



Centennial Coal

Submission to:

Productivity Commission

**Inquiry into National Workers Compensation &
Occupational Health and Safety Frameworks**

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INTRODUCTION

Centennial Coal Company Limited is the largest underground black coal mining producer in New South Wales. The company operates five (5) mines in the Lithgow region, five (5) in the Lake Macquarie/Central Coast area and one (1) in the Southern Highlands region of the state. Centennial also operates one (1) mine in Central Queensland. The company also has reserves of coal for future expansion in the Lithgow and Hunter Valley areas of the state.

Coal produced is consumed primarily for electricity generation and is purchased by all the major power generation companies within the state of New South Wales. The company also exports both hard and semi-soft coking coal to various markets throughout the world. Centennial employs approximately 1500 people with a flow on effect of three (3) times this number through the engagement of contractors and other service provider companies that provide services to the operations throughout New South Wales and Queensland.

Centennial Coal is a member of the New South Wales Mineral Council and supports the submission lodged on behalf of its members including Centennial Coal. Centennial Coal has decided to provide its own submission due to the significant impact workers compensation and safety issues have on its operations and its business. These issues are not only of importance to Centennial Coal but are also a vital ingredient to the continued success of the black coal industry in New South Wales.

WORKERS COMPENSATION FRAMEWORK

NATIONAL FRAMEWORK

Centennial Coal supports the adoption of a national framework for workers compensation. A national framework would be seen as simplifying arrangements that currently exist for employers who operate in several states with various levels of legislation to encounter when dealing with the same subject matter. Workers compensation legislation should be uniform across all states to avoid the current situation, which only results in increased administration and premium costs to companies in the coal industry.

A national workers compensation framework would avoid the duplication of legislative interpretations from state to state as well as providing reduced cost to business owners through improved efficiencies by standardisation of systems and administrative processes. More importantly the writing of a common piece of legislation should provide stakeholders with the opportunity to consult with government on the drafting of such legislation to ensure a more equitable and progressive document. If a national framework were to occur it must be innovative and flexible with a best practice and non-prescriptive legislative approach.

Centennial Coal considers that within the framework a simplified method should be adopted to allow companies to undertake the option of self-insurance. We consider that a stringent actuarial investigation should be undertaken for companies that wish to take such an approach but at least the opportunity should exist for companies to opt out of the system to self insure. This option is currently not available for the coal mining industry in New South Wales.

Currently in New South Wales the coal mining industry is a captive workers compensation insurance policy holder with Coal Mine Insurance which is a subsidiary company of Coal Services Pty Limited. Due to state legislation all coal employers must have their workers compensation insurance policies held by Coal Mines Insurance. This is a monopolistic situation, which prohibits any competition and engenders the setting of premiums based on what the financial requirements are to ensure a balanced budget.

For the past five years Centennial Coal has made significant advances in designing systems and processes for its operations to ensure a safer work environment for its employees. The adoption of these measures has seen Centennial Coal achieve substantial safety improvement at all of its operations however the lower injury and frequency results have not been reflected in workers compensation premium reductions.

In fact over the same time period workers compensation costs have increased by 50% despite improved safety performance and a reduced number of employees at our sites. This makes management of our workers compensation extremely difficult with the realisation that no matter how good the safety management system is that you implement it will have no effect on reducing premium cost.

Centennial Coal estimates that for the year 2003/04 the company will be paying approximately \$25,000,000 in workers compensation insurance premiums, for its New South Wales operations, which equates to approximately \$16,000 per employee. At one of our sites the figure is close to \$35,000 per employee for the year. These figures are based purely on premium calculation, they do not take into account any adjustments that may be made by Coal Mines Insurance to increase prudential margins which according to sources is likely to occur this in this years premium. Due to improved safety performance there has been a decline in the number of claims from our operations but this is not reflected in the insurance premiums.

SCHEME STRUCTURES

Centennial Coal believes that benefit structures under a national framework should be fair and equitable to the employee and encourage a return to work attitude. However current benefits paid to coal industry employees are far in excess of those available to people in outside industry and should be brought into line with the mainstream. Furthermore we consider that any increase in benefits currently paid to employees in the New South Wales coal mining industry will result in an impact on the viability of operating our business. Increased benefits would also result in further disincentive for employees to return to work.

Workers Compensation Payments

Employees in the New South Wales mining industry receive entitlement to workers compensation of 78 weeks. This is far in excess of the state legislation, which allows for 26 weeks entitlement. The time period is excessive and encourages a culture of not returning to work. A national framework should provide a suitable time frame for injured employees to return to work but at the same time have in place measures to encourage people to return to work.

Medical Expenses

All fees charged in relation to a workers compensation claim should be regulated. Currently the fee for attending a Doctor regarding a workers compensation injury is double that normally charged for the same treatment for a personal injury. These charges result in increased claim costs, which flow on to increased premiums. Over charging and over servicing need to be monitored and systems set up within a national framework to prevent these events from occurring.

Lump Sum Payments

Legislation covering the mining industry in New South Wales provides for lump sum payments to be made to injured employees for percentage loss of use of body parts and pain and suffering. Payments under this legislation have increased dramatically in recent years with the culture within the mining industry being that these claims are being part of redundancy and retirement package payments. What is so difficult to manage these types of claims is that the legislation accepts that “nature and condition” can form part of the claim. This results in payments being made to people for disabilities that are obviously part of the ageing process.

