

Response on written submissions on the extended terms of reference – relevant to the Office of Industrial Relations, Queensland Treasury

Coal Workers' Pneumoconiosis Select Committee

Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – extended terms of reference regarding occupational respirable dust exposure

Submissions to the inquiry			
	Submitter	Issue	OIR comment/response
1.	Campbell J Staines Solicitor CSM Conveyancing	<ul style="list-style-type: none"> Mr Staines expressed concerns about actinolite (asbestos) content in rock samples and an application by Hanson to expand its quarry made to the Gold Coast City Council in 2013. The submission states he has raised this issue with Workplace Health and Safety and 'Ministers' but has been ignored. 	The OIR has no record of incoming correspondence to the Minister responsible for work health and safety or Workplace Health and Safety Queensland from Mr Staines (checked on 4 Sep 2017).
3.	Bernard Corden	<ul style="list-style-type: none"> Mr Corden expressed concerns that respirable crystalline silica is much more toxic than coal dust and that workers' compensation statistics indicate there are very few new cases of silicosis arising from Australian industries. However, he is concerned that these statistics may be unreliable in determining its prevalence due to its prolonged latency period. 	Up-to-date Queensland workers' compensation claims information for CWP and silicosis since 1 July 1997 is provided in the response to Question 1 from the Committee included in this submission.
8.	Bruce Ham	<ul style="list-style-type: none"> Mr Ham advises the Qld Coal Employees' Health Scheme under the Queensland Coal Board was not restricted to coal workers and included some workers from Dalrymple Bay Coal Terminal and some non-coal mine employees. The submission notes initial coal industry health assessments indicate workers coming from quarry, tunnelling 	The OIR entered into a Memorandum of Understanding (MOU) with the Department of Natural Resources and Mines in October of 2016 which provides for the exchange of information between the departments in relation to Coal Mine Dust Lung Diseases (CMDLDs). The OIR provides information to DNRM regarding workers' compensation claims

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		<p>and civil works sectors may have adverse respiratory impacts.</p> <ul style="list-style-type: none"> Mr Ham supports legislating for a central entity or at the least an exchange of data between equivalent State bodies because of the high level of mobility between employers, industries and States. His view is that there is potential for data sharing between organisations to extract a more comprehensive data set and that as long as confidentiality protocols are agreed, the register of miners, can be matched by name and date of birth to extract health and health outcome data on miners from databases held by other authorities. 	<p>data for CMDLDs to ensure that there is accurate understanding of the prevalence of CMDLD cases and ensures more accurate reporting.</p>
9.	Dr John Schneider	<ul style="list-style-type: none"> Dr Schneider's submission provides some comments on health surveillance of workers exposed to respirable crystalline silica. In his view, many medical practitioners have limited occupational medicine awareness and training for health surveillance concentrates on the fitness for work aspects of the medical rather than the identification of hazardous exposures such as carbon particulates. 	<p>The OIR will be working with scheme insurers to ensure that they will be using the same cohort of medical practitioners who will be providing services to the Coal Mine Workers' Health Scheme administered by the Department of Natural Resources and Mines (DNRM). This will ensure consistency between the workers' compensation scheme and DNRM's health surveillance scheme.</p> <p>Further DNRM has established, in consultation with Queensland Health, a Clinical Pathways Guideline for the Coal Mine Worker Health Scheme which will also be followed in the workers' compensation scheme for consistency. Information sessions on the Clinical Pathways Guideline for relevant doctors on the Medical Assessment Tribunals under the <i>Workers'</i></p>

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			<i>Compensation and Rehabilitation Act 2003</i> (the WCR Act) are currently being arranged.
10.	Maurice Blackburn	<ul style="list-style-type: none"> Maurice Blackburn support the recent legislative amendments in the <i>Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Act</i> which introduced provisions in the Workers' Compensation and Rehabilitation Act 2003 to permit workers with pneumoconiosis to re-open their workers' compensation claim is their experience disease progression. In their view the "re-opening" provisions are a welcome enhancement to the statutory benefits available to workers but draws attention to the absence of a similar provision in respect of common law damages. Maurice Blackburn submit that the common law "once and for all" rule should be modified by legislation so that where a plaintiff develops an injury or disease which is new or of a more serious character they can apply to the court for further damages. In their view a worker diagnosed with asbestosis cannot bring a damages claim for mesothelioma or lung cancer after an original common law claim for asbestosis has been settled and that an award of "provisional damages" involves an immediate assessment of all losses, except those attributable to the happening of a future 	<p>It is recognised that in some circumstances the "once and for all" nature of the common law system in Queensland has the potential to lead to injustice to workers with pneumoconiosis (e.g. silicosis) who experience disease progression. This injustice was addressed in the <i>Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Act 2017</i> by the provisions which allow re-opening of a statutory claim for pneumoconiosis, to allow a worker to access further statutory compensation where they experience disease progression. The Amendment Act does this without permitting the re-opening of common law claims.</p> <p>A worker who experiences deterioration of a pneumoconiosis injury can "re-open" their workers' compensation claim where their deterioration puts them into a higher pneumoconiosis band. A worker who developed a new disease is not prevented under the Act from accessing further common law damages as the "once and for all" restriction only applies in respect of the same injury.</p> <p>For example, a worker who has settled a claim for asbestosis will not be prevented from bringing a damages claim for mesothelioma or lung cancer</p>

