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Office of the President

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Our ref (KB/ACT)

Committee Secretary
Coal Workers' Pneumoconiosis Select Committee
Parliament House
George Street
Brisbane QLD 4000

By email: cwpsc@parliament.qld.gov.au

Dear Committee Secretary

**Coal Workers' Pneumoconiosis (CWP) - Other Occupational Respirable Dust Issues
(Extended Terms of Reference)**

Thank you for the opportunity to provide a submission to the Coal Workers' Pneumoconiosis Select Committee ("**Committee**").

The Queensland Law Society ("**Society**"), in carrying out its central ethos of advocating for good law and good lawyers, endeavours to be an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader community. Many of our members have first-hand experience in assisting those who suffer from the devastating effects of pneumoconiosis. We believe that it is essential that appropriate action be taken to address the cause and impacts of this disease.

To that end, the Society has been participating in the Coal Workers' Pneumoconiosis Stakeholder Reference Group which has developed proposals to address the difficulties in the diagnosis of coal workers' pneumoconiosis ("**CWP**") and the rehabilitation and compensation afforded to workers suffering from this disease and similar diseases.

This group has reported its work to the Committee and draft legislation has now been introduced into Parliament as the Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) Amendment Bill 2017. This bill was referred to the Finance and Administration Committee for further consideration and accordingly, we will direct our specific comments about the bill to that committee.

In respect of this inquiry, we would like to respond to some of the recommendations in the "Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland" (the "**Report**") prepared by this Committee. Firstly, we thank the Committee for their work on this report. It is an important document for the health and safety of Queenslanders.

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Our comments and queries are outlined below:

Process for introduction of new legislation to implement the recommendations

Before commenting on the substance of the Report and its recommendations, the Society understands that the Committee has taken on the role of developing legislation to implement the Committee's own recommendations, and that it has also been given an oversight role for review of implementing legislation under the Committee's Terms of Reference. Further, the Society understands that the Committee may be seeking to introduce this legislation prior to the end of the usual 90 day period for the Minister to respond to a select committee's recommendations.

This is an unusual approach and the Society is keen to gain a better understanding of how the process for the introduction and passage of the proposed legislation will work – and in particular whether it will be subject to usual good governance and transparency measures such as review by the Scrutiny of Legislation Committee, and public consultation.

These good governance measures appear particularly pertinent given the unusual approach to the development of the legislation, and the complex and broad-ranging nature of the recommendations it would be seeking to address – which give rise to a risk of unintended drafting consequences and potential for contravention of fundamental legislative principles.

Recommendations 1-16 – Establishment of an independent Mine Safety and Health Authority (generally)

The Report recommends the establishment of the Mine Safety and Health Authority (the "MSHA"). The Society would like to see details of all of the proposed powers to be given to the Commissioner and the MSHA to ensure that these are not excessive and are commensurate with similar bodies.

The proposed governance structure for the MSHA as shown in Appendix F is also unusual for a significant regulatory authority, in particular in that it (and the Commissioner) are not accountable to a government minister. This has the potential to give rise to concerns about the accountability of the Commissioner and the MSHA and whether a parliamentary committee (not the government of the day) is best placed to provide oversight and direction to them. The Society would therefore also like to better understand the proposed governance structure of the proposed MSHA, to ensure it is appropriate and commensurate with similar bodies in Queensland.

Recommendation 8 - The Commissioner should have an express power to direct inspectors, including the chief inspector, inspection officers and authorised officers, in relation to the investigation of a possible offence or offences against the mining safety and health Acts.

We refer to our comments above. We also note that under workplace health and safety legislation, matters can be referred to the Director of Public Prosecutions for investigation and

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prosecution and we would presume that a similar referral mechanism can be put in place in respect of this new authority.

Recommendation 17 - The Mine Safety and Health Authority should be funded by a dedicated proportion of coal and mineral royalties paid to the Queensland Government, to be determined in consultation with industry and unions after an assessment of the operating costs of the Authority is undertaken. The dedicated proportion of the royalties should be fixed by regulation and reviewed periodically by the parliamentary committee responsible for the Mine Safety and Health Authority.

