malfeasance from CSR at Wittenoom and James Hardie with an escalating death toll from industrial diseases such as asbestosis or mesothelioma ILO Convention C162 Asbestos Convention was only endorsed by the federal labour government under Julia Gillard in 2011. However, the following additional ILO conventions require ratification to enhance harmonisation and align with the primary object of the model Work Health and Safety Act: [204-207]

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)
C139 - Occupational Cancer Convention, 1974 (No. 139)
C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
C148 - Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
C152 - Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
C167 - Safety and Health in Construction Convention, 1988 (No. 167)
C170 - Chemicals Convention, 1990 (No. 170)
C172 - Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
C174 - Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
C176 - Safety and Health in Mines Convention, 1995 (No. 176)
C177 - Home Work Convention, 1996 (No. 177)
C181 - Private Employment Agencies Convention, 1997 (No. 181)
C184 - Safety and Health in Agriculture Convention, 2001 (No. 184)
C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
C188 - Work in Fishing Convention, 2007 (No. 188)
C189 - Domestic Workers Convention, 2011 (No. 189)
C190 - Violence and Harassment Convention, 2019 (No. 190)

Notwithstanding the platitudes, an obstinate reluctance to ratify these critical conventions reflects the incumbent federal government's unethical leadership and shallow commitment towards the resolution of workplace health and safety issues. This is exacerbated by the meagre resources and parsimonious budget allocated to Safe Work Australia. [208]

I) Friedman doctrine and corporate social responsibility

Catabolic capitalism is an inevitable trajectory of the mercenary Friedman doctrine, which promotes a free market ideology and shareholder approach to corporate social responsibility with the primary objective of maximising profit. It advocates corporations direct its resources solely towards profitability and avoid the imbroglio of social or community issues, which eventually propagates oppression. The organisation accepts no social or moral responsibility towards society and it is transferred to shareholders who receive a proportion of profits as a reward for their investment and undertaking the concomitant risk. It is somewhat incongruous with common law duty of care and hardly reflects the object of preventive work health and safety legislation. Indeed, risk is essentially subjective and socially constructed although current curricula for accredited work health and safety tertiary education programs across Australia are littered with Ayn Rand objectivism. Moreover, the inordinate positivism reflects and aligns with the sacred Friedman doctrine in an exasperating and futile attempt to square the circle. [209-224]

The laissez faire philosophy merely dumps a kentledge of red tape downstream and establishes a tyranny of bureaucracy in an incompetent struggle to demonstrate due diligence via superficial administrative nostrums. Moreover as growth stalls, the corporation with its pathological pursuit of profit and power creates a dystopian psychopathocracy, which the entrepreneurial economists aspired to prevent. In many cases it degenerates into a kleptocracy or even a kakistocracy and begs the question how can any corporation remain ethical if its only corporate social responsibility is to make a profit? [225-232]

The deification of shareholder theory or the Shock Doctrine is evident amongst most global corporate behemoths in Australia and incessantly reinforced via its socially autistic martinets. The current chairperson with Safe Work Australia is a non-executive director with Wesfarmers. The corporation's primary objective is to deliver satisfactory returns to shareholders through financial discipline and exceptional management of a diversified portfolio of businesses, which includes the National Safety Council of Australia. [233-237]

Glencore is a global mining conglomerate, which operates an extensive range of mining and mineral resources projects throughout Queensland. This includes the notorious McArthur River zinc-lead mine in the remote Gulf of Carpentaria. In May 2013, the organisation appointed Tony Hayward as an independent non-executive chairman. Almost one year before the Deepwater Horizon disaster during a postgraduate lecture at Stanford Business School, the former BP stalwart proclaimed……*Our primary purpose in life is to create value for our shareholders. In order to do that you have to take care of the world*. [238-242]

