COAL WORKERS' PNEUMOCONIOSIS SELECT COMMITTEE

Members present:

Mrs JR Miller MP (Chair)
Mr JN Costigan MP
Mr CD Crawford MP
Mr JP Kelly MP
Mr S Knuth MP
Hon. LJ Springborg MP

Counsel assisting:

Mr B McMillan (Barrister at Law)

Staff present:

Dr J Dewar (Research Director)

PUBLIC HEARING—INQUIRY INTO COAL WORKERS' PNEUMOCONIOSIS

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 14 DECEMBER 2016

Blackwater

WEDNESDAY, 14 DECEMER 2016

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Committee met at 4.02 pm

SMYTH, Mr Stephen, CFMEU Mining and Energy Division, Queensland District

CHAIR: I declare open the public hearing of the coal workers' pneumoconiosis inquiry. I would like to thank everyone for their attendance here today. My name is Jo-Ann Miller. I am the member for Bundamba and I am the chair of the Coal Workers' Pneumoconiosis Select Committee. The other committee members with me are the Hon. Lawrence Springborg MP, deputy chair; Mr Craig Crawford MP, the member for Barron River; Mr Joe Kelly, MP, the member for Greenslopes. Jason Costigan MP, the member for Whitsunday, and Shane Knuth MP, the member for Dalrymple, who are both members of the committee, are unable to join us. However, we are very pleased to have with us your local member, Mr Lachlan Millar MP, the member for Gregory, who has subbed in place of Mr Costigan.

The purpose of the public hearing today is to receive evidence on the committee's inquiry into the emergence of coal workers' pneumoconiosis, or black lung disease, which it is commonly known as. This committee is a bipartisan committee of the Queensland parliament. Its purpose is to assess whether the current arrangements to eliminate and prevent black lung are adequate and to also look at the roles of government agencies, mine operators, dust-monitoring procedures, medical officers and unions in these arrangements now and into the future. This hearing is a formal proceeding of the parliament and is subject to the standing rules and orders of the Queensland parliament. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Those here today should know that the hearing is being transcribed by Hansard and that media may be present so that you may be filmed or photographed.

May I ask, before we commence receiving evidence, that all mobile devices be switched to off or to silent mode. For the benefit of Hansard, I ask that witnesses state their name and position when they first speak and to speak clearly into the microphone. It is my pleasure now to introduce our first witness, Mr Steve Smyth of the CFMEU. For the record, Mr Smyth, could you please state the capacity in which you appear before the committee?

Mr Smyth: I am the President of the CFMEU Mining and Energy Division in Queensland.

CHAIR: Thank very much. Would you like to make an opening statement, please, Steve?

Mr Smyth: Yes, I will. First and foremost, I would like to thank the inquiry and the government for commencing this inquiry into the pneumoconiosis issue. We have a view that we will get to the bottom of the issues relating to it both in the past and even in the present tense.

Just as a bit of an introduction, I am a third-generation coalminer. I started in 1988. I worked until 2000 as a coalminer, a mine deputy and a check inspector and then from 2000 to 2009 I was an industry safety and health representative with powers and functions under the Coal Mining Safety and Health Act. That job entailed inspecting mines and investigating accidents. From 2009 onwards, I have been the president the CFMEU Mining and Energy Division. As part of that function, I sit on the advisory council. The minister appoints us to the advisory council with the industry and I am one of the CFMEU union representatives.

From my perspective, I want to place on the record that we are absolutely disgusted—I suppose that is a nice way of saying it—by the state of affairs as we see it. From a coalminer's perspective, to think that pneumoconiosis has returned, you really have to question did it ever go away. I do not believe that it has. In my time as a mine deputy and in my time as an ISHR, you are vigilant in the workplace, particularly in areas around dust, gas, roof falls and other issues. I think—I do not think, I know—that a lot of focus has been on the coal operators providing safe places of work, safety and health management systems being effective and in place to protect workers. Then we have a heavy reliance on the medical professionals through the health surveillance unit as the checks and balances in relation to medical related issues. I think where we went wrong there in the industry is that we have gone from what you see as a health surveillance unit, which should have been there for the surveillance of workers, to a fitness for work related approach. The other thing is that, along

the way—and I am happy to place it on the record—a lot of the medical professionals, and I cannot blame them all, and a number of radiologists and a number of others have really just focused on the end result, in my view, on what they get in their pocket, not on patient care.

I have been fortunate enough to attend a number of these hearings and listen to the coalminers and their families tell their stories. They are stories that we hear quite a lot. It is disgusting. As I said, it is tragic, it is terrible. I am more than happy to answer questions—whatever is required. I have a number of documents here that outline some of the actions that we have taken since, we call it, the reintroduction or since it has popped its head up again in endeavouring to try to get our head around this pneumoconiosis issue and some of the mechanisms that we put in place in the interim prior to, to be honest, the government taking real action, because they were a little bit slow out of blocks and so was the mines department. I just want to place it on the record and I will leave it at that. I am happy to answer any questions or take any on notice if there are some that I do not have the answers for today. Thank you.

CHAIR: Thank you very much, Steve. I will now go to the deputy chair.

Mr SPRINGBORG: Thank you very much, chair, and thank you very much, Stephen, for coming before us today. This is not the first time that we have seen you or the members of your union, given the importance of this issue. We find it absolutely unbelievable that this was going on and that the dots did not join up. In your time in the industry, did you find that anyone had been talking about coal workers' pneumoconiosis, or black lung, prior to its emergence, or was it something that had been basically consigned to the annals of history because we had all convinced ourselves it had gone away—or, sorry, should I say the authorities?

Mr Smyth: I think the latter. I believe that there is a culture—I call it a culture, or a view—out there that pneumoconiosis had been eradicated. In my dealings in going around the mines, a lot of focus was on dust, but it was on the combustibility of dust, of mine dust explosions. I did not even seen it, to be perfectly honest. It sort of fell out of the induction process for starters. As we sit here today, I think there is only one mine that has reintroduced it into its induction process. Yes, I honestly can say that it just went off the radar. People had this false view, or sense of security, that pneumoconiosis had been eradicated when, in fact, we know now that it had not been.

Mr SPRINGBORG: Thank you. I put this question to your national president, Andrew Vickers, in Bundamba a little while ago. The CFMEU has extraordinary networks with mineworkers because of the collegial nature of everything. That has been pretty obvious by the members who have come forward. As far as you know, of any of your former mineworkers, any of those people who we now know had been receiving WorkCover for confirmed cases of pneumoconiosis going back to 2006, or others, there had not even been any of that that had been suggested to your union or your organisers that you know of? It was not until 2015 that this first inkling of it came out? I raise that in the context of how collegial it is and just trying to understand how something that was there just failed to be detected by anything, even the closest networks that were available?

Mr Smyth: My first inkling of something happening is when Percy Verrall wrote a letter to the CFMEU asking for some support due to the fact that he was having some health related issues. At the time, we took that up on Percy's behalf. We got some external legal advice but, up until then, no, I was not aware until I had heard through this inquiry and sitting on the Monash review of these other cases.

What really surprised me was I then thought, 'Were those guys members?' I will be honest, because if they are members, they normally contact us. I sort of—and I still am—am really surprised by those cases back in the early 2000s. What I have been able to find out is I had a mineworker of ours who told me probably about a month ago that his father-in-law died in 2002 and the cause of death was pneumoconiosis. I have asked him for the death certificate. That was in a conversation. He lives in Rockhampton. He works at Ensham. We were having a conversation and I went, 'Wow!' The guy was a long-term miner from the UK. Up until about a month ago, I believed that pneumoconiosis had been eradicated—sorry, I was not aware of any cases prior to the 2015 case.

Mr SPRINGBORG: That would be really great if we could get some information around that—obviously, understanding and respecting the confidentiality of the family, of course. Long-term coalminers in the UK and a number of people who have been confirmed now as sufferers of CWP worked in the UK industry and then came and worked in Australia either as a result of the closure there or prior to that time. That would be useful. As far as you know, that gentleman worked in the Queensland or Australian coal industry after he moved here?

Mr Smyth: He worked at Moura—in the Moura mines, yes.

CHAIR: We also intend to go to Moura, Steve, at some stage next year.

Mr Smyth: For the record, I think in areas like Moura, Biloela and Banana there would be a lot of people who have worked in those mines there and a lot of experienced old people might have a number of things that they can add to the inquiry.

Mr SPRINGBORG: Given that your union has been fairly critical in this process of getting miners' records and sending them over to make sure that they can be reread and provide that particular support, in many cases you are aware of what is coming around the corner. You would be expecting that there would be significantly more confirmed cases of CWP based on what you have been able to forward to Dr Cohen?

Mr Smyth: That is correct. We have a register, which we commenced in November last year. That involved an arrangement between ourselves and the University of Illinois, Dr Cohen. At this stage, we have sent 136 X-rays and CT scans. We have 87 waiting to come back. Out of the ones that have come back, we have 12 to 14 people. What happens is that Dr Cohen—and I have some forms here that I want to provide later on—will follow the B reader process, him and a number of other readers. He will then provide a report back to the individual.

If it comes back and he has diagnosed simple pneumoconiosis or something of a medical type, he will then instruct that individual to see an Australian specialist or doctor. He has made it clear obviously that he does not practise here in the country. Based on that, between 12 and 14 people have been asked to follow up, with either CWP, emphysema or industrial bronchitis—a number of other lung related diseases. We still have 87 to come back.

Mr SPRINGBORG: That is 12 to 14 out of 50 thus far?

Mr Smyth: Yes, that is correct.

Mr SPRINGBORG: There is 87 to go?

Mr Smyth: That is correct.

Mr SPRINGBORG: If it follows the same sort of pattern—and I am always reluctant to speculate; you have to be very careful about that—and there are about two-thirds to come back, we could get another 20 to 30 coming out of it?

Mr Smyth: That is correct. A number of those guys are retirees and a number of them are active miners that still do not trust the system. The problem has been that because the Queensland government has engaged Dr Cohen he has a backlog of X-rays that he has to review, but you are correct; they are the numbers.

Mr SPRINGBORG: So the ones that he is reviewing on behalf of the Queensland government are ones that are quite separate from those which you have sent over?

Mr Smyth: That is correct.

Mr SPRINGBORG: We do not know what he is going to find with regard to those ones. With those other ones from the Queensland government, I think we have been told there are almost 200,000 records to be processed—200,000 miners—in the last 10 years or thereabouts. Some of them are probably more recent entrants into the mining industry.

Mr Smyth: That is correct. My understanding is that with some of the X-rays that have been sent there may be a bit of a double up because our members came to us and we have got them underway. We have stopped the process now. We have encouraged them to go through the Health Surveillance Unit because obviously it is captured then.

What we have done throughout our process is we have made sure that individuals have had the consent forms, the process has been followed and it is all above board. As I said, I will touch on one I got just on Friday which again shows the failure of the system. We are making sure that it is all above board because the first thing that people want to do is challenge our process. That is why there has been a delay as well because they are using the dual reader or sometimes three readers. Based on those figures, we are quite concerned that the numbers are going to come back higher than that. I hope there are no more but I have to be honest: based on what I have seen so far—

Mr SPRINGBORG: The trend is not comforting, is it?

Mr Smyth: No, it is not comforting at all.

Mr SPRINGBORG: I have one further question. We have seen your submission. It is quite comprehensively put together and is endorsed by other submitters, or components of it. Based on the fact that you are a third-generation miner in the mining industry, are you confident that we are able to marry together the priority of productivity with the need to have a safe work environment for coal workers in the future using education awareness, monitoring and safe, innovative techniques to suppress dust and keep workers safe? Can we do all of those things?

Mr Smyth: I believe we can. I believe we have to. I believe we need to take a mature approach to this, which I know we are driving. At the end of the day it can be achieved. We have to sit down and have that discussion. The advisory council, which I sit on with the QRC and the government, is going to put a number of recommendations and regulations in place to work towards.

I will be perfectly blunt: one of the obstacles is going to be the medical professional. At the end of the day, as I have heard, black lung is not curable. There is no prevention. Prevention is better than a cure. It is about stopping it at the coalface. I believe we can do that successfully. We will have to change the mindset of a lot of people.