The Society requests further detail about whether the funds will be directed from existing royalties or whether a further contribution from mine operators will be required.

Recommendation 18 - Any surplus income derived from the dedicated proportion of royalties that is not allocated to, or expended from, the annual budget of the Authority should be invested with the Queensland Investment Corporation for the future research and the operational needs of the Authority.

As stated in the response to recommendation 17, we request further detail about whether the funds will be directed from existing royalties or whether a further contribution will be required.

Recommendation 19 - An Occupational Exposure Limit (OEL) for respirable coal dust (including mixed mineral coal mine dust) should be set requiring duty holders to ensure a 'coal worker' is not exposed to atmosphere containing respirable dust exceeding an average concentration, calculated under AS 2985, equivalent to the following for an 8-hour period—

- for coal dust – 1.5mg/ m³ air, and
- for silica – 0.05mg/m³ air.

Section 89 of the *Coal Mining Safety and Health Regulation 2001* should immediately be amended to give effect to this recommendation. Consideration should then be given to relocating the OEL provisions within the *Coal Mining Safety and Health Act 1999*.

The Society requests that any notice of proposed amendment to the Regulation be made public prior to its introduction so as to give mine operators sufficient time to obtain appropriate advice and implement systems for monitoring of the OEL in line with any amendment.

Further, it is unusual for legislation to implement changes of this nature (which typically require engineering changes that can take some time to develop and implement) with immediate effect, and no transitional period. The Society suggests that a reasonable transitional period ought to be determined following consultation with relevant stakeholders, including appropriate health advisors, so that affected parties are provided the opportunity to mitigate any adverse impacts associated with required changes and to assure a reasonable degree of stability which is proportional to the required health protection imperatives.

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Recommendation 20

a) An underground mine operator should be required to submit to the Authority a dust abatement plan and ventilation plan for approval by the Commissioner for Mine Safety and Health before any underground coal mining operations are commenced; and again, with appropriate amendment as necessary, before mining operations are commenced on any new longwall block.

b) An above-ground (surface) mine operator should be required to submit to the Authority a dust abatement plan for approval by the Commissioner for Mine Safety and Health before any mining operations are commenced.

c) The Commissioner for Mine Safety and Health should take into account the mine operator's compliance history and record of respirable dust monitoring results in deciding whether to approve, reject, or require amendments to the dust abatement and/or ventilation plans.

As to recommendations 20(a) and 20(b), further detail needs to be provided on the type, form and substance of any plan including how existing safety plans are to be used and what existing operations will need to do to ensure this can continue to operate.

As to recommendation 20(c) we are concerned by the amount of power given to the Commissioner and query what rights an operator will have if the plan is rejected, including the right to continue operating. There will need to be a right of review and appeal and ability for these processes to be expedited to ensure that a balance can be struck between the mine's continued operation and the safety of workers.

Recommendation 21

It should be an offence for a mine operator to commence or continue mining operations, without prior approval by the Commissioner for Mine Safety and Health of the required dust abatement plan and, where applicable, the required ventilation plan for the relevant mining operation.

Without being appraised of further details, the Society is concerned by this recommendation. While health and safety are paramount, until details are provided we cannot comment on the merits of such an offence and the impact that this will have on mine operations.

Recommendation 26

An industry working group including coal mine operators, unions and government should be tasked with exploring the use of real time personal dust monitors as a compliance tool, including canvassing amendments to Recognised Standard 14 on monitoring respirable dust in coal mines, to enable the use of real time personal dust monitors for compliance monitoring and reporting.

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The Society believes that in addition to these groups, scientists, including medical practitioners, should be involved in such trials to ensure their accuracy even if only in an auditing capacity.