The Friedman doctrine emerged via the Chicago school of economics in a city where [redacted] notorious gangster plied his trade during the roaring twenties and the great depression. Alphonse Gabriel Capone, who is unrelated to Queensland's industrial relations minister, was eventually imprisoned for tax evasion and died following a cardiac arrest, which was exacerbated by chronic neurosyphilis. In 1946 a physical and psychological medical concluded that Scarface had the mentality of a 12-year-old child and the infamous dictum from Karl Marx resonates…….*History repeats itself, first as tragedy then as farce*. [243-246]

m) Executive director indemnity and criminal liability insurance

Serious breaches of statutory safety legislation attract custodial sentences and significant fines for executive directors and senior management. This has generated a widespread sinister practice across the insurance sector with the provision of policies that allegedly offer indemnity against any financial penalties incurred following successful prosecutions. [247-249]

Director or officer insurance is a common and reasonable practice against liabilities incurred under the common law torts. Indeed, corporations' law prohibits the practice against any wilful breach of duty but does not exclude negligence. However, with regards to criminal liability the traditional no insurance for crime caveat prevails because it is incompatible with public policy. Nonetheless, exceptions apply to crimes based on negligence, which are typically concerned with motor vehicle accidents. [250-251]

A recent case in South Australia (Hillman v Ferro Con (SA) Pty Ltd (in liquidation) and Anor [2013] SAIRC 22) exposed many of the counterproductive consequences created by this rather unethical or even illegal commercial transaction. This undermines workplace health and safety legislation and is incongruous with the fundamental tenet of deterrence. It makes a mockery of law and the standard of justice, much like health care will eventually be determined by bank balances or credit card limits with an EFTPOS machine mounted on the dock in a magistrates' court. [252-254]

n) No last rights

In countries under a British colonial influence most major transport or industrial disasters are typically followed by a coronial inquest at a coroner's court, which can be a pretty sombre and daunting place for the laity. Its officer of the crown is appointed to protect state or more recently corporate interests and not to establish liability. This anachronistic institution deals in many unexplained or sudden deaths, which are categorised via callous and often enigmatic findings such as unlawful killing, accidental death or suicide using a retrospective judgement of convenience. In Australia every state has a coroner's court and rather fortunately, very few people are seldom required to attend the proceedings. Indeed, not too many deaths are processed through the local coroner's office and even less require a full inquest. [255-269]

Coronial inquests are typically held once criminal and civil liability avenues have been exhausted and a full session is redolent of many television courtroom dramas. Proceedings are conducted by the coroner from an elevated stage with a reverential acknowledgement of ascribed status. The gallery consists of the usual suspects, which include lawyers, police officers, ushers, clerks, witnesses and jurors accompanied by the fourth estate and the general public. The intimidating theatre looks, stinks and feels like any other courtroom although the chimera is often misleading. It can be an extremely daunting and painful place, where callow people traumatised by sudden bereavement suffer the story of death in a vacuum of unaccountability. [270-275]

Exclusive and inordinately expensive barristers clash over evidence taken under oath with rigorous although often unforgiving cross examination of defensive or terrified witnesses. The theatrics occasionally meander with an attempt to establish who, whether it be individually, collectively or corporately, was or was not responsible for causing death. However, in a coroner's court the primary objective is to establish the medical cause of death using pathological evidence with due consideration of the circumstances. An appropriate finding or verdict is delivered from prescribed categories and should not indicate or apportion any liability, which is usually resolved via adversarial legal courts. [276-280]

Following establishment of the medical cause of death and a prescribed finding, the body is released for burial or cremation. The intimidating void is charged with blame and guilt although nobody is on trial. There is no prosecution, defence or concerns about accountability and many seasoned barristers believe cross examining at coronial inquests is akin to working with both hands tied behind their back. It is a hopeful but often hopeless counsel of perfection. [281-282]

It is not always so straightforward, especially following major transport or industrial disasters, when many executive careers, substantial assets and powerful reputations are at stake. The process often becomes embroiled in political controversy, chicanery and even deception. Regulatory authorities will only prosecute in accordance with defined protocols with a reasonable expectation of achieving a conviction. If criminal cases prove unsuccessful many of the emotionally shattered and distressed dependents never have the wherewithal, let alone the inclination to pursue civil action. The coronial inquest remains the only forum in which the circumstances of death will be addressed and merely affords an epigrammatic and restricted opportunity to hear and test evidence. [283-289]