If you do not mind me adding, I heard one of the guys say this morning—and he really hit it on the head—that you accept working in dust. I look at it from a risk management perspective. We had the boom come on, and we had coal production increase, thicker seams and bigger equipment. We did everything to increase our production but nothing ever popped into anyone's head—and hindsight is a great thing—to say, 'Hang on a minute, we are doing this but we are not increasing the monitoring or the screening of workers.' Focus went into getting the end result out. At the same time we had new people coming in and we did not educate them or train them—all those things that as a third-generation miner you learnt, and I learnt when I first started in '88. I think we need to get back to a simple approach.

Going back to your question, I believe we can do that. We can collectively work together to maintain levels of production that are done in a safe and efficient way at the same time ensuring that we protect the workers. I reckon it can be done. We just need to be mature in that approach.

CHAIR: Steve, can you explain to us the difference between the permanent workers and the contractors, because this has come up time and time again? Also, which union, if any, covers the contractors?

Mr Smyth: First and foremost, you have the permanent employees and then there are the contractors and labour hire. In the underground sector you have companies like Wilson's, Mastermyne and PIMS which provide certain services. In what they call development mining it can be belt installations, putting in seals or pumping strata products. Those guys or girls—mainly guys—are what we call specialist contractors. Labour hire—or, as I call it, the person employed by the hour—are a body to come in and do a job. They will come in and they might fill in for a person who is on annual leave or sick leave. That used to be the trend but there is a trend now to utilise them on a daily basis.

I can go back to my time as an ISHR when one of our powers and functions was to take complaints from coalmine workers. I know that ISHRs do it now in the mines department. We used to get a lot of complaints. The complaints would be anything from a fridge is not working in the crib room or the air conditioning is not working, but they were too frightened to even raise that. We would go in on behalf of all mineworkers—because that is how it worked—and investigate. We would not disclose a name to the employer because the employer would want to know—because they were frightened back then.

I turn my mind now to the issue of dust, and you hear it all the time, particularly in open-cut mines. They will put people on a circuit. Normally if they have a permanent guy on the circuit, if they are on the water truck, they will take the appropriate action. But, if you are a labour hire person, they are frightened of losing their job. I know that sometimes it is hard to pin down, because no-one will ever come out and say, 'If you raise that complaint you will lose your job,' but there is plenty of evidence. I think the guys this morning really touched on what happens down the track.

I think it all comes back to education and awareness. That is also needed in the supervisory roles, because you haven't even got a member of the boom. We brought a lot of new supervisors in that did not have a lot of experience understanding what their roles and responsibilities are. It is a real issue and you continue to see that. You will continue to see that they do not believe they have a voice. We have permanent members of ours who are still frightened to say stuff. As much as you tell them that they need to stand up because the buck stops with them, they will not do it. It is a real issue. It is a real worry, but at the end of the day obviously labour hire employees and contractors are at the more pointy end of the stick because of their employment nature.

CHAIR: Is there any union that looks after labour hire?

Mr Smyth: The CFMEU has coverage for production and engineering—the tradesmen. The AMWU can cover boilermakers and fitters, and the ETU covers electricians. That is how it works. People determine whether they want to be a member or not. The ISHRs represent all coalmine workers. Union affiliation has nothing to do with how they approach their roles.

CHAIR: Thank you for making that clear.

Mr CRAWFORD: Steve, I am interested in ex-miners. You have had a lot of members over the years, some of whom have retired and gone to all different parts of the state, the country and the planet. In terms of tapping into CWP and what is happening, we are finding that there is not much knowledge amongst them of awareness campaigns. They have not really seen anything from government. Where are you guys at in terms of trying to round up some of them or seeing where they are at?

Mr Smyth: That is a good point. First and foremost, some of the action out of the Monash review was for the government to advertise in the newspapers. We gave them a suggestion, particularly in Queensland, to put out ads in places like Hervey Bay, the Gold Coast and Emu Park—all those places where miners retire—to, one, make them aware and, two, offer them a service. That has not really taken off and occurred. We have been able through our own networks—and it is very sporadic—to contact people. Most of them have rung us. Some of the old retirees have come into our office in Rockhampton or Mackay and said, 'I worked in the mines.' That is a number of those X-rays that we have sent away.

We have sent out safety alerts through our own distribution network, but, again, that is not getting to those retired guys or even those guys who when the industry came off the boil said, 'I have had enough of mining. I am going over the hill and I am not coming back.' That is one area that again falls into the unknown. I looked at our database last week. We have 20,000 people on our union database. That goes back to 1988. They are either members or they have retired. I did not go through to see how many have retired, but that is an issue in itself. That is a really good question because that information is something that is lacking.

Even for the guys who get diagnosed with the disease, apart from Dr Edwards, who is a leading specialist, there are not a lot of answers for people. It is very hard. There were some commitments given in the Monash review about how they were supposed to communicate to the state—I call it the state, but those retirees.

CHAIR: Steve, I think it has been almost unanimous across our hearings that retirees, in particular, are not aware. The department has told us that they have put ads in the papers, but unless you buy the paper that day you are not going to know anything about it.

Mr SPRINGBORG: Except in Collinsville where, amazingly, virtually everyone was aware. It is the only place.

CHAIR: Collinsville has a long history and that is where Steve comes from.

Mr SPRINGBORG: I could not believe that.

Mr CRAWFORD: And some of them have just tripped over the answers. We had some the other day tell the story of going to see their GP who sent them to someone else. 'I do this, I do this and I do that,' and they kind of stumble their way around on their own. It was not until they sat in front of our committee they realised that, whilst they had been doing all this on their own, they could have tapped in through you guys. We asked some of them which company they worked for and they told us. We then went to that company's submission which clearly said that if an ex-miner contacts them they will do all these things. It was only because these people sat in front of us that they realised there was another pathway. I think it is a big concern.

We have heard statements from different people, particularly around the examination of medical records and the Coal Mine Workers' Health Scheme, about the idea of a one-stop shop. If we were to say to you, 'Draw us up a framework for what you think a one-stop shop could or should look like,' what would you guys say to that?

Mr Smyth: We would support that on the basis of the following: they need to be specialists in the role that they undertake; they need to not be aligned to the coal companies or the union; they need to be independent; and they need to be appointed by government. From an X-ray perspective—and I have just come back from the US—they need to be trained to the ILO standard for starters—to the B reader standard and the curriculum. In relation to spirometry, they need to be trained to the appropriate spirometry standard. All of this needs to be done in a controlled environment. It cannot be the 267 NMAs that we have now and whatever number of radiologists that we have who take it.

I have heard the idea of a one-stop shop. Obviously we want world's best practice in this country. To achieve world's best practice, we do not need to be reinventing the wheel. As late as last year there was a proposal put to the Queensland government by the University of Illinois to come over and offer training and a number of other things. I am not sure whether that is in my submission, but a number of things were put forward on not reinventing the wheel but using those people. In the

US they use 12 people. They have a panel of 12 appointed by NIOSH to do all the X-rays and all the spirometry. Obviously they can then have people but they all need to be trained to a standard. That would be my call on it.

I was at the hearing in Mackay when a number of people spoke, including a radiologist. At the end of the day, in my view we have to take away the ability for them to be influenced, whether it is by the union—I will be honest—or by the company. They have to be really independent. I have a bit more on that, again, based on what I have seen and experienced. It has to be a real health surveillance process, not a fitness for work process, and it is obviously about the record keeping.

Mr CRAWFORD: I think the record keeping would be a big part. We have heard of different miners who have had chest X-rays almost every year because they have bounced from company to company to company and then other situations where records have been kept in broom closets and all sorts of different things. To have one central location that deals with everything to do with health surveillance and maintenance of records means that any mining company could go to that place to access the records for every single Queensland miner that they may have on their books.

Mr Smyth: There certainly needs to be a central database. Again, the Health Surveillance Unit have a form on their website at the moment where any coalmine worker can go on there and request a copy of their medical history. They have five days to give it to them.

CHAIR: Are they able to—

Mr Smyth: No.

CHAIR:—do it within five days if they have records in broom cupboards?

Mr Smyth: They can't. That is what I am saying about the system. If 100 coalminers said, 'I want my records within five days,' the whole system would crash. The system is in such dire straits with the Health Surveillance Unit, if you want to call them that—I actually have another view on it. Mineworkers trusted the checks and balances at the back end of the screening process. To have 17,000 outstanding X-rays and 150,000 or 200,000 health assessments is just unacceptable.

The other issue it raises—and I digress here—is that, if you have people who are having trouble doing spirometry and X-rays now, I put my hat on as a parent and say, 'If they cannot do spirometry properly, what about when we take our children to the doctor to go and see about asthma?' All of those things flow into it. I know we are talking particularly here about CWP, but that is the question that we get from a lot of parents. To sum it up, we need people to be trained to world's best practice, NMAs to be appointed by the government, a central database for the information, a group of specialist people who deliver both spirometry and X-rays, and a focus on health surveillance.

Mr CRAWFORD: As opposed to pre-employment medicals.

Mr Smyth: Yes. That can be dealt with over there.

Mr MILLAR: Steve, in your recommendations in your submission, you talked about having a one-stop shop. Can you take us through some of those recommendations? If you had a magic wand, looking at ways of moving forward on this, what would be your recommendations to make sure that we monitor this and find out who has it and what we need to do?

Mr Smyth: First and foremost, putting aside the control measures at the coalface with independent monitoring and continuous dust monitors and those systems, from the perspective of screening, the people who are actually undertaking the screening of the X-rays have to be trained, experienced and competent. They have to be not just competent as a radiographer or a radiologist but actually competent—

Mr MILLAR: Do we have someone like that now?

Mr Smyth: RANZCR would tell you that they do. They told the chief inspector last year that they do, but there is no-one trained in—

Mr MILLAR: You have X-rays from the CFMEU and we have X-rays from Queensland going over to this one doctor in the United States.

Mr Smyth: Yes.

Mr MILLAR: Right now we could be on the verge of having a lot more people with this condition, yet we are sending all of our X-rays to one person in the United States. Please tell me how is he coping with doing that?

Mr Smyth: He has a team. I have visited the facility. He himself is a B reader. He then has four to five other B readers. That is how the process works. He has a number of data analysts who get the data. How it works now is that the X-ray gets done—if I am a coalminer, I go to Rockhampton and

the X-ray gets done. I sign the consent form. That gets uploaded to the Health Surveillance Unit. They upload the DICOM file to the US. The day I was there 800 X-rays came in. He has a number of people working on the input of that data and the file. That is all done with patient numbers. As they do that, he will do a read of the X-ray first. Then he will have another reader and another reader come and read the X-ray. They have quite an extensive team there based at the University of Illinois. All the people who read these X-rays are under the banner of the NIOSH. They are appointed under that panel of 12. That is how they do it.

With all the X-rays that are being done here now—and I have a form here—the process is that an Australian radiologist reads them and then sends them to the Health Surveillance Unit. One of the issues with that from their perspective is that all of those X-rays going to the United States are sent blind. When he gets them in the US, he does not get the form that goes with them to find out what the Australian radiologist has looked at. We have said to the government how are you supposed to train and mentor people—if you look at it from a practical point of view, isn't part of improving the system a matter of saying, 'If there is a certain Australian radiologist who keeps reading them and keeps getting it wrong, how is he or she going to learn in the interim that they are getting it wrong?' For instance, most of the X-rays going to the US are of poor quality—straight up. Even now with the digital film it is of poor quality or there are issues there. There are number of things there. There is a proposal there about bringing those people over to train and do that B reader course. At the moment that is the process. That is how it works. The X-rays are sent.

The turnaround period has been delayed a bit because of the number of X-rays going over there. They will be dual read or triple read or read by four people, depending on whether they find any abnormalities or issues. I am aware of them finding a number of other—again, I am not a doctor—health related issues. They are finding people with unfolded aortas and a number of other conditions which are still being missed by the Australian radiologists. I am not here to bash them. I am just putting it out there. While it may be for a chest X-ray, they are looking at a number of things in that X-ray. I go back to when we got to the stage where they were not complying with the ILO standard or even using the slides. They must have just been getting them in and saying, 'Yeah, you're fine. Off you go.' It must have been like a production line—tick and flick and off you go.