Recommendation 27

The definition of 'further sample' in section 89A(5) of the Coal Mining Safety and Health Regulation 2001 should be amended to allow the use of real time personal dust monitors, such as the Thermo Scientific PDM3700, for resampling after a trigger event.

If this recommendation is to be adopted, we request that our members are provided with sufficient notice of the change to the regulation so that they may advise their clients.

Recommendation 28

All commercial providers of atmospheric dust monitoring for the purposes of compliance with the regulation should be required to be approved by the Commissioner for Mine Safety and Health, having regard to the expertise and qualifications of the person or entity conducting the monitoring.

The Society is concerned with the potential practical issues arising from a system where only the Commissioner can approve these providers. Again, the Society submits that further detail is required about how this will affect current and ongoing projects.

Recommendation 31

Section 119(1)(b) of the *Coal Mining Safety and Health Act 1999* and section 116 of the *Mining and Quarrying Safety and Health Act 1999* should be amended to remove the requirement for industry safety and health representatives to give 'reasonable notice' to the mine operator before the power to enter a mine site is exercised.

The Society does not believe this recommendation is appropriate. Operators and occupiers should, at the very least, be given notice that an industry safety and health representative ("ISHR") is to enter their premises. The notice only needs to be "reasonable" which means that an ISHR can explain a need to inspect a site in a short timeframe, if the circumstances require.

Recommendation 39

(h) The approval of doctors to undertake the respiratory health assessments for the early detection of CMDLD under the scheme should become the sole responsibility of the Mine Safety and Health Authority. (Monash recommendation 9)

(n) The Coal Workers' Health Scheme should conduct ongoing individual and group surveillance of health data collected under the scheme, to detect early CMDLD and analyse trends to disseminate to employers, unions and coal mine workers. (Monash recommendation 15)

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(o) Coal workers should have exit respiratory health assessments (retirement examination) regardless of whether they leave the industry due to ill-health, retirement or other reasons. (Monash recommendation 16)

In respect of recommendation 39(h), we are concerned that if doctors are only to be approved by the MSHA, then there may be a perception that their advice on findings is not independent. We submit that should the doctors be approved wholly by a separate body, or at least in consultation with a separate body, this perception may be avoided.

As to recommendation 39(n), we note that this dissemination needs to align with Queensland's Information Privacy Principles ("IPP").

Recommendation 42

Health assessment data should be captured and stored digitally in a health assessment database in a manner that allows regular and meaningful surveillance, so that it may be used to identify trends in disease, inform policy decisions and identify regional areas or individual mines for potential scrutiny. (See also Recommendation 39(l))

As set out above, this data capture and storage needs to comply with the IPP.

Recommendations 43, 44, 45, 46 and 65

- **Recommendation 43 - Health Assessments under the Coal Workers' Health Scheme should be required for all coal workers, removing the current exception for workers employed for a 'low risk task'.**
- **Recommendation 44 - All coal workers should be required to undertake a health assessment prior to commencing work in the coal industry, including coal transportation and handling outside coal mines.**
- **Recommendation 45 - All underground coal mine workers should be required to undertake a health assessment every three years.**
- **Recommendation 46 - All other coal workers should be required to undertake a health assessment at least every six years.**
- **Recommendation 65 - An expanded or additional category of workers, defined as 'coal worker', should be established to include workers involved in the transportation and handling of coal outside a 'coal mine' including rail workers (e.g. coal train loaders and drivers), port workers (e.g. dozer, stacker/reclaimer, and ship loader operators), power station workers, and maritime workers (e.g. tug and line boat crew).**

In respect of these recommendations, we believe it is necessary for there to be consistency in definitions in both this new scheme and the *Coal Mining Safety and Health Act* ("CMSH Act"). We note the latter currently includes a definition for a "coal mine worker".

We note under recommendation 65 the definition of "coal worker" is to be expanded.

Care will need to be exercised in how this regime (currently contained in the CMSH Act and CMSH Regulations), could be expanded to cover workers currently falling under the

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Workplace Health and Safety Act ("WHS Act") and the Transport (Rail Safety) Act ("TRS Act").