Despite a doctrine covering an alleged separation of powers, the coronial inquest remains an antediluvian and often preordained formulaic ritual orchestrated by a politically appointed panjandrum. Witnesses and other interested parties are designated solely by the coroner and typically include the bereaved and any directly involved individual or agencies, who are forbidden to call on others to corroborate or challenge statements or testimonies. [290-293]

After witnesses are sworn in their evidence is scrutinised by the coroner using previously gathered and sometimes embellished statements and then cross examined by legal representatives on behalf of the interested parties. The general conduct of proceedings is entirely under the coroner's discretion. No incriminating questions are allowed and the coroner alone determines the extent or relevance of cross examination tactics. After hearing evidence only the coroner provides jurors with a summary and lawyers are prohibited from making speeches or remonstrations and cannot address the jury or offer any summation on behalf of their clients. [294-297]

The coroner's summary typically reflects a judgemental opinion based on personal interpretation of events. It cannot be neutral, especially amidst a brume of regulatory capture and particularly if the state government is paying his mortgage and children's school fees. It does not require any sophisticated analysis or critical thinking to identify a coronial flavoured or favoured version of the truth. It often directs jurors towards a prescribed finding based on the evidence and its burden of proof using legal submissions from lawyers made in the jury's absence. Although the coroner emphasises the distinction, jurors often find it quite difficult to distinguish between the summary and a legal direction. Uninitiated juries may easily confuse a coroner's interpretation of facts with legal direction based on points of law and the certainty of direction becomes a straitjacket for reviewing complex and contrasting versions of events. [298-304]

The common law concept of negligence and duty of care has been the subject of much debate over many years and featured prominently in the landmark Paisley snail product liability case (*Donoghue v Stevenson* [1932] UKHL 100). However, at a coronial inquest there is no finding of negligence, which is exacerbated by an enormous chasm between unlawful killing and accidental death verdicts. The legal test for unlawful killing is equivalent to manslaughter and the coroner directs jurors that they must be satisfied beyond reasonable doubt. [305-314]

Moreover, the act is not culpable unless the mind is guilty and many complex cases with a high degree of negligence are conveniently categorised as accidental death. If there is no such a thing as an accident maybe accidental death should be removed from the coroner's prescribed categories. Investigation of deaths within the coroner's jurisdiction requires assistance from coroners' officers, who are often seconded or provided via the local police service. The coroner also establishes close relationships with pathologists and inquests often only hear medical or other expert evidence, which aligns with the coroner's preordained agenda. [315-318]

Following unsuccessful criminal or civil proceedings the bereaved are often left abandoned and a coronial inquest is their last resort. It inspires a humble morality that it is a personal inquest into the death of their loved ones. The aggrieved are typically addressed via deferential language and the numerous ushers and clerks function like an unction of undertakers. Initial comments are empathetically structured to emphasise that proceedings will merely establish who died and when, where and how the circumstances unfolded. The first three criteria are relatively straightforward although determining how is often fraught with complexity, especially in controversial cases where political careers, substantial assets and personal reputations are at stake. [319-321]

Beneath the alabaster of humble inquiry, sympathy and sensitive acknowledgements lurks a denial of the agenda concerning how the circumstances of death can be established without apportioning blame or liability. It does not require much intelligence or discernment to appreciate the incongruity, which casts a spectre over the entire charade. This anachronistic and dishonest forum is merely an adversarial wolf in inquisitorial sheep's clothing, which can be superficially beckoning although it is usually disappointing and provocatively painful. Nevertheless, it is often the only remaining opportunity for resolving and revealing the circumstances of death. It typically kicks the laity in the guts, especially when they are most vulnerable and yet another door gets slammed in their face. [322-326]