I still do not think they are really picking up on things—again, that is my own opinion. They are still picking up a number of things in X-rays that are being sent to the US that are being missed here. Can I give you an example? I could talk all day—that is my problem. I will give an example of a gentleman by the name of Keith Stoddard. Keith had a recent X-ray done as a follow-up. They identified a number of new nodules. I believe he was told he just had to keep it monitored. That X-ray was sent to Dr Cohen in the US. Dr Cohen then contacted Keith and advised him to get a PET scan done as a matter of urgency because he was concerned about it. Keith has gone and done that. Keith became pretty sick on the back of it. It was because of that nodule that he was concerned about what it may be. When they are looking at the X-rays, they are looking at a number of other things. That is the process they have been using.

We have engaged them for a period of six months. It is going to take longer than six months, because we are still not training our guys up. It is a specialist skill. They can be radiologists looking at a number of different things, but to me it is a specialist skill. What I have seen in the US is that they are probably doing 1,000 to 2,000 X-rays a year looking at lung related disease, not broken fingers or broken arms.

Mr CRAWFORD: You mentioned before about whether there is an Australian radiologist who is constantly getting it wrong. At the same time, if we have an Australian radiologist who is constantly getting it right, that person should be picked up by Dr Cohen basically saying, 'You should be a B reader. We should get you up to speed.' I agree with your point about the paperwork going over there as well.

Mr Smyth: I agree. They should identify a champion or somebody who can lead the charge and do it. I heard Dr Bruce Leibowitz say that he has gone and done the course and it has given him a better understanding of what to look for. That is one of the issues that came through the Monash review as well—we are missing the early signs of pneumoconiosis. That is when we want to be capturing it, if we are capturing it at all. I do not understand why we send them over blind. We could be mentoring and training our people and educating them. I am not a doctor; I am just a coalminer.

CHAIR: Is there anyone in the public gallery who wants to give evidence here this afternoon? No. Steve, do you mind if we continue past your allocated time?

Mr Smyth: I'm fine.

Mr CRAWFORD: He said he could talk all day, so we should hold him to it.

Mr Smyth: As long as I get my dinner I'm fine.

CHAIR: Thank you, Steve.

Mr KELLY: I have a few questions. Thanks, Steve, for your submission and your appearance here today. You obviously have dealings with, I would imagine, nearly all of the coalmines in Queensland in your role.

Mr Smyth: That is correct.

Mr KELLY: You would have interactions with organisers and delegates who either visit or are based in those mines.

Mr Smyth: Yes.

Mr KELLY: In terms of the employment relationship across mines, it seems to me that there would be some mines where the relationship between, say, the union delegates and management would be somewhat adversarial and other mines where it might be a little bit more cooperative. Is that actually the case? Are there variations on the relationship between union delegates and organisers and mine owners and operators?

Mr Smyth: There certainly is.

Mr KELLY: In an environment where there is a more cooperative relationship, how do you find the employer's approach particularly to dust issues in terms of safety but to general safety issues?

Mr Smyth: The other part to that is that it depends on what the issue is. In relation to dust, I have seen certain operations where the employers and employees have actually sat down and attempted to work through a process. I think the overall arching problem has been that a lot of people still do not know what it is all about. It comes down to the individual as well. You could have a really good mine manager at a mine who wants to do the right thing, but he will be hamstrung by the decision that corporate may make. It has worked well.

Where the disconnect has happened with a number of these employers is where corporate comes in—and I will give an example. I have been involved with Anglo at Grasstree Mine. The guys had an arrangement with the local management there that they would get everyone X-rayed, get them sent off and the process would happen. Corporate came in and said, 'Yes, but you will use the company NMA to do this and we will send them to a B reader in the US.' But this B reader in the US was based in Florida. No-one had ever heard of him. We fixed that. What I am saying is that they had a good relationship at the mine. They were able to nut through a process. People did not want to go down the mine. You heard the Glencore guys. Then suddenly corporate comes in over the top of them and says, 'No. We are going to do it this way.' They have resolved that. They have sorted that out.

CHAIR: How was it resolved, Steve, with the Florida doctor?

Mr Smyth: I did a little bit of research. I wrote to the company and said, 'This guy in Florida is not on the NIOSH panel of 12.' Americans are big on publications, but the only publication he had ever done was an X-ray on the spine and that was it. I had my contacts in the US and did a bit of digging. I ended up finding out that one of the doctors that Anglo had used had contacted this guy because they met at a conference. I was just gobsmacked. That was not the process. The two-reader process that we have set up is a very clear process.

There are relationships that work well. There are others where it is obviously confrontational. You heard the Glencore guys. I have been involved in that. They have been very much at each other where others will work through it. At first when it all came out people just thought it was a one-off. I heard a Dr Foley tell the workers at Carborough Downs that it was just a 'cluster', that it will go away. That was the mindset. Twelve months down the track the mindset has changed. There is that relationship. We all have differences at times but some people have approached it better than others. If corporate keeps out of it, to be honest, they get it resolved.

Mr KELLY: I think I have heard that same doctor use the term 'cluster' but in a slightly different context. You have talked about the use of labour hire contractors. I know that it is hard to generalise because you deal with all mines but, to my mind, temporary and casual employees are brought in to fill a hole or to fill emergent short-term work that may be there for a week and then not there for another couple of months. Is that generally what is happening or are you seeing permanent ongoing staff replaced with temporary employees?

Mr Smyth: Permanent employees replaced by labour hire. The best example that I can give is in September 2014 BMA said that they had a surplus of 506 permanent employees. They went through a process of offering redundancies and redeploying. They now have 1,200 labour hire

employees back. They have doubled it. They are not on their lonesome, but that is the trend. In the past, they would use them for peaks and troughs. They are now used as part of normal employment. That brings its own issues.

Mr KELLY: I understand that unions are not necessarily research organisations and do not necessarily have the resources that some people sometimes imagine they do, but is there any research that you are aware of that has a look at the relationship between the percentage of labour hire contract workers and safety in various mines?

Mr Smyth: Yes. The best example that I can give is that, of the last seven fatalities in Queensland mines, six have been contractors. The mines department have all of these statistics, because I got them provided to me last week. We have our own statistics. What I am saying is that every HPI, or serious accident, gets reported to the ISHR and then the mines department provides that information as well. There is a trend here. You can simply go through it. Whether it is on incidents, accidents, drug testing, or a number of other things, the statistics are there. The one I got last week was that, unfortunately, of the last seven fatalities, six have been contractors. When you break that down, for example—and it probably relates to the dust—for three of those seven, the individuals were not given a toolbox talk or a prestart. Why I say 'dust' is that, now that the dust is prevalent, the focus is on it, but we are still not getting that in our induction process. We are still not getting that message out and the awareness out to people about the issues of dust.

Mr KELLY: Do your organisers report difficulties accessing sites and being able to move around sites and inspect safety issues if they are called upon to do that by members or delegates of the union?

Mr Smyth: No, all the ISHRs have to do is give reasonable notice to the employer to attend the site under their powers and functions. That is one of our recommendations, or one of our proposals—that they have the power to do unannounced inspections like the department is supposed to be doing.

Mr KELLY: You do not believe that that is occurring—that there are unannounced inspections occurring?

Mr Smyth: By the department?

Mr KELLY: Yes.

Mr Smyth: No, it is a joke. They have the power, as the regulator, to regulate the industry and to go out and ring the mine manager and say, 'Mate, I'm coming out.' I can tell from my time as an ISHR, you would go out with the inspectorate to randomly do an inspection. You get out there, he has been there having a cup of coffee and a biscuit. Do not get me wrong: you have to have relationships. That is not, in my view, what the regulator should be doing each and every day. They are there to regulate. They have really dropped the ball. They do not do enough unannounced inspections, in my opinion.

As I said, we want the ability to do unannounced inspections. We just need that ability sometimes to do it because, at the moment when you are ISHR, you ring the manager and say, 'I'll be out on site.' You have to give them reasonable notice.

CHAIR: What is 'reasonable' notice, Steve? What would be considered 'reasonable'?

Mr Smyth: Depending on the nature of the incident, if it is a complaint, I used to give 24 hours notice that I was coming to the site to do a mine inspection—put it in writing or an email. If it is for something that has come up, I will ring them. You might be an hour from the pit, or two hours. Because I am based in Mackay, I might be two hours from the mine, or three hours. You say, 'I'm on my way out.'

Mr KELLY: You were an ISHR for 10 years, I think?

Mr Smyth: Yes.

Mr KELLY: Were you employed by one mine at that point?

Mr Smyth: No, I was elected by the members of the CFMEU, paid for by the CFMEU, but appointed by the government, by the minister, to look after all coalmine workers. We had similar powers and functions to the mines inspector.

Mr KELLY: That is another layer of inspection?

Mr Smyth: Yes.

Mr KELLY: In that period—I think you said it finished in 2008, so it obviously predates these issues being raised again—how would you characterise the level of concern shown to dust as compared to other safety issues, such as gas, crushes, collisions, those sorts of things?

Mr Smyth: Depending on it—call it—the topic at the time or what has occurred, when I was in the role I investigated a number of fatal accidents, unfortunately. They were either tyre explosions, rib failures in the underground, a gentleman fell off the high wall at Moura, but none of them ever related to the issue of dust, if that makes sense. You really used to prioritise. In the open-cut a lot people would look at vehicle interaction, blasting, strata failure, whereas in the underground you are looking at dust—as I said, the combustible issues of dust with explosions, roof falls, vehicle and people movement, because the gentleman got crushed as well.

I know in my role when I was there I had shut down a number of coalmines—longwall mines—for excessive dust. That was the issue. If I can just step through? I would go and do an inspection. With one of the longwalls at Newlands northern, I shut their longwall down because of the dust. I had complaints from the workers about dust. I went down the longwall face and I could not see in front of me. I had no monitor there to say that that is above three milligrams. That is one of the issues. You had to do that on your own experience. When you say, 'You're shut down until you review your procedures and you control that dust,' that just generates an argument, because the employer will say, 'What are you basing it on?' You are basing it on your experience. That is how it used to work a lot of the times. You were basing it on your experience and the competencies that you had. You were shutting it down for dust because of visibility and the issues of explosions and the issue of health related dust as well. That would happen on longwalls. That would happen when you go into development panels.

When you did a mine inspection, you would take a mine official with you. The mine would send either the mine manager or the SSE with you as part of that inspection. You would have the local safety representative with you as well. You did not do it on your own. You just did not sneak off. You were in that all the time. I used to say to the mine manager, 'I want someone from the mine to come with me,' because if you find something wrong he needs to fix it there and then. That is how it worked.

Mr KELLY: You were a deputy prior to that, I think you said.

Mr Smyth: Yes.

Mr KELLY: In that role as an ISRH, you would have engaged with quite a significant number of deputies across the state in various mines?

Mr Smyth: Yes.

Mr KELLY: Would you characterise that the deputies, by and large, felt empowered to be able to deal with dust and other safety issues or did they feel pressured that production had to continue regardless of the issues that they had encountered?

Mr Smyth: Definitely pressure on production. The CFMEU has coverage of deputies. There was a trend through the boom and prior to the boom where they offered staff contracts. A number of people took those. That was fine. Obviously, there was an increase in wages. I saw then a lowering in standards, because then they were tied into this contract. They were just focused a lot on production, because it linked back to their KPIs. That also happened—do not get me wrong—with some of the union deputies as well because, at the end of the day, they felt pressured or they could not stand up. It used to really frustrate me, because they are at the front line of safety, the same as an open-cut examiner in an open-cut and there is no excuse for it.

You could see it when you go to a mine. I have had deputies when I went to a mine as an ISHR get me aside and ask me could I help them fix a problem and I would say, 'Mate, you're the deputy. You're the statutory official.' That was also one of the issues along the way. It has improved, but it is still an issue.

Mr KELLY: Can I just ask the union's view—not necessarily personal, but the union's view—in relation to the issue of compensation?