Permanent partial and total partial lump sum payments should only be made where the injury results from a work related injury. Consideration should be given to devising a system whereby receipt of these payments prohibit the person coming back for “top up” claims and they are seen as full and total settlement of the claim. A consistent method of determining impairment needs to be devised when assessing a person’s level of disability.

Workers compensation claims should be discounted or not allowed in circumstances where the person has contributed to the injury through gross negligence or wilful misconduct. Whilst employers accept they have major responsibilities towards their employees, so to should employees be responsible in their attitudes and behaviours whilst at work.

Journey Claims

Workers compensation is designed to provide coverage for a person when they are at work or when performing their job. Journeys claims to and from work should be excluded from any legislation.

Common Law Claims

Centennial Coal considers there should be a narrowing of the access to common law as a means of obtaining a benefit. Common law should be restricted to those employees who have a severe and permanent restriction that prevents them from ever gaining any form of employment. The granting of a common law lump sum should result in the cessation of any statutory workers compensation benefits.

To reduce the number of common law claims there should be a higher focus on injury management, return to work and vocational retraining. Common law claims should be the last resort as litigation is no substitute to resuming work and only results in adversarial positions being taken between the insurer and the claimant with the legal fraternity often coming out the winners.

Legal Expenses

The current workers compensation system that exists in New South Wales encourages a litigious culture where many legal firms compete for the employees business to pursue section 66 & 67 claims as well as common law claims. Centennial Coal supports a system where there is no legal interference unless the claim proceeds through a process to common law and only when the company is negligent. The use of legal people and the court system to determine Section 66 & 67 claims is unwarranted.

The company supports a system that awards set payments for partial or total impairment for employees involved in workplace incidents. There needs to be

a set amount awarded to the employee based on a table of disability percentages. To determine the percentage of impairment applicable to the employee there must be an industry panel of occupational physicians appointed who determine the level based on their medical examinations. In adopting this method there is no need for the legal profession to become involved which in turn will assist to reduce scheme costs.

Injury Management

To avoid lengthy periods of an employee being on workers compensation a national framework should promote early injury intervention and return to work. This requires active participation on the employee's part and rehabilitation processes that return the person to their pre injury level of duties. The employee must actively participate in the return to work program and companies must provide professional assistance through occupational therapists and medical practitioners to provide a pathway of monitoring and designing programs to return the employee to his pre injury duties.

Return to work programs must be staged based with milestones determined as to the progress of the person. If it is becoming obvious that the person will be unable to return to the workplace then vocational retraining must be initiated. All too often this is overlooked as the most suitable method to return injured workers back into the workplace. The cost of not pursuing vocational retraining is high not only as a financial factor also as a high personal cost to the employee who typically suffers from low self esteem and a loss of worth.

Premium Determination

Methods of determining premium should be focussed on being experience based. This provides rewards for companies who have in place good safety management plans and also provides an incentive to continually strive to improve health and safety systems and to promote structured return to work programs. By adopting an experience based system it ensures that cross subsidisation between companies and industries does not occur and keeps a focus on the individual business unit to continually improve its safety performance. Responsibility for enacting systems to improve safety

performance and hence workers compensation performance should always rest with the individual business unit.

Private Insurers

Centennial Coal believe that there needs to be competition for the provision of workers compensation insurance throughout all industry. The national model should provide for companies to opt out of the national arrangements and seek coverage by a private insurer, this promotes choice for companies. The adoption of such a framework would provide for a private company to offer coverage across all states for the one employer, which results in greater flexibility and competition.

Summary

The New South Wales coal industry has its own industry specific workers compensation scheme and insurer. Irrespective of what industry people work in they should be covered by the same workers compensation legislation. The coal industry is exempt from workers compensation legislation that applies to all other employers in the New South Wales in relation to benefits payable to employees; this is to our detriment. While not wanting to diminish the importance of providing injured employees with adequate workers compensation insurance entitlements it should be noted that the current arrangements are becoming cost prohibitive.

Centennial Coal supports a single piece of Federal legislation to cover workers compensation throughout the country. The creation of such legislation would assist coal companies in New South Wales to employ more people and to achieve a higher rate of return for their shareholders by the introduction of common systems and practices which will result in more efficient workers compensation models. Common legislation would also see a level playing field for coal industry operators in New South Wales.

OCCUPATIONAL HEALTH & SAFETY

Centennial Coal supports the establishment of a single piece of Federal Occupational Health & Safety legislation which would result in the elimination of state based legislation. The demise of the multiplicity of legislation concerning the same issue will result in improved administration and clearer understanding of compliance requirements.

All encompassing Federal legislation will provide a standard approach to occupational health and safety throughout Australia, which should result in the adoption of the most suitable systems and processes being adopted to improve safety performance and awareness.

An overriding legislative framework needs to be developed which sets out minimum standards that must be adopted by all employers. The legislation should be drafted to take a minimalist intervention approach with an emphasis on the work site implementing systems and processes that are based on site specific needs and determined by a risk assessment method. The legislation should provide for consultation with employees on site so they assist to determine what are the best occupational health and safety requirements for their operation.

An emphasis must be placed on a regulatory body encouraging best practise safety systems being developed and introduced. There must be audit procedures put in place to ensure systems are robust. Operations that are seen to be adopting best practise safety methods should be encouraged to share achievements with other operations performing similar work. This could be facilitated by members of the framework organisation actively identifying such systems and process and encouraging like organisations to adopt such systems.

Summary

Centennial Coal considers that a national framework of occupational health and safety legislation should be adopted. Initiation of such legislation would result in improved understanding of legislation, reduced administrative costs and an improvement in safety performance.