Following coronial inquests or public inquiries pertinent comments with additional evidence regarding the calumny of regulatory or policy capture or unhealthy relationships between the coroner and the police service are often dismissed as crackpot conspiracy theories. Regulatory or policy capture is easy to identify but almost impossible to prove without a precise definition of public interest and complainants typically encounter a tyranny of bureaucracy. Despite allegedly independent investigations into fair and accountable public administration via an ombudsman, the outcome is often a forgone conclusion, which is embellished via a carefully polished, disinfected and decontaminated report. It predictably sacrifices the truth and accountability to secure assets and protect reputations. [327-333]

Another anomaly which requires extensive investigation and further clarification is the incongruity of coronial inquest findings and the burden of proof covering criminal proceedings, which was highlighted following the recent acquittal of the Hillsborough soccer stadium match commander. A second coronial inquest returned findings of unlawful killing to a criminal standard. In the subsequent criminal prosecution the jury returned a verdict of not guilty following some inexplicable legal chicanery from the trial judge, who declared the coronial inquest findings were irrelevant. After almost thirty years it left the bereaved families emotionally shattered with pertinent questions regarding accountability, especially after the coronial inquest findings and reiterates that justice delayed is merely justice denied. [334-335]

o) Transdisciplinarity

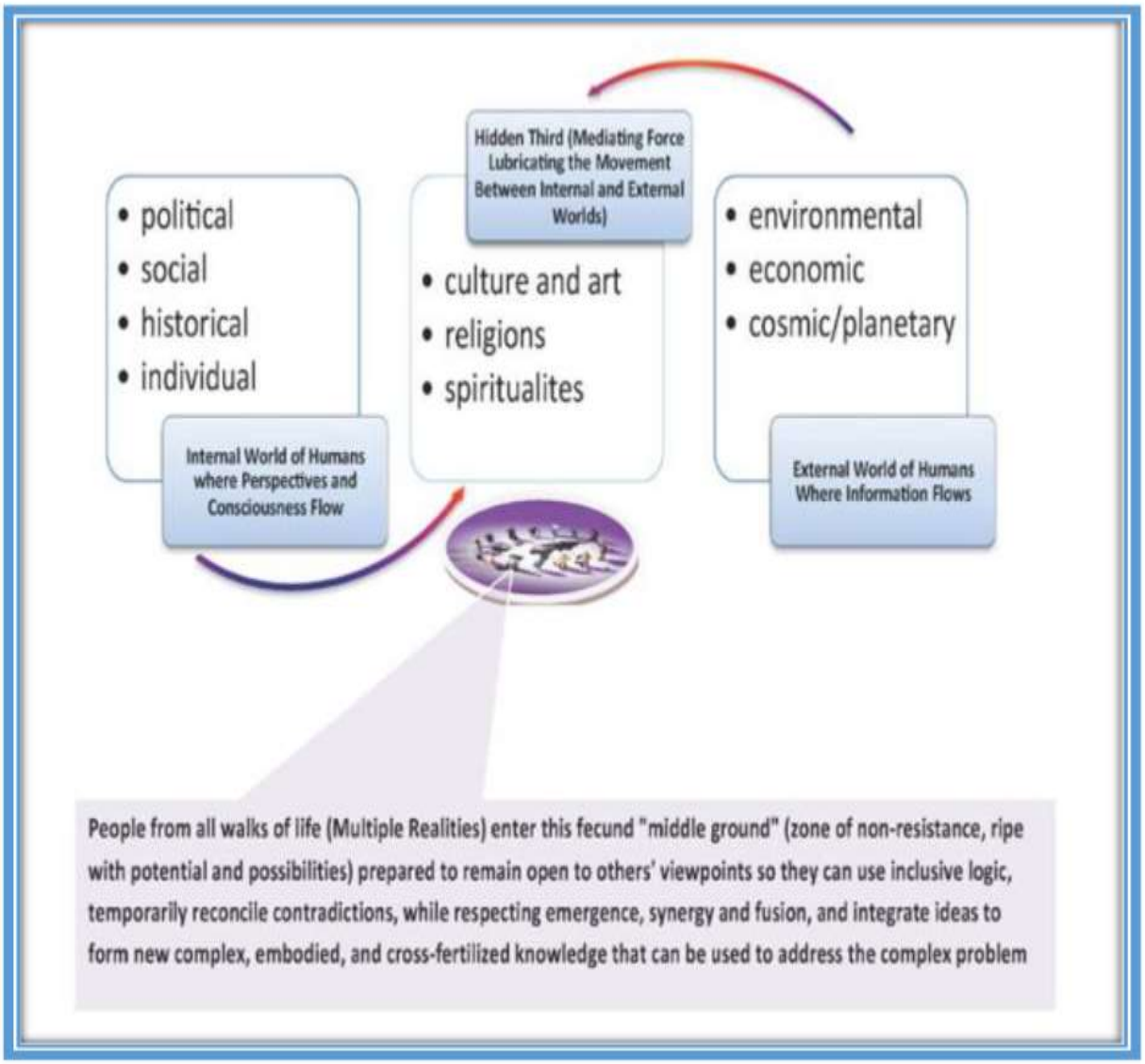
Humans enact legislation and use techniques and controls to tackle many of life's trials and tribulations. Nonetheless, risk is essential for our existence and is the foundation of fallibility. It is a wicked problem and somewhat paradoxically, the elimination of risk restricts our survival and extirpates learning. Wicked problems are extremely complex with many layers of behavioural complexity and every overt action generates a covert and opposite reaction. [336-341]