Mr Smyth: Yes.

Mr KELLY: When we get the surveillance right and when we get all of the medical testing and procedures right we should be able to identify CWP in the early stages. Really, the ideal advice and situation for that worker would be to have no further exposure to coal dust and it will not progress. That would render them unable to continue in their current employment, but it would not necessarily render them incapable of other types of employment. Does the union have a view on how that issue might be dealt with from a compensation perspective?

Mr Smyth: Yes, we have. You have hit the nail on the head. At the moment, that is one of the issues. If I can just touch on that? I believe that there are a number of people out there—the older guys—who are probably in the boat where they are sick or they may have some sort of pneumoconiosis and they are not prepared to go to the doctor. They will only get away with that until the next couple of medicals and until we fix the system. Putting that out there, we have put forward a campaign around a 10 cent a tonne levy for workers compensation, because if you are a person like a Steve Mellor who is in his late 30s—and for some people, mining is all they have ever done; they are not an academic and they do not want to go to university—his career is finished. He cannot work. Obviously, his income has been reduced. Without having a scheme to fall back on that can either prop up your wages or provide that ongoing support, a lot of people will not come forward.

I do not really think that the current workers compensation scheme should have to also, in my view, facilitate that. That is why, as I said, we have a campaign around a levy, because we want real compensation and we want that to be ongoing. We have a view on the current system where a person is diagnosed with it. In the US, I am aware that, if a person is diagnosed with it, they can go back to the workplace as long as the dust is controlled to below one milligram and there is continuous monitoring going on. We cannot do either of that, because we do not have the systems.

From a compensation perspective, the scheme needs to be one that works. The scheme needs to cater for those people who cannot fall out of it, for want of a better word, and the money they earn. You know yourself that, if you are a 40-year-old man and you are providing for your family and you are suddenly going to lose your job and you go back in over the hill, as they call it, to do some other work, then the income that you are on, through no fault of your own, is reduced. There needs to be that top-up, or that gap picked up there to facilitate that.

Mr KELLY: If your family's major home is a town where there are not many other options, that is probably a factor as well.

Mr Smyth: Yes.

Mr KELLY: It seems to me that, if we get the medical surveillance right, if we get the mitigation right and we get the monitoring right, we should not have to worry too much about the compensation, but we need to get that right as well. There are clearly identified issues in each of those four areas. Is there anything else that the committee needs to be considering in relation to these matters?

Mr Smyth: In relation to the mitigation and the dust at the coalface, again, similar to the screening is the importance of independent dust monitoring. The legislation has shown for 15 years what happens. With all due respect, with the legislation as it is written, the employers do their own dust monitoring. We believe that the standards coming into place on 1 January will go a long way towards managing that, where we have people who are trained to take the dust samples who are independent of the employer and they need to be. It is also is empowering the employee long term—each of the workers—to have their own personal dust monitor. I am talking about the underground sector here. The turnaround on when the dust sample is done—in the US, they can do it in days; here, it takes 14 days. If you are on a longwall face, you might have mined 200 metres further from that point where the dust sample was taken. It is not a real reflection of that. I think the enforcement of the monitoring that is going to come into place to hold people to account if there are failures and voids is required. Obviously, long term, we also are looking at the open-cut mines with standards of equipment that are going to increase through the recognised standard there, the monitoring there, people having X-rays and health surveillance.

With our recommendation, I think that we will go a long way to addressing a lot of those issues. I know that a number of the other submissions have done the same. I just think that we need to put the trust and faith back into the coalmine workers. We owe it to them and we have to demonstrate—all of us—that we have a system that we believe will work and is robust and provides that independence. Our blokes do not trust a number of the current medical professions, particularly the radiologists and the others, and the company doctors. I cannot put it any clearer. That is going to be a journey in itself,

CHAIR: Thank you very much. Because the Cook Colliery operates here in Blackwater, what has been done in relation to the testing of current miners working there as well as the retirees who have worked at Cook over decades?

Mr Smyth: My understanding is that at Cook they give current employees the opportunity to participate in a two reader processes, as I call it. That is how I understand it. At this stage that is what they can participate in. I am unsure about retirees as most who do not live here will move to Emu Park or down to the coast. I do not know whether they have been captured or picked up. Again, that goes back to that point as I said about advertising in those areas and offering that. Obviously Cook

has had a number of different employers over the years, more starts than Phar Lap. It is really hard to track down who owned the mine but, if there is a system there, it needs to happen. As I said with Cook, most of the guys I understand are full on in the two reader process. It would be interesting to know throughout the Bowen Basin and in the underground mines in a percentage how many people have taken up the offer. I am sure the employers can provide that. It would be interesting to see, because that is where you will find some of the old guys just biding their time. I am aware of a guy at Broadmeadow who rang me and said that he'll never go for a medical, because he feels like he'll fail it due to his lung. I said that he needs to go off and see obviously a medical practitioner. We obviously encourage people who ring us to go and see the local doctor to get a referral.

CHAIR: With the 10 cents per tonne levy, if that could be used or raised to higher than 10 cents per tonne to fund an independent one-stop shop, what do you think about that? What if it were automatically funded so there never was any issue in relation to governments cutting budgets, et cetera, and what if there were independent doctors, maybe even independent radiologists and independent spirometry specialist staff employed there who literally went around the mining towns?

Mr Smyth: We would welcome that. The other part to that approach would be training and awareness, because we can put in the checks and balances but we need the training and awareness. There is a great opportunity to do that. When I first started in the industry, the health van used to go around doing chest X-rays and that. They used to have that in place. I remember my dad and my brother participating in that.

CHAIR: I did too, Steve. They used to do it in Ipswich, a health van would go around and take the X-rays.

Mr Smyth: I think that is an option and I think that should be looked at. When we look at this, we should look at it on a broader spectrum in terms of dealing not only with the spirometry and the X-rays but how we can educate people and make more people aware and offer that. As I said, the retirees are an unknown number as are those workers who left the industry because of the downtown, and it continues. If we can set up a system that provides what we say is efficient compensation both now and into the future for them and their families, then we owe it to them. Along the way, we need the training and awareness built into it, and the independence is very important.

CHAIR: The other issue is the effect of coal workers' pneumoconiosis on the wives and the families. We are getting increasingly concerned. This morning we heard evidence about relationship breakdowns, about people wanting to leave the industry as well. Do you have any views in relation to that? What assistance is provided, because it appears to me that, apart from the unions involved, there appears to be no assistance for the families?

Mr Smyth: Most employers have what they call the employee assistance program and will say that you can utilise it, but a lot of our guys will not take that up. You can say that it is independent but blokes will not utilise it because they think it is the company looking over their shoulder. With a few of these guys, we have encouraged them to participate because mentally they are in a bad way. Gavin Anastasi was there this morning. Gavin put on a really brave front, because Gavin was not in a very good place. I have dealt with a lot of these guys, and they will ring you in a very distressed state. I spoke to a number of their partners as well. I just think that more needs to be done. With the training and awareness, we need a package of what happens when you get it? At the moment when a person gets diagnosed, other than someone like a Dr Edwards who can diagnose it and then talk about the ongoing treatment of a person, whether it is through rehabilitation or that, the part missing is that assistance for the individual and the family. That is something that is probably lacking and does not really get picked up because everything thinks they are big, burly coal miners and they will be right. You have seen this morning that they are not, because it affects them and it affects their family.

CHAIR: Steve, the big burly coal miners this morning were in tears.

Mr Smyth: They certainly were. This is not the first time I have unfortunately experienced that. There are a lot of stresses on them and their family and they feel like they are on their own, but there needs to be something more done with the assistance program.

CHAIR: Particularly when you are in the small coal towns as well where there might not be that assistance readily available. Do you think that that is something that could be provided by that one-stop shop approach?

Mr Smyth: I think so. If I can just touch on what I have seen in the US? I was fortunate enough to see both the process of how they read the X-rays and work through it to the other end when they evaluate coal miners with pneumoconiosis. I attended with two gentlemen—one from Pennsylvania, one from West Virginia—diagnosed with it and the evaluation process that they go through. It is all the way through from sitting down and talking to the doctor, their spirometry tests—which we do not

do here—the X-ray, a fitness evaluation and at the back end the most important thing, the rehabilitation. They will develop a plan for each and every person diagnosed with it, because not one plan fits. That was an amazing. It took eight hours for those gentlemen to go through. But included in that is also the ongoing assistance from the people who provide that, so I found that pretty impressive and is part of our recommendations. We recently commented on the X-ray consultation paper from Monash and on the spirometry ones that have come out. I think we are missing that part. To me, the rehabilitation is not just about whether you go and get on oxygen or whatever is the process: it is also about that ongoing assistance.

Mr MILLAR: How long until we have the right diagnostic equipment expertise? Are we a long way away yet?

Mr Smyth: Ball park figure? I would say at least 12 months. I can base that only on what I have learnt in the last 12 months. I am not a medical person, but I base that on the fact that to start with these people do not have a caseload study to look for X-rays or whatever you need to look at for the disease. They have just started using the ILO standard with the appropriate stencils. We are at least 12 months off that in terms of having people mentor them—I call it the mentoring process—and apply the correct curriculum, because that is what we keep saying about the ILO standard. The B reader standard was developed in the '70s so that when people were reading X-rays they did not have the opinion of a person. It was based on a standard using 22 standard stencils, ongoing curriculum, ongoing training. I think you heard Bruce Leibowitz say that he just did it. Fifty per cent of people fail the test. You have to re-sit it every three years. But the big part of that is the ongoing caseload study you get. In my opinion we are a long way off. College radiologists will probably tell you they are ready to do it tomorrow.

CHAIR: In terms of the documents you wanted to table today, could you table them at the end of Lawrence's questions so that our counsel assisting could have a look. Then we might have a ten or 15 minute break and then counsel assisting

Mr Smyth: I am fine with that, no problems at all.

Mr SPRINGBORG: There are a couple of things you have mentioned during the course of your answering questions today and your presentation today that spurred me into some additional questions. You would have heard Gavin this morning give a very good account of difficult situations and he talked about his brother-in-law and one other suffering from what he thought was silicosis. Does your union have a list of retired members or members of whom you are aware have been diagnosed with silicosis which of course as you are aware is a type of pneumoconiosis? Do you have extensive numbers of those? Given the absolute paucity and pathetic nature of diagnostics, it may be possible that there are people out there diagnosed with silicosis who may actually have coal workers' pneumoconiosis?

Mr Smyth: Good question. No, we have not. We can actually find that. That would not be too hard for us to establish. When I say 'hard', we can go back through our records. It is easy for us. We use two law firms to do our common law and I am sure we can re-identify them.

Mr SPRINGBORG: Who knows what is actually out there, because we have a remit to deal with coal workers' pneumoconiosis. As you are aware, pneumoconiosis covers three areas: silicosis, coal workers' pneumoconiosis and of course the asbestos-related disease of mesothelioma.

CHAIR: If you can get that information, we would be really grateful.

Mr SPRINGBORG: We might want to go and chase some of this stuff, because there are people who have been retired for a whole range of reasons, including medically unfit. A moment ago we discussed with the member for Barron River the issue of world's best practice, particularly in the area of diagnostics, because that is something we have not done very well, which is obvious. Based on your experiences, and what you have seen and talked to others, is there a jurisdiction in the world that has world's best practice when it comes to the issue of supporting coal workers in the safest possible environment to ensure that we reduce the impact or likelihood of any dust-borne diseases, particularly pneumoconiosis?

Mr Smyth: I believe it is the US system. I believe the system developed through NIOSH, the National Institute for Occupational Health and Safety, is a long way down that path. I have travelled to a number of other countries to look at the coal industry and a lot of them lean towards the US, particularly NIOSH. Yesterday, two of our ISHRs returned from the US. They were there for a fortnight undertaking a number of visits to MSHA, which is the Mine Safety and Health Administration, similar to the regulator here. NIOSH does the sampling. I am more than happy to provide the correspondence we sent to the US on what was the purpose of the trip. It was to look at world's best practice. Why do

they have a dust level of 1.5 milligrams? Why does every worker have a continuous monitor on their hip? That is the nature of it, in conjunction with what we have seen with the screening. That is my experience.