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		<p>event, most usually the development of a new or more serious injury or disease.</p> <ul style="list-style-type: none"> They further suggest that the regulatory pendulum has swung too far in favour of large employers and a culture of reckless indifference, if not gross negligence has been allowed to thrive in Queensland's workplaces. 	<p>except where the terms of their settlement specifically include compensation in respect of those diseases. In those circumstances it would not be appropriate for a worker to bring a new damages claim in respect to any injury for which they have already received compensation.</p> <p>On 5 April 2017, the Honourable Grace Grace MP, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, announced that a best practice review of Workplace Health and Safety Queensland (WHSQ) in response the tragic fatalities at Dreamworld and an Eagle Farm worksite in 2016.</p> <p><i>The Best Practice Review of Workplace Health and Safety Queensland Final Report</i> (July 2017) has recommended that WHSQ re-balance its priorities in favour of 'hard' compliance work and redeploy some resources away from the capacity building area, with a view to increasing on the ground visibility and activity of the inspectorate (Rec 1, page 8). This recommendation has been accepted by the Government.</p> <p>The Review Report also recommended creating two new offences regarding negligence causing death (industrial manslaughter) in the Work Health and Safety Act 2011. These new proposed offences are included in the Work Health and Safety and Other</p>

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			Legislation Amendment Bill 2017 introduced in Parliament on 22 August 2017.
12.	Queensland Resources Council (QRC)	<ul style="list-style-type: none"> The QRC has made two previous submissions on coal mine dust lung disease and the management of respirable mine dust in coal mines, therefore their submission is limited to exposure to respirable dust other than in coal mines. Much of the QRC's previous submissions addressed the reasons for the normalisation of the risk in relation to coal mine dust, which stemmed from the fact that for many years there was no evidence of CWP. This does not appear to be relevant to silicosis as the risk has been widely acknowledged both within and outside of the mining industry. The QRC is not opposed in principle to a reduction in the Occupational Exposure Limit for silica, however it believes that the OEL should be based on scientific evidence being reviewed by qualified specialists on a nationally consistent basis. The QRC submit that the OEL should be set through the current review of exposure levels being undertaken by Safe Work Australia and that appropriate transition timeframes should accompany any reduction and engineering controls will be required, and these will take time to develop, build, test and refine. Miners may also currently find it difficult to reliably detect crystalline silica exposure at levels as low as 0.05mg/m³. 	The Office of Industrial Relations supports the review of the national exposure standards for airborne contaminants being conducted by Safe Work Australia and also acknowledges that any reduction in exposure standards should be supported by scientific evidence.

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		<ul style="list-style-type: none"> The QRC is of the view that the Select Committee to only consider applying its recommendations to “other workers” in circumstances where the type of tasks and supporting scientific evidence indicates that the level of exposure may result in a significant adverse health effects. 	
13.	Cement Concrete and Aggregates Association	<ul style="list-style-type: none"> The Cement Concrete and Aggregates Association’s (CCAA) main issue in relation to occupational respirable dust exposure for workers in their industry relate to respirable crystalline silica. The CCAA recommended and strongly supported the 2004 reduction in the Occupational Exposure Standard for respirable crystalline silica (RCS) from 0.2 mg/m³ TWA to 0.1 mg/m³ TWA. Since then, the available data would suggest that the incidence of silicosis has progressively declined to very low levels. The industry continues to recognise the health impacts of RCS and has supported the current Safe Work Australia Workplace Exposure Standard (WES) of 0.1mg/m³ on an 8hr time weighted average to minimise the incidence of silicosis. The CCAA is of the view that any change to QLD’s OEL must be cognisant of Safe Work Australia’s review and notes there are practical difficulties in monitoring lower levels of exposures that need to be taken into account, particularly the statistical confidence of results at very low levels. 	The Office of Industrial Relations supports the review of the national exposure standards for airborne contaminants being conducted by Safe Work Australia and also acknowledges that any reduction in exposure standards should be supported by scientific evidence.