There is no definitive solution and many undesirable derivatives emerge including the curtailment of liberty and extirpation of imagination, creativity, discovery and learning. It presents many challenges, which require a collaboration of science, culture, religion, spirituality and society. The conundrum is best summarised by Albert Einstein…….*Objective knowledge provides us with powerful instruments for the achievements of certain ends but the ultimate goal itself and the longing to reach it must come from another source.* [342]

This transdisciplinary approach accepts the coexistence of multiple contradictions and realities, some of which are unfamiliar to the physical sciences. It seeks to liberate reason from a positivist domain and explores the unfathomable realities of complex wicked problems, which are beleaguered with paradox and ambiguity. Industrial safety with its myopic emphasis on accident theory excludes many other disciplines from its fraternity. These professions cover an extensive range of subjects such as social psychology, culture, poetics, teaching, spirituality, metaphysics and theology. Many have an established code of ethics which most safety crusaders are unable to recognise or unwilling to appreciate. [343-345]

Nicolescu recognises the middle ground between the subject and object and advocates an alternative concept This fecund zone or hidden third, (Figure 1) is conducive to bohemian disciplines and does not merely accommodate the validity of another profession for the sake of appeasement. People from every walk of life or multiple realities can enter this milieu and their perspectives are encouraged. It welcomes discernment, which can temporarily reconcile contradictions and respect emergence, synergy and fusion. This enables integrated ideas to generate innovative, signified and intricate knowledge that can be used to develop strategies for tackling wicked problems. [346-349]

Figure 1 - The hidden third



Basarab Nicolescu – Transdisciplinarity: The hidden third between the subject and the object

Available from: Fallibility and Risk – Living with Uncertainty; p. 102. Dr. Robert Long:

https://safetyrisk.net/free-safety-ebooks/

Industrial safety struggles with soteriology, suffering, harm and human error because of its fundamentalist binary oppositional logic. The transdisciplinary approach to wicked problems respects chaos, disorder, uncertainty, paradox and emergence. A construction of order merely provides psychological comfort rather than a testimony of reality. Excessive control extinguishes movement in life and it becomes static and dystopian.