Mr SPRINGBORG: Can I take that a little further? You indicated that you think they have the best standard of any of the jurisdictions. Why do we see figures of coal workers' pneumoconiosis in the US of up to 10 per cent of coal workers? It was at 12, I think, went down to two and is heading back up towards 10 per cent. Is it a fact that they have a good required standard but it is not being enforced or adopted as well it should be, or do you think that, regardless of their high rate, it is still good?

Mr Smyth: Probably the first part of it. It is a voluntary process in the US. In the US when you talk to a lot of the miners it comes down to the nature of the mine and the size of the mine. A lot of these mines are small, individually owned mines. All the workers in those mines have ever known is coalmining. The best example I can give is when people in the US are diagnosed with pneumoconiosis, if they get moved from the face area to the outbye they lose money, so they will continue to work at the face area. They have all the mechanisms and the tools there, but because it is a voluntary process a lot of the guys wait till the end of their working life to try to claim benefits. Up until 1998 it was more of a compulsory arrangement. The tools and mechanisms are there, but it is a matter of when the people take it up. I think they still lose 2,000 people a year who die from the disease.

I believe in Kentucky or West Virginia they have just had 300 cases of progressive fibrosis and advanced rate of the disease. When you talk to the Americans they are gobsmacked but the likes of Cohen have been pretty honest. They actually say that they may get it right with the diagnostics at the end of it and they may get it right with the systems, but they are not getting it right at the prevention end of it. A lot of people do not take it up until after they finish mining.

Mr SPRINGBORG: As far as I can boil that down, if we adopted their rate of 1.5 milligrams per cubic metre and our miners in that high-risk situation had continuous monitors on them so they would know when that was exceeded and the other requirements, at least on paper—if they were adopted as a minimum compliant standard within our industry do you believe that that would be the platinum or rolled gold standard that you could adopt?

Mr Smyth: It certainly would be because if it is going to be 1.5 milligrams, that would obviously drive the other behaviours through other control measures to get the dust down to that level. The continuous monitoring, or instantaneous monitoring, will obviously allow the worker to withdraw themselves from a place of dust instead of waiting two weeks for the result to come back. Throwing into that then independent monitoring of dust in the workplace being done, I reckon we would be going a long way to achieving what we want to achieve as far as prevention at the coalface is concerned.

Mr SPRINGBORG: Their stuff is great on paper but not good in practice.

Mr Smyth: That is correct.

Mr SPRINGBORG: We do some things well in practice, but some of our stuff is not good on paper.

Mr Smyth: That is correct.

Mr SPRINGBORG: When it comes to diagnostic reporting it has not been very good in practice, either.

Mr Smyth: That is correct.

Mr SPRINGBORG: We actually have—

CHAIR: And the record keeping.

Mr SPRINGBORG: Yes. That is just a saga on its own.

Mr Smyth: You are right. That is spot on. That is my opinion.

CHAIR: Thank you, Steve. We would invite you now to seek leave to table the documents.

Mr Smyth: I have two documents. Can I explain what they are? The two documents are what they call B reader forms. They are of a member of ours who had his X-ray sent to the United States. The date on there is 12 February 2010. This gentleman's X-ray was sent to the US. This was done six years ago. When it was done here in Australia it was not picked up; it was said that the X-ray was fine and he was fine to work. When you look at this, you can see he has actually been diagnosed with simple pneumoconiosis on the classification. Obviously his issues with the standard of X-rays is

captured there. Then over here we have his 2016 X-ray. It has come back again from the same reader. The US reader diagnosed pneumoconiosis and he has actually gone up a classification. That is a prime example: in 2010 he actually had it and they sent him back to work at the Glencore and the Carborough Downs mines. In 2016 he has gone up a classification. I just want to submit that. That is an example. It is all aboveboard. I would like to have his name redacted.

CHAIR: It will be.

Mr Smyth: I think it is important to see the comparison. He is a long-term coalminer. He has been in the industry for a long time.

CHAIR: Leave is granted. Do you have any other papers?

Mr Smyth: I have one other document. I do not know whether it has been provided. This morning one of the guys mentioned letters coming out about the mines department saying that everything was fine with those guys. I have a letter here and I do not know whether it has been submitted. It is dated 2 December when all these issues were going on. It is a letter signed by the chief inspector of mines. It is a public document because it got sent to all the mines on the mine record book. It relates to the issues that we raised with them about the standard of X-rays and the standard of the people reading the X-rays. This is where some of the issues were generated by the guys on the job. They got a letter from the chief inspector and the employer says, 'Here's a letter. It's all good.' I am trying to indicate that from my perspective the college of radiologists have clearly not been honest in this, if I can put it that way. This is on 2 December 2015. The college of radiologists did not at that time have the stencils to report the ILO standard. This year at the Monash review they made us aware that in March 2016 they got the ILO stencils to compare X-rays. All I am saying is this is the stuff that came out. This is why my workers are in two minds; this is why my workers were confused. That does not give us much confidence or faith in the system. I want to provide that.

CHAIR: Leave is granted.

Mr SPRINGBORG: In that information the X-rays of the worker whom you talked about in 2010 clearly showed that he had simple pneumoconiosis and the next lot said he had gone up one step. He would have been cleared as fit for work to go back into the environment by the doctor?

Mr Smyth: That is correct; the NMA signed off to say he was fit for work.

Mr SPRINGBORG: That information in 2010—I do not want to take away from what Ben may want to ask later—obviously would have been sent down to the Health Surveillance Unit?

Mr Smyth: That is correct.

Mr SPRINGBORG: And put in a box?

Mr Smyth: That is correct.

Mr SPRINGBORG: They would have ticked it off all very nice, and filed it—

Mr Smyth: That is correct.

Mr SPRINGBORG:—or maybe did not file it away, but made sure that everything was filled out but not the fact that they had a red flag?

Mr Smyth: That is correct. I do not know whether this has been captured, but there was a requirement of the Health Surveillance Unit/the department of mines and energy and somewhere between 1998 and 2001 it disappeared off the section 4 form. One of their roles was to review all X-rays to the ILO standard of pneumoconiosis. Somewhere between 1998 and 2001 it dropped off the form. They will say that was a review of the health scheme. When we had the introduction of the 2001 legislation based on risk management, who applied that process to say, 'Has the risk been managed?' I will leave it at that.

CHAIR: We will have a 15-minute break now.

Proceedings suspended from 5.22 pm to 5.39 pm

CHAIR: We will reconvene the hearing. I will now pass to council assisting, Ben McMillan.

Mr McMILLAN: Stephen, thank you very much for your evidence so far. I have a range of questions on a number of different topics. If at any stage I confuse myself or you, please let me know and I will try and go back. Can I first of all take up an issue that emerged from your evidence earlier today that was raised by the deputy chair about other dust diseases. As I understand it, the union has established a process where members or former members can fill in a lung disease registration form to alert the union to concerns that they have about their respiratory health; is that right?

Mr Smyth: That is correct, but in doing so they also provide a copy of either a CT scan or an X-ray that they have been getting us to send to the US. We have a register which has that lung disease information plus a consent form, and then obviously we send that away for them.

Mr McMILLAN: Obviously, because it is not necessarily a confirmed diagnosis, they may fill that in with 'suspected' silicosis, asbestosis or coal workers' pneumoconiosis?

Mr Smyth: That is correct. There could be a number of things that they are unsure of at the time.

Mr McMILLAN: When did you establish that process?

Mr Smyth: December 2015, I believe. I can get the exact date, but it was around December 2015 when this came to light.

Mr McMILLAN: Do you have a ballpark figure as to the number of workers who have filled in those forms so far?

Mr Smyth: I would say in excess of 150.

Mr McMILLAN: You indicated that when they fill in those forms they give you whatever documentation they have, including old X-rays, health assessments and so on.

Mr Smyth: That is correct, they fill out a work history form for us. I will give you an example. A gentleman by the name of George McCrohan, who unfortunately passed away some weeks ago from fibrosis, provided us with X-rays that he had at his house under his bed. I am happy to be corrected on this and I may have to take it on notice, but we wrote to the Health Surveillance Unit on his behalf requesting a number of X-rays. They had trouble finding some of those. In fact, he had the originals at his house but they were analogue and out of date, so that is one example. They will sometimes send those to us. The view in the US is they would rather have a digital X-ray on a disc or an uploaded DICOM file, but in the past a number of analogue X-rays from our office have been sent off.

Mr McMILLAN: We understand that there have now been 18 confirmed cases of coal workers' pneumoconiosis diagnosed in the last two years. Do you have a register of each of those 18 cases?

Mr Smyth: We do. Some of those cases were not members of the CFMEU. We have a list; we know all the names. Obviously a number of those who were not members of ours came in and we provided them with assistance, and we have those guys there. We have another list which I mentioned earlier who are possible or awaiting confirmation.

Mr McMILLAN: I will get to that. What I am interested in is whether the union has had contact with each of those 18 workers?

Mr Smyth: Other than probably three.

Mr McMILLAN: Of the 15 that you have had contact with, have each of them filled in one of these dust disease registration forms?

Mr Smyth: No, because they have either been processed through the mine they worked at or they have come to us after they have been diagnosed. An example is one of the guys was an electrician who was diagnosed and he had gone through his own process to get diagnosed. He come to us for assistance, and then I believe he gave us a copy of where he was diagnosed but not the stuff before that.

Mr McMILLAN: If the committee were inclined to consider each of the 18 cases and particularly look at the mines that those people have worked in in Queensland, the jobs that they had in those mines and their history of health surveillance or lack thereof through the Coal Mine Workers' Health Scheme, is there a single source of information that the committee could look for that would assimilate all of that data, or not?

Mr Smyth: No, it is all over the shop. Actually, if they filed a workers comp case now, then workers comp would probably have all of that and obviously their work history. I would think that the department would, because they are reporting them and they are getting them reported to them.

Again the problem is that, with those who are retired from the industry or fell out of the industry, there is no real obligation on the department to report that to the department. I think it is all over the shop, to be honest, if that answers the question.

Mr McMILLAN: You mentioned that, of the 50 or so cases that have been B read by Dr Cohen through the union, in 12 to 14 of those Dr Cohen has diagnosed early CWP.

Mr Smyth: Potentially, yes, or emphysema.

Mr McMILLAN: When you say potentially, those are 12 to 14 individuals in excess of the 18 confirmed cases we know about?

Mr Smyth: That is correct.

Mr McMILLAN: You have already indicated that he has some 87 still to report on for the union.

Mr Smyth: That is correct. In the documents that I handed up earlier we got six individuals last week, and out of those six there is obviously one guy in that we did not know of. If you follow the classification, he is right on the level of potentially simple pneumoconiosis. That is not in the material that I have provided. He now has to go off and see his own doctor. That is the advice, to go off and get a CT scan done and get it followed up here.

Mr McMILLAN: Just to clarify the documents that you have handed up, you referred to two B reader forms that respectively reviewed chest X-rays from 2010 and May 2016, but just to clarify, both of those forms were read simultaneously, at the same time. It is not the case that one of them was B read in 2010 and nothing was done?

Mr Smyth: That is correct. They were both read this year in 2016.

Mr McMILLAN. What it does indicate to us is that whatever assessment was done in 2010 was inadequate.

Mr Smyth: It certainly was. Absolutely.

Mr McMILLAN: Can I ask you about the role of ISHRs. You were one for two years prior to taking up your current role.

Mr Smyth: Nearly nine years, actually.

Mr McMILLAN: I am sorry, nearly nine years. Presently how many ISHRs are there in Queensland?

Mr Smyth: We have three: Greg Dalliston, Jason Hill and Stephen Woods.

Mr McMILLAN. Do they have responsibilities under the mining and quarrying legislation as well?

Mr Smyth: No, just under the Coalmining Safety and Health Act and Regulations.

Mr McMILLAN: They are solely responsible for the coalmining industry?

Mr Smyth: Yes, both open cut and underground, that is correct.

Mr McMILLAN: Are those positions funded through the CFMEU?