Simply extending the coverage of the CSMH Act and Regulations to those workers (and excluding them from their current safety regimes) is not appropriate – the CSMH Act contains provisions which are specific to the conditions and structure of a coal mine and a blanket application is not suitable for rail and port workers.

Rather, to ensure a consistent approach, it is likely that it would be necessary to duplicate relevant provisions of the CSMH Act and Regulations into appropriate parts of the WHS Act and TRS Act. This has the potential to create some complexity and should be done with caution.

Given that the Committee has not yet addressed or reported on the expanded terms of reference relating to port and rail workers, consideration should be given as to whether any changes to implement recommendation 65 in particular may be premature.

Subject to the above, we suggest that any definition of "coal worker" or "coal mine worker" needs to adequately cover those people who are exposed to coal/coal dust for a certain period time, given that CWP is based on cumulative exposure over time (we note the workers' compensation amendment have cited a period of 6 months). Caution also needs to be exercised to avoid including people who will not be exposed (this will avoid unnecessary testing and cost). There should be consistency in health assessments, which should be developed by appropriately qualified health advisors.

Recommendations 52 and 53

- **Recommendation 52 - Approved Medical Advisors should be approved as such by the Commissioner for Mine Safety and Health.**
- **Recommendation 53 - A subset of Approved Medical Advisors with appropriate qualifications and experience in diagnosing occupational respiratory diseases should be approved by the Commissioner for Mine Safety and Health to conduct respiratory health assessments and designated 'Approved Medical Advisor – Respiratory (AMA-R)'. (See also Recommendation 39(i)).**
- **Recommendation 54 - All health assessments under the Coal Workers' Health Scheme should include spirometry testing undertaken by an appropriately qualified and experienced person or provider, approved by the Commissioner for Mine Safety and Health.**

We refer to our response to recommendation 39(h). Without being provided with more detail to support the benefits of the approval being made solely by this body, including the qualifications the commissioner, this process may be more appropriately managed by the Queensland Health, or in conjunction with, this scheme.

Recommendation 62

The Workers' Compensation and Rehabilitation Act 2003 and Workers' Compensation and Rehabilitation Regulation 2014 should be amended as necessary to provide for:

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- a) the introduction of a medical examination process, with costs to be borne by insurers, for former or retired coal workers who have concerns that they may have CWP or CMDLD and who retired or left the mining industry prior to the commencement of the proposed new provisions of the Coal Workers' Health Scheme for retired miners
- b) statutory clarification that a worker with CWP or CMDLD who experiences disease progression can apply to reopen their workers' compensation claim to access further benefits under the workers' compensation scheme
- c) enhanced rehabilitation (including, where appropriate, pulmonary rehabilitation) and return to work programs for those diagnosed with CWP or CMDLD, to assist them back into suitable alternative employment
- d) the alignment of the workers' compensation scheme with proposed new arrangements for the Coal Workers' Health Scheme.

We note that recommendations 62(a) and (b) have now been incorporated into the Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) Amendment Bill 2017. We are pleased that the proposed amendments have been broadened to cover pneumoconiosis generally.

Recommendation 68

The committee recommends that there be established, as a statutory committee of the parliament, a Committee on Public Administration. The committee is to have the power to investigate matters of public administration, on its own motion or on reference from the Assembly. The committee is to consist of three members nominated by the Leader of the House and three members nominated by the Leader of the Opposition. The committee is to have the power to call for persons, documents and other items.

Again, the Society welcomes further details of this committee, its functions and powers. This recommendation is clearly very broad-reaching, and like a number of the Committee's recommendations, has implications that extend well beyond the immediate issue of managing the risk of CWP and other dust diseases. It is important that these broader considerations are fully considered prior to adoption.

Thank you again for the opportunity to make a submission to this inquiry. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitors, Vanessa Krulin on _____ or Kate Brodnik on _____

Yours faithfully

~~Christine Smyth~~
President