This curtailment of liberty destroys imagination, learning and maturity and existence becomes meaningless. Definitions and certainty often provide emotional reassurance although realism must usurp fatalism. Endorsing integrity and accepting fallibility with risk is critical…..*No legacy is so rich as honesty*. Moreover, many professional disciplines are sequestered or insulated from each other by their lexicon, discourse and symbols. Indeed, as George Bernard Shaw once remarked…….*All professions are conspiracies against the laity*. [350-353]

Conclusion

The noble work from Queensland's parliamentary inquiry into black lung exposed the grim reality of prolonged exposure to respirable coal dust. The select committee's extensive and robust report revealed……*a catastrophic failure, at almost every level, of the regulatory system intended to protect the health and safety of coal workers in Queensland,* which is verified via an escalating toll of mine dust lung diseases that currently exceeds 130 victims. [354-357]

Meanwhile, almost 350 tradesmen across Australia have been diagnosed with silicosis and places extraordinary strain on an already beleaguered public health system. More recently, a spate of fatalities throughout Queensland's mining sector prompted immediate reaction from the Department of Natural Resources, Mines and Energy, which included a safety reset, introduction of industrial manslaughter into the mining statute and the Brady Heywood review. [358-361]

The primary objective of the industrial manslaughter legislation is to ……*strengthen the safety culture in the resources sector*. It fails to expand on the enigmatic concept, which is typically described from a cognitive behaviourism perspective using an extremely narrow regimental or militaristic definition as……*The way we do things around here*. [362-363]

Industrial manslaughter is merely a trojan horse, which attenuates the lynch mob pursuit of revenge or innate desire for retribution. Indeed, there is never any closure for the bereaved and it can hardly be conceived as justice in any civilised society. This reactive adversarial legislation supplemented by the Brady Heywood review and its cosmetic interventions is merely putting lipstick on a pig. The inordinate scientism, positivism using torpid cause-effect logic is merely a futile attempt to package our 3.14159 subjective minds into one objective brain……*Scientific theory is a contrived foothold in the chaos of living phenomena.* [364-369]

Doing more of the same with an expectation of achieving different and better outcomes is often defined as insanity and was apocryphally attributed to the late Albert Einstein. The recent mining sector reset and recommendations from the Brady Heywood review are just repairing potholes in the road and counting how many sheep we have left. An alternative transdisciplinary route is required that offers a beneficial balance between the objective and inherently subjective nature of risk. Transdisciplinarity explores and addresses the existential dialectic between us and them and when power corrupts, poetics cleanses the soul. [370-374]

Over the past five decades government of the people, by the people and for the people has degenerated into government versus people. The merger of corporate and state interests means there is no longer any left or right, it is now top versus bottom and they only thing in the middle of the road is a double white line and dead wombats. [375-376]

The Commonwealth of Australia does not require a third political party but desperately needs a second one. Indeed, corporate conglomerates no longer need to lobby federal or state governments because they are the government. Challenging and defeating this kakistocracy and kleptocracy of corporate tyranny with its malevolent freedom to harm will require genuine leadership that explores the existential dialectic between top and bottom, with or without and *i*-thou using a social psychological approach. It must expose the irreverent lexicon of intellectual cowardice and crush its obstinate obedience to the orthodoxy. [377-383]

The corporate impiety is best reflected via cost of injury and disease. In 1992-3, the cost of work related injury and disease in Australia exceeded $20 billion and it was uniformly distributed between employers (40%), employees (30%) and the community (30%). The allocation of cost to specific agents is quite complex and extremely dependent on the outcome severity. It significantly increases for individuals, their dependents and the community if the consequences involve traumatic fatalities or serious injuries. More recent estimates put the cost at $62 billion per year with a staggering redistribution amongst employers (5%), employees (77%) and the community (18%). The allocation of costs endured by employees has increased by a staggering 157% with a corresponding decrease of 88% for employers. [384-385]

This variation, despite a steady decrease in fatalities and serious injuries, is partly attributed to significant increases in average weekly earnings. However, descriptive statistics often conceal more than they reveal and correlation does not imply causation. Additional exogenous factors, which include rampant neoliberalism with its laissez faire doctrine, the gig economy and an unabashed worship of profit may be significant weapons in Abaddon's arsenal. It has created a culture of cruelty and complacency and social protection via welfare has degenerated into warfare. [386-390]

Indeed society cares for the individual only so far as he is profitable although if we can find money to kill people, we can surely find enough money to help them…..The carnival is over and it's across to you Ministers Grace and Lynham with Saturday, 31st October 2020 merely eight months away. [391-392]

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