Mr Smyth: That is correct.

Mr McMILLAN: Entirely?

Mr Smyth: Yes.

Mr McMILLAN: Do you have any idea how many inspectors are employed by the inspectorate for coalmines?

Mr Smyth: Not now. I would have in the past, but not now. It would be remiss of me to guess.

Mr McMILLAN: We will ask them.

Mr Smyth: Yes, they would be best-placed to answer that.

Mr McMILLAN: You have recommended that ISHRs be given statutory authority to make unannounced inspections of coalmines. Is there any reason at all for ISHRs to do announced inspections?

Mr Smyth: To do announced inspections?

Mr McMILLAN: Assuming that that recommendation is accepted, I am interested in what the benefit is, if any, to having announced inspections. Or should all inspections be unannounced?

Mr Smyth: I think you need a mixture, because if you go onto a site for a normal follow-up, then obviously you want to do that as an announced inspection so that the employer can facilitate the appropriate people. If you are going out to follow up on an investigation, then you want the appropriate

people there to talk to about that. I honestly believe that unannounced inspections need to occur, particularly around complaints. For example, if you have a complaint of a dusty circuit on an open cut, you get the call and by the time you ring and say, 'I'm coming out tomorrow to investigate it,' what was there then is gone and they will fix it up.

When I was an ISHR and I would go to a mine, if they knew I was coming, when I walked in the mine it would be spotless. The best stone dusting you have ever seen. You just know that is not a true reflection of what happened, so the unannounced inspections are very important to really get an overview of what the place looks like.

Mr McMILLAN: Do you think that is true of the mining inspections as well, that there needs to be a mix?

Mr Smyth: Yes, they certainly need to be doing more than five per cent. They certainly need a mixture. Can I just say that, as we all know, mining inspectors have competencies. As a whole, they have to have come from the industry, so they have been mine managers at mines. They have worked at mines. I am not holding that against them, but they have come from the industry, so whenever they do it you have to be mindful of the fact that they may have worked for Anglo. I know from my perspective I work for Anglo. When I got this job I did not go to one of their mines for 12 months.

Mr McMILLAN: Under the current statutory regime, when ISHRs intend to do an inspection they are required to give the mine operator reasonable notice. You have indicated that in your experience that varies depending on what the situation is.

Mr Smyth: Yes.

Mr McMILLAN: Have you ever had the experience personally of being refused access to a mine because you had not given reasonable notice?

Mr Smyth: I certainly have on numerous occasions.

Mr McMILLAN: They are situations where the mine operator determines that what you consider reasonable notice is not reasonable notice from their perspective?

Mr Smyth: That is correct.

Mr McMILLAN: How is that resolved other than you simply do not get access to the site?

Mr Smyth: I sit in my car at the front gate waiting. It has happened on numerous occasions. What I did at the time was I rang the Chief Inspector of Coal Mines and said that I was—and I am happy to name the mines—at a number of mines where I was refused access on-site to carry out my powers and functions. I rang the chief inspector and said, 'I'm raising a complaint. I'm being obstructed in my role. I'm being hindered. You need to do something about it.' The longest I ever had to wait was two hours at a Rio Tinto mine. The security guard would not let me in. That was to go out and investigate a complaint, but I got it fixed. I had to actually ring the chief inspector at the time or the ombudsman for health and safety to get them to intervene, because the employer at the site level had no desire to let me on. I was there purely in the function of health and safety.

Mr McMILLAN: Since you have moved to your current role, do the ISHRs who currently work in the industry report similar experiences to you?

Mr Smyth: Yes, they do. They would be better served to say, but I do believe on occasions they have been hindered. I particularly know in relation to this dust issue, to be honest, that they were given a bit of a run-around, in my view. Particularly when they were asking for certain documents when they were issuing directives and requesting that, there was what I call lip-service.

Mr McMILLAN: I am interested to hear more about the directive that was issued by one of the ISHRs on 21 December 2015 where the ISHR, as I understand it, issued a directive to all underground mines in Queensland in relation to a concern about excessive coal dust and free silica and essentially directed the mine to cease operation until those dust levels were brought under control. First of all, you obviously were not the ISHR who issued that directive.

Mr Smyth: No.

Mr McMILLAN: But were you involved in any discussion or consideration of the circumstances or facts which might be sufficient to ground the concern before it was issued?

Mr Smyth: No, not at all. Even when I was in the former role I took the view that the ISHRs act independently to any part of the union. It is very important to maintain that difference. The ISHR would issue a directive in line with his or her powers.

Mr McMILLAN: We should ask the person who issued the directive more about that if we are interested in that.

Mr Smyth: That is correct.

Mr McMILLAN: Jason Hill was the ISHR, if I remember rightly, or Woods. Both Mr Hill and Mr Woods.

Mr McMILLAN: What I am interested in is to ask you about the response that came from the chief inspector of mines. As I understand the process, the ISHR issues a directive to the operator of the mine.

Mr Smyth: That is correct.

Mr McMILLAN: That is a process that is communicated directly by the ISHR in writing to the operator of the mine?

Mr Smyth: Or the SSE, that is correct.

Mr McMILLAN: Or the SSE, and that was done in writing by correspondence?

Mr Smyth: That is correct.

Mr McMILLAN: The following day the chief inspector of mines sends a letter to all those SSEs essentially advising them that in his opinion your ISHR had no power to issue that directive?

Mr Smyth: Yes. Putting my ISHR hat on, I found that extraordinary.

Mr McMILLAN: Why?

Mr Smyth: Because if you actually look at the directive that was issued, the ISHR issued a directive to the SSE at the mine saying, in my view, 'Where you do not comply or you cannot demonstrate an acceptable level of risk to three milligrams or 0.1 of silica, operations should be suspended until that level is achieved.' That is how I read it. The chief inspector just said, 'It doesn't meet the requirements of 167.' One of the issues with the 167 directive is that you do not have the ability as an ISHR to issue a directive to stop and say, 'You need to fix that process,' if that makes sense. You actually have to stop or suspend the activities in a part or whole of the mine. Because the directive was actually saying to the employer, 'Here's a heads-up to the SSE that you need to comply with the legislation,' which they should be doing, he has just taken the view that it does not meet the requirements of 167 and—

Mr McMILLAN: The full text of his response, in fairness, is set out at paragraph 8.2.8 of the CFMEU's submission.

Mr Smyth: That is correct.

Mr McMILLAN: In your experience as an ISHR did you ever issue any directives under 167?

Mr Smyth: Yes, quite a few.

Mr McMILLAN: Were any of those directives responded to by the chief inspector of mines?

Mr Smyth: Yes, they certainly were.

Mr McMILLAN: Can you talk us through that process of essentially what the chief inspector of mines has to do to be responding to a directive that is issued to a mine or a group of mines?

Mr Smyth: Yes. When I was an ISHR I issued a directive to an open-cut mine in relation to an emergency response on one occasion. The guts of it was that in my view the mine did not have an effective or adequate emergency response capability. I had been in discussions with the mine prior to that and issued a 121, which is another power. The situation was that they had no emergency response, so I issued a directive and said, 'You have an unacceptable level of risk. All operations will cease until you have an effective and adequate emergency response.'

The chief inspector at the time, Brian Lyne, rang me up and said, 'Your directive is out of line and I'm going to override your directive.' That is normally the conversation. That obviously leads to a bit of a heated discussion, and then he will go and issue a directive to override your directive. Nine times out of 10 in my nine years' experience—because I issued quite a few—there is not much substance in the chief inspector's overriding of your directive, if that makes sense.

As an ISHR you have to have a number of competencies: a deputies certificate III, G2 and a number of others, and all of the ISHRs have that and more. We have actually gone and assessed the risk at the mine, and in our view on that occasion it was unacceptable. The chief inspector will ring the SSE. The SSE will normally have rung him and said, 'We have an issue here. I need you to override this directive.' Chief inspectors, in my view, do not normally put as much attention into removing that directive as what the ISHR puts into issuing it, because we take it very seriously when they are issued. That happened to me on a few occasions when the chief inspector overrode it. There were similar words around why he believed the directive did not stand, and that is how it appeared.

Obviously there are appeal mechanisms around that. My focus was obviously on ensuring an acceptable level of risk with the emergency response, and there were a number of other ones I have issued as well.

Mr McMILLAN: Did the union choose to take this issue any further once the chief inspector wrote that letter to SSEs? He concludes by saying—

Because I do not think that the directive is valid I do not have power to review the directive nor do I believe it is within the powers of the ISHR to issue.

Did you take that any further?

Mr Smyth: I didn't. You would have to ask the ISHR, because I imagine there would have been further correspondence and discussions in relation to that. The chief inspector then may have taken other action to direct inspectors to go out and undertake further inspections and follow-up, because they do that sometimes.

Mr McMILLAN: You were asked some questions about contractors and the use of labour hire in the industry, and you particularly made reference to the increasing trend of labour hire officers.

Mr Smyth: Yes.

Mr McMILLAN: The committee has heard that the use of labour hire extends to deputies and statutory officers for the mine. Do you support the notion that any person who holds a statutory position in a coalmine should be a permanent employee of the mine?

Mr Smyth: That is correct, and appointed by the coalmine operator.

Mr McMILLAN: Why is that?

Mr Smyth: Because if they are appointed by the coalmine operator they have that ownership to the mine. We had a position we put to the advisory council some years back, supported by the government at the time, of not allowing them to have anyone who was employed as a labour hire or a contractor as a statutory official and for the operator to appoint them all. There were issues in relation to conflicts of interest around business, but we would support a view that they be appointed by the coalmine operator because then they are responsible to the coalmine operator. The simple view is that, if you are the coalmine operator or the senior site executive, that person—the deputy—is your eyes and ears. He is the one responsible at the coalface literally for ensuring an acceptable level of risk each and every day. When they are in a role that is not a permanent employee, they are vulnerable. They are driven sometimes by other KPIs, if you want to call it that. In my own opinion—of nearly 30 years—they are potentially putting themselves at risk or out there for certain things to happen. They are not doing the job that they are employed to do.

Mr McMILLAN: In terms of your role on the Coal Mining Safety and Health Advisory Committee, has that committee considered the use of real-time dust monitors in the industry?

Mr Smyth: Yes, they have. I attended a meeting two Thursdays ago and that was not on the agenda. Prior to that there was a presentation given at a meeting which I missed by Anglo and Glencore about a personal dust-monitoring process. I have had the paperwork sent through but that has been presented.

Mr McMILLAN: I take it that the CFMEU endorses the view that as quickly as possible real-time dust monitors be certified as inherently safe and fit for use under the reporting regime in the regulations?

Mr Smyth: We certainly do and in line with our certification and standards. It needs to be done right, but we certainly need that.

Mr McMILLAN: As we understand it, there is a process by which Simtars goes through to accredit or certify devices as inherently safe and fit for use underground. Have you been involved in that process at all?

Mr Smyth: No, I haven't. Greg Dalliston, an ISHR, I believe attended Simtars some weeks back in relation to that, but you go out there and regularly visit. We are not directly involved. I do know that earlier in the year as part of the Monash review the minister instructed Simtars as a matter of urgency to get things underway. That was not so much to do with the personal dust monitoring; it was more for respirable dust monitoring. Again, I do not know what has happened out of that, where the disconnect is and where Simtars are at.

Mr McMILLAN: The committee has been told that at least one mine operator has been actively pursuing the accreditation of the PDM3700 since at least December last year through Simtars and that there has been significant delay in achieving that certification. If I am misstating that information at all, I will correct the record in due course. Can you shed any light at all on the union's experience of that regulatory process and why it is taking so long?

Mr Smyth: Not in the sense of how they go about the certification. I do know there are delays—going back over the years even if it is for the introduction of a new gas monitor or that type of stuff. I am not sure of that. As I said earlier, two of our ISHRs have recently returned from the US where that was a major part of their visit. They are in the process of developing a report around some of the deficiencies that they have been made aware of from their visit to the US with the manufacturers of that unit and what the US have had to do. Again, the US standards for electrics underground is a lot different from Australia's. Ours are a lot tighter.