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19.	Safe Work Australia	<ul style="list-style-type: none"> Workplace Exposure Standards – for coal dust, silica and dust listed in the <i>Workplace Exposure Standards for Airborne Contaminants (2012)</i>. The review of exposure standards is expected to be finalised in 2018. SWA is in the process of updating Schedule 14 of the model WHS Regulations which specifies chemicals that require health monitoring – including monitoring for crystalline silica. Updated guidance material is expected to be published in late 2017. Coal dust is not specified in Schedule 14 however a person conducting a business or undertaking is required to deal with the risk to workers and other persons at a workplace and health monitoring may be a reasonably practicable measure to discharge obligation. 	<p>The Office of Industrial Relations supports the review of the national exposure standards for airborne contaminants being conducted by Safe Work Australia and also acknowledges that any reduction in exposure standards should be supported by scientific evidence.</p> <p>Under section 49 of the WHS Regulation, no person at the workplace is to be exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.</p> <p>Under section 368 of the WHS Regulation, a person conducting a business or undertaking must ensure health monitoring is provided if a worker is carrying out ongoing work using, handling, generating or storing hazardous chemicals and there is a significant risk to the worker's health because of exposure to a chemical mentioned in Schedule 14 of the WHS Regulation. Schedule 14 requires health monitoring for crystalline silica, through methods such as standardised respiratory function tests and chest x-rays.</p> <p>Under the WHS Regulation, health monitoring must also be provided if a worker will be exposed to other hazardous chemicals not listed in Schedule 14, if there is a significant risk to the worker's health, and there are valid techniques to detect the effect on the worker's health or there is a valid way of determining exposure</p>

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			<p>and it is uncertain whether exposure has resulted in the exposure standard being exceeded.</p> <p>The OIR supports the view this means that although coal dust is not included in Schedule 14, given there are valid techniques available to detect effects on worker health (e.g. chest x-rays, spirometry (lung function) tests) a health monitoring program in relation to coal dust would be considered a reasonably practicable measure required to be implemented by a person conducting a business or undertaking under the model WHS laws.</p> <p>The primary duty of care under the WHS Act includes ensuring, so far as is reasonably practicable, that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury to workers arising from the conduct of the business or undertaking.</p>
25.	Shane Brunker CFMEU	<ul style="list-style-type: none"> Concerns about how 'fly ash' is being treated by generation companies and workers being exposed to hazardous side effects. Refers to MSDS for 'fly ash' and engineering controls being used to avoid exposure and limited use of respirators Concerns about 'pulverised fuel' and the potential for explosion. 	<ul style="list-style-type: none"> Pulverised fuel does pose an explosion risk. Obligation holders must identify and manage hazardous areas associated with pulverised fuel under the WHS Act and regulations. The power-station audit program explicitly examined the management of hazardous areas to prevent explosions. Operators may arrange clean-ups prior to announced visits, however, clean-ups cannot hide improper design (such as poorly positioned cabins)

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		<ul style="list-style-type: none"> • Submits there are no instruments to measure the level of pulverised fuel or fly ash in the generators or dust suppression methods used. • Submits generator managers arrange clean-up before site visit but then drop standards a few days after. • Train unloading: cabins don't have positive pressure sealing. Cabins with poor air conditioners – always dusty inside. Workers are unprotected in the unloading shed and there is minimal dust suppression. • Coal stockpiles – refers to poor work practices causing dust in the 1990s and 2000s. New conveyors and stackers/reclaimers have dust suppression systems but some remote locations do not have any stockpile area dust suppression. • At another site (not specified) the coal stockpile has water sprays but the pump station does not have sufficient capacity. The roadways along the conveyors still become dusty when vehicles are driving along them as the water sprays only wet the stockpiles. 	<p>nor inadequate hazard assessment and maintenance systems. Unannounced visits have a role in identifying chronic low-level leaks and poor housekeeping practices. Unannounced visits will be utilised strategically within the dust projects.</p> <ul style="list-style-type: none"> • The condition of cabins (and the air-conditioning filters) will be checked as part of the port audits currently underway. • The OIR is arranging a meeting with Mr Bruncker to discuss issues raised in his evidence to the Committee on 23 August 2017.