Mr McMILLAN: The Coal Mining Safety and Health Advisory Committee has statutory obligations to advise and report to the minister, doesn't it?

Mr Smyth: That is correct.

Mr McMILLAN: Why hasn't that process been driven by that committee? Why has the issue of this real-time dust monitor, which seems to be quite critical to getting better dust data, not been driven by that committee?

Mr Smyth: Because our focus has been on the development of recognised standards for dust mitigation, dust control and dust monitoring. You get the updates as to where things are at. Our focus has been on the introduction of the new regulations, the X-ray standards and a number of other areas. Obviously that is an important area as well, but we need to get the levels right. We need to get a number of other control measures right. That is all I can add to that.

The other thing with the advisory council is that we also have to report to the minister on the effectiveness of the legislation. That is why our focus has been on the regulations and a number of other matters.

Mr McMILLAN: When you recently visited the United States, was your particular focus on the health surveillance program rather than the dust suppression and monitoring program?

Mr Smyth: That is correct.

Mr McMILLAN: And it is the ISHRs who recently returned last week or this week who went to focus on dust monitoring and suppression?

Mr Smyth: That is correct. I am happy to provide a copy of the letter that outlines the purpose of our visit. I think it will give a bit of detail and content as to what they looked at and what they will base their report on.

CHAIR: Thank you, that would be good.

Mr McMILLAN: A number of witnesses in the course of their evidence and submissions have made reference to the Coal Services model in New South Wales. Have you had much to do with Coal Services in your role as President of the CFMEU Mining and Energy Division?

Mr Smyth: No. Coal Services is driven out of New South Wales. The CFMEU sits on the board of Coal Services—that is, the CFMEU in the northern districts and the south-west part of New South Wales that sits on the board. In Queensland we do not participate in Coal Services.

Mr McMILLAN: So you are not in a position to discuss Coal Services and the union's view about the merits of that structure as opposed to Queensland's current regulatory regime?

Mr Smyth: I have looked at what they do. I believe they have some good stuff, particularly around independence—such as independent dust monitoring—and the standard and competency of the people taking the dust levels, but I have some reservations as well. They are a one-stop shop. They do everything from dust monitoring, X-rays, medicals all the way through to insurance. I am not saying anything untoward there, but from my perspective you fall into a similar situation that we have here where we sort of had a closed shop with the number of doctors and radiologists delivering a service to the industry. They have that as well. Their independence is good. They do not monitor it as long as us. When they do the dust monitoring, they monitor for half a shift. We monitor from the surface down to the underground and out for about 80 per cent of the shift. There are a number of things they do, but certainly the independence is welcomed and some of the other stuff. Outside of that, I do not know how the board functions; I do not sit on it.

Mr McMILLAN: The committee needs to consider recommendations to the parliament arising from the terms of reference. A number of witnesses have suggested to the committee that it think about some kind of one-stop-shop, independent regulator for coalmining.

Mr Smyth: Yes.

Mr McMILLAN: As we understand it, the Department of Natural Resources and Mines has only very recently—in the last six months—appointed an independent Commissioner for Mine Safety and Health. That officer has no statutory independence under the legislation and does not seem to be

organisationally or bureaucratically independent from the department either. First of all, would you support a recommendation that the Commissioner for Mine Safety and Health be given proper statutory and organisational independence from the department?

Mr Smyth: I would actually.

Mr McMILLAN: If that were to occur, that officer may be in a position to head a department or an organisation similar to Coal Services. From what I understand your evidence to be about NIOSH, the model in the United States seems to be an independent regulatory agency that is responsible for dust monitoring and health surveillance?

Mr Smyth: Similar to Simtars, NIOSH does a lot of the research and provides a lot of the detail and the tools. MSHA does the regulating, but NIOSH has developed the programs. It is NIOSH that has developed the B reader process, the spirometry test, the software and the data. As I understand it, they come under the umbrella of labour—for want of a better word—in the US. That is how it functions. It is independent. It still has independence.

Mr McMILLAN: What is your concern—and, if you do not have a concern, let me know—about a truly independent body doing both monitoring and health surveillance? Is there a problem with that from your perspective if that organisation is, in fact, independent?

Mr Smyth: No, there is not, as long as it is not linked back to industry.

Mr McMILLAN: By 'independent' I anticipate you would suggest strongly that there be some sort of tripartite agreement and participation in that organisation from department, union and industry?

Mr Smyth: It could be a similar process to how the advisory council sits. Whilst you have the independence, which is the most important thing, you still need to have a system of ongoing consistent review. If you had a similar system to the advisory council, which in a way does that—because we are empowered to check the effectiveness of the legislation—the checks and balances are there. As far as the practical part of it, that is where the independence comes in—to the people who are using the tools out on the job.

Mr McMILLAN: You said earlier that in your role as an ISHR you investigated a number of fatal accidents.

Mr Smyth: Yes.

Mr McMILLAN: The Department of Natural Resources and Mines, going to its highest level, has given evidence to this committee that it considers prosecution of offences both for serious incidents and for noncompliance with directives to be an option of last resort and something that had little efficacy. Can you comment at all on your experience of the value or otherwise of prosecuting breaches of safety obligations and/or noncompliance with directives?

Mr Smyth: My own opinion is that I honestly think that there needs to be the ability to prosecute and the will to prosecute. You can fine a company like Anglo American $137,000 and they do not bat an eyelid. Based on the current coal price, that is the equivalent of cutting half a shear on the longwall. There has to be a bigger deterrent for people to do the right thing. Fifteen years of self-regulation has not worked. Look at the state of affairs we are in. If we are going to be serious about fixing this problem and taking it forward, then there needs to be more of a deterrent because money is not a deterrent.

Mr McMILLAN: What other compliance measures do you think should be considered other than prosecution?

Mr Smyth: There is a compliance policy the department applies. I think it goes from one to five, and five is a prosecution. Within that, there is a level of compliance—and the department knows it better than me—which varies. I think the department gets the senior person in the company—in line with the mine manager—in, sometimes along with the chief inspector, and they will deal with the matter there. Say it has been not so much a breach of directive but ongoing issues. That is how they deal with it. There will be a letter drafted and it will be sent to the company in relation to that.

Those compliance meetings are fine, but it just seems they continue to have compliance meeting after compliance meeting and nothing seems to change; there is no deterrent. Fines are one thing, but if people are really going to be held to account—and it flows on as well because all coalmine workers have obligations obviously—if there is a real view out there in the industry about being serious about it, then something has to change from the current system because it is just not working.

CHAIR: Can I ask a question please? Obviously there are transnational companies that own the coalmines here in Queensland. You are probably right that money means nothing in relation to fines and also calling them in and having meetings would be something similar to hitting them with a wet lettuce leaf I suppose.

Mr Smyth: Correct.

CHAIR: Do you think that for the managers, or whatever level of management in the coal companies not only in Queensland but Australia-wide, there should be consideration by this committee of potential jail terms?

Mr Smyth: I do not know whether it is in the terms of reference, but I think that that needs to be really considered. I go a step further. The more I think about it—and I think about these workers who have been diagnosed or misdiagnosed with the disease—in a sense they have had bodily harm done to them. We have radiologists and others who have continued—I know that is not the question you asked—as if nothing has happened. They continue to misdiagnose and continue to provide a poor service, but there has to be a real deterrent. If you are the CEO of a company and you know that you are in the hot seat, it might change things. I am not saying all managers are bad people; that is not what we are saying. Something has to change because too many workers have lost their lives and too much blood has been spilt. Again, with the pneumoconiosis we have heard stories today and something has to change.

Mr McMILLAN: I have just realised that I missed a point when I was asking you about ISHRs. Recommendation 12 in your submission is that legislation changes occur to allow for an ISHR to issue a directive to suspend operations for an unacceptable level of risk without having to be challenged. The question I was trying to get to in a roundabout way earlier was: should there be some kind of change essentially removing the power of the chief inspector of mines to challenge a directive issued by an ISHR?

Mr Smyth: I do not know about removing the power, but probably set a higher bar and a higher criteria for them than to simply be able with the whisk of a pen to say that directive does not comply. At the moment in my experience they simply override the directives without them in my view having to justify why they override the directives. The recommendation around that is to give the ISHR another power. Instead of having to shut the bloody mine down, they can issue a directive for the employer to take a certain path. For example, for dust, if they go into a longwall and say to the shearers cutting, 'There are issues with the spray,'—the best example I can give is if there is an issue in the longwall and the main gate, or the fresh air end we call it, for them to actually issue a directive to stop and fix it they have to shut the whole longwall down. What we are saying there is if you have a directive where you can actually instruct them to stop and take immediate action to fix it, that does not shut the whole longwall down. Whether that is a good analogy, I do not know, but that is the idea of that directive: issue it for a certain task to undertaken or done. At the moment all they can do is issue a blanket directive. That is where the angst comes in because the chief inspector says, 'I'll override that directive.' There needs to be a criteria for the chief inspector. They need to actually do their own work. They actually need to justify the position they take to override that directive in my view.

CHAIR: Can I ask a further question? We spoke previously about inspectors coming from the industry. This might inform the committee. What movement is there to your knowledge from industry to the inspectorate back to the industry and back to the inspectorate et cetera? What movement is there? How chummy are some of the inspectors with the mine managers or people working in perhaps their old mines where they came from?

Mr Smyth: It happens all the time. It slowed down a little bit when the industry obviously slowed down because the jobs at the mine were not as readily available in those senior roles. It slowed down a bit, but you will hear inspectors or the ISHRs themselves say they are considering their future and going back to work for the employer. That is one of the issues. They have to come from somewhere, but the real independence sometimes is questioned because they are pally. In recent years I have seen the older guys who come to the inspectorate are staying to the end. They actually take a bit more of an aggressive approach, if they are the right words, because they know they are not going back. That is one of the issues with that structure. As I said before, I have been to a mine when they were already out there and they were having tea and bickies—my words. I am not saying you have to be aggressive in the approach, but you are there to do an inspection to follow up on stuff. You have to have that relationship, but there is a difference between having a working relationship and overstepping the mark. It slowed down a bit in recent years because the jobs have not been in the industry.

CHAIR: Because the industry is cyclical by nature—there are booms and busts all the time within coal—have there been any mining companies, for example, who have offered positions to mines inspectors who may have been riding them just to get them off their case, for example?

Mr Smyth: Not that I am aware of. For me to say yes—I have not got that evidence.

CHAIR: It would be a cheap option, would it not?

Mr Smyth: Yes, it would be.

Mr McMILLAN: I want to ask you about your recommendation No. 7 that the government establish a coal dust disease board to provide lifelong assistance to workers diagnosed with CWP and other dust diseases. You have identified in your submission some aspects of concerns about the current workers compensation scheme. Specifically you have identified, for example, the time limitation and the requirement for an injury to be medically certified. Beyond those two complaints why is it that the union considers that the current workers compensation scheme is not capable of adapting to meet the needs of coal workers?

Mr Smyth: Obviously we say industry should be paying for this. I know the workers compensation scheme is set up with the levy on industry, but we say that the industry should be paying for this.

Mr McMILLAN: Isn't the industry already paying for it through their insurance premiums?

Mr Smyth: They do, but we do not believe that goes far enough. We say it does not go far enough. As there was a question asked earlier on, these guys get the disease and show no impairment yet they cannot work in the mine again. We say the workers compensation scheme is inadequate to pick up that part if a person is 40 years old and his career is finished. He is not impaired enough to get—I am not a workers compensation expert—a lump sum that will see him through to when he retires. The scheme needs to be set up to cater particularly for coal workers' pneumoconiosis or other lung related diseases. It needs to be set up in a way that it gives proper compensation, not a token gesture. It also needs to be set up in such a way that the Queensland taxpayers, in my view, should not be outlaying for this when in fact the industry should be paying for it.

Mr McMILLAN: I want to break that down a little bit further, using some of the current cases as an example. A worker is diagnosed with coal workers' pneumoconiosis and as a result of that makes a workers compensation claim. That claim is accepted under the current arrangements. The evidence that the committee has received so far suggests that the time period in which a worker has to wait for that claim to be accepted, while it was clearly unacceptably long a year ago, has been very significantly reduced down to a relatively short period of time in the case of the couple of most recent confirmed cases.

Mr Smyth: That is correct.

Mr McMILLAN: I think Chris Byron's evidence before this committee in Mackay was that his claim was accepted within two days of it being made. Assuming that that time delay problem is resolved and the worker makes a claim that is accepted promptly, first of all, it can be accepted for medical expenses and that worker is redeployed to another part of the mine where he is not exposed to an excessive level of dust. First of all, where is the disadvantage to the worker if, in fact, he is redeployed to a different area of the mine on equivalent remuneration?

Mr Smyth: That is the issue; they are not in every case. We have a gentleman who is getting $28,000 a year less at the moment because he has unfortunately been diagnosed with pneumoconiosis. We have a number of other gentlemen—

Mr McMILLAN: Can I just ask you: how is that the case? Why is that the case? Is it because they do not have access to the same amount of overtime? Why is that?

Mr Smyth: The employer says, 'Because you can no longer operate the shearer on the longwall face you will be taken out of the underground environment and we will find a job for you.' Normally the role they will go in to fill is not a permanent job; they will create a role for them and they will put them elsewhere. In the case of the gentleman I talk about, he comes out of the underground, so he goes off the roster he is on. He goes on to a permanent day shift arrangement, so he does not get the roster rate of working weekends and he does not get the other allowances as an example. That is what happens. Straight away I say in that example he should not be punished or have action taken against him for a disease that he has contracted in the workplace through no fault of his own.

I can take it a step further if you like. If you consider that and going back to the scheme we talk about, the employers are accommodating these gentlemen at the moment. However, there is nothing to stop the employer—they have not done it—not finding alternative work for the individual. The companies can facilitate it, as we heard this morning about the guy in the control room. He has actually just been plopped in there because he has that skill that allows it. In the long term who knows what will happen? The idea of the scheme is we have a view that, unfortunately, in the future it is

going to be bigger than the 18 people we have. How then do we have a system working in the future if we have these young people coming through who do not get offered alternative work and cannot work in the mine as far as remuneration and ongoing costs are concerned?

Mr McMILLAN: Putting aside for a moment what I can fairly describe as your philosophical view about how that scheme should be funded, if appropriate amendments to the current workers compensation scheme can be made, you do not object to the notion that there does not need to be an entirely separate bureaucracy to deal with coalminers?

Mr Smyth: Just on that point, I am actually sitting on that review of the workers compensation legislation for the union. I have to see from my perspective how that pans out, what that looks like. It is quite simple I suppose from my perspective: as long as our members we represent or coalmine workers who contract it are looked after into the future in simple layman's terms—

Mr McMILLAN: To break it down, what you mean by 'looked after into the future' is covered for medical expenses associated with their illness?

Mr Smyth: That is one, yes.

Mr McMILLAN: Compensated for loss of earnings and loss of earning capacity as a result of their changed work capability?

Mr Smyth: That is correct.

Mr McMILLAN: Anything else?

CHAIR: Would that include bonuses as well?

Mr Smyth: I do not know. From my perspective, in simple terms, I can only use an example of a person. If a person is working in the mine getting $100,000 a year and he or she suddenly loses their job and they have to work doing another role that pays $70,000 a year, how is that gap or that top-up of the wages done? That is my view. Through no fault of their own, they have lost their employment. They should be compensated for that loss of employment, that top-up of the wages—whatever you want to call it.

Mr McMILLAN: I asked you whether there were any other aspects of support.

Mr Smyth: Not off the top of my head. There is the ongoing rehabilitation. That is important. We can pay for their medical bills, but the other part of that is their ongoing rehabilitation as they go on in life, whether they have to be on oxygen or whether they need physio or whatever it may be. I do not know whether that is what you are talking about when you talk about medical bills.

Mr McMILLAN: The current scheme under medical contemplates rehabilitation, transport and medical devices. All of those things are covered and contemplated by the current scheme.

Mr Smyth: You just have to ensure that that happens.

Mr McMILLAN: On the question of rehabilitation, you particularly made reference earlier to the fact that you are impressed by the rehabilitation focus in the United States scheme. The committee has heard some evidence from companies and workers in Queensland who have been redeployed to less dusty environments or I think what have been described as low dust environments. Is something more being done in the United States beyond simply moving someone off the longwall and into the coal handling and processing plant in terms of rehabilitation?

Mr Smyth: I cannot really comment on what happens in the workplace. What I am indicating about rehabilitation is that, when they have been evaluated for the disease, it is that part of the rehabilitation that they can do outside of the workplace that assists them. That could be a number of things that they do there, where here at the moment the rehabilitation in the workplace is to remove them to a less dusty place.

Mr McMILLAN: As we understand it, the evidence that the committee has received is that the report comes back and says, 'This person has CWP,' and the only condition placed on their employment is that they have to be working in an environment with less than one milligram of dust per cubic metre. Is something more required to rehabilitate those workers to ensure that they can have long and successful careers in the mining industry if they wish?

Mr Smyth: I believe so. That has to be the evaluation of each and every one of those people for what best suits their illness. Most of those guys will come back and say that they have zero impairment but when you talk to a number of them they are short of breath. The ironic thing is that I am interested in how the coal companies ensure that the dust is below one milligram.

Mr McMILLAN: That comes back to the question of continuous real-time dust monitoring.

Mr Smyth: Yes. When they say, 'We have moved someone to a less dusty place of less than one milligram,' they do not have the continuous dust monitors. I am not trying to digress. I am just thinking out loud. Rehabilitation to me is a number of things. It is obviously redeployment in the workplace to manage their risks there but then also the ongoing individual specific rehabilitation of that worker. Keith Stoddard, who is a guy I mentioned earlier, and a number of others are at varying levels of where they are at with the disease. It has to be specific to the person.

Mr McMILLAN: I want to take up an issue that has been pursued in this committee, particularly by the member for Whitsunday, who is not with us today, and that is the question of mental health and the effect of the re-identification of coal workers' pneumoconiosis among mineworkers in Queensland. What is being done either by the union or otherwise to ensure that we do not have a catastrophic failure of mental health amongst this same cohort of people?

Mr Smyth: From our perspective, we have our own employee assistance program. Obviously we offer it to the people. A number of those people either take it up or do not take it up. In relation to CWP, I am not aware of anyone who has taken it up from us. Most of the employers will offer it to their employees. I could not tell you whether or not they have taken it up. To me, the offering of it does not go far enough. Sometimes individuals need to protect themselves from themselves. I certainly agree that more needs to be done on the mental health side of it. We have seen Chris Byron and even Mr Rogers today who are very upset about it. I think that is something that is really lacking. That could be built in as part of rehabilitation. I know rehabilitation is long term, but that could be about real assistance with mental health issues.

Mr McMILLAN: One mine in Queensland that we are aware of has had four confirmed cases of CWP come out of that workforce. Regardless of whether they contracted CWP at that mine—and they probably did not—that is bound to have a significant effect on their colleagues, their workmates, who have seen four of their mates who have been diagnosed with this horrendous and fatal condition. What is being done to support those workforces?

Mr Smyth: I can only talk about what is probably the best practice that I have seen and that is at the Carborough Downs mine. After some discussions the company got the likes of Dr Cohen and his colleagues out to talk to the workforce. A lot of the angst is built up when people do not know the answers. They were brought out. They did a full screening program of the workers. They were brought back and returned to talk to the workers about the status of things. A good example is that there were a number of guys who were diagnosed on the ILO classification not with black lung but with dust. It was poorly dealt with by the NMA at the time who gave these guys various explanations of what it was. Those guys were ringing us up pretty stressed.

A part of that was actually getting the appropriate people to explain, 'You may have this on your classification. You do not have pneumoconiosis. You have some sort of dust on your lungs. You have to have regular X-rays at three-yearly intervals.' I know it is not EAP, but it was about the explanation. That still does not go far enough and I agree, because a number of those questions are still being asked. That is why I talk about education and awareness. There is not enough done in that space. It is something that really needs to be fixed. It is an ongoing journey. Whether it is to do with full pneumoconiosis or other issues, mental health is a big issue in the mining industry.

Mr McMILLAN: You will be grateful that I am coming to the end, as will the committee, no doubt. The committee has received evidence from the Occupational Physician from the Department of Natural Resources and Mines, Dr David Smith. He gave some evidence about a review of the Health Surveillance Unit that was undertaken in 2002.

Mr Smyth: Yes.

Mr McMILLAN: He was part of that review. One of the recommendations was for the establishment of the position of an occupational physician, which he then took up. He gave evidence to this committee that, I think, 28 recommendations were made in that report. He considered that the CFMEU objected to, first of all, the form of that report but also obstructed the implementation of those recommendations. He gave evidence that the only recommendation that was implemented was the establishment of the occupational physician and that the 27-odd remaining recommendations were not implemented. Can you give any evidence today about the union's involvement in that review and/or objections or participation in the implementation of those recommendations and, if not, will you take that on notice?

Mr Smyth: I cannot personally talk about that. I will go back a step. We would have been involved in the review because of the tripartite approach. I will take that on notice and find out. It would be remiss of me to answer that in relation to why they were opposed or objected to.

Mr McMILLAN: Dr Smith's evidence has been published by Hansard on the committee's website. Can I ask you to review that carefully and provide a detailed response to the committee?

Mr Smyth: Yes, I can do that.

Mr McMILLAN: Thank you very much, Mr Smith.

CHAIR: I am obviously quite concerned about the families of the miners who have been diagnosed with CWP. In fact, a miner's wife has said to me that even the children are getting quite upset. For example, they are talking about it in the schoolyard to the point where one child came home and said to her father, 'Are you going to die, daddy?'—which is quite upsetting. What I am asking, Steve, is how can we help the wives and the partners and the families? It is okay to bring out Dr Cohen to talk to the guys and girls working in the pits. If primary school children are talking about it in the schoolyard, can you suggest a way that we can help those families and the kids as well, particularly those living in small towns that are built around the mining industry?

Mr Smyth: I think the simplest thing is—call them workshops or whatever—to have open forums where you are engage people to come along—people who know what they are talking about for starters—and talk to the people about that. I get endless calls. I get endless requests to come and talk to people, and I do. We have put a lot of literature out around it. I have spoken to numerous wives. I have heard a lot of those stories. They are unsure. What does it mean? Is it a death sentence? I cannot answer those questions at times. I think that is the way to do it.

We talk about education and awareness. You really need to start with the basics. We had a meeting in Tieri going back three or four months when members of ours at Oaky No. 1 and Oaky North walked off the job over the X-rays. They had a meeting in town. It was an open meeting and probably 400 people turned up—their wives and everyone. It was around the issue at the time but it was also around a lot of those questions. I think we do not know enough about it. We are not providing enough information about it.

I am a big believer in having an open forum and having that discussion. It is not about a turkey shoot or anything. It is about getting the right information but with the right people, particularly around that issue. Like today, you have two guys today who were pretty upset. I know both of them and I was quite taken back. One of the gentlemen had his wife there. She was upset at the end. She came up and gave him a cuddle and asked him if he was all right. It is certainly having an effect.

I can talk from experience of my brother-in-law, who has had 35 years in the mine and is waiting for his results from his pneumoconiosis X-ray to come back, and his 12-year-old daughter—I should not laugh, but you would go silly if you didn't—asked her dad the other day did he have black lung or not because if he has he will have to get out of the mine. That is an example.

I know I have gone on a bit. I think we can be offering those open forums. Dr Cohen and his colleagues can talk to the workers and talk about the mechanism of it. I think the other part of it, in terms of talking about what it means to the families, certainly needs to be done. I think the employer needs to be doing that. I believe the employers in these mining towns have the resources, but they need to get the right people and put aside the differences. I am sure we can work, with a collective approach, to be able to do that.

CHAIR: Thank you very much. There being no further questions from the committee, I declare this hearing closed.

Mr Smyth: I just want to thank the committee. Whatever needs to be done we will work together to achieve it. I think what you are doing is great for the industry and it is welcomed.

CHAIR: Thank you, Steve.

Committee adjourned at 6.43 pm