



Coal Services Pty Limited

ABN 98 099 078 234

30 January 2004

*Occupational Health Services for industry
Statistical Services
Training and Mines Rescue Procedures
Workers' Compensation Insurance for the NSW Coal Industry*

The Commissioner
Workers Compensation & OHS Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir

**Re: Inquiry into National Workers' Compensation
Occupational Health & Safety Framework**

The board of Coal Services Pty Limited (CSPL) has noted the comments contained in the Interim Report of the Productivity Commission's Inquiry into National Workers' Compensation & Occupational Health & Safety Frameworks.

Specific reference is made in the Interim Report to the workers' compensation arrangements for NSW coalminers and several coal companies, the NSW Minerals Council and the CFMEU made submissions to the Inquiry raising a number of issues surrounding the operations of Coal Mines Insurance Pty Limited (CMI), the wholly owned subsidiary of CSPL through which the workers' compensation business is transacted.

The more salient issues raised traverse the monopolistic arrangements, the cost of workers' compensation for NSW coalminers and the solvency of CSPL.

Coal Services Pty Limited (CSPL) was created on 1 January 2002, following extensive negotiations between the Federal and NSW Governments, the NSW Minerals Council and the CFMEU. All parties agreed not only to the creation of CSPL but to incorporate the functions previously undertaken by the Joint Coal Board and the NSW Mines Rescue Service to focus on three core businesses:

- Workers' Compensation Insurance for NSW coal miners (Coal Mines Insurance - CMI).
- Occupational Health & Rehabilitation (Coal Services Health).
- Mines Rescue (Mines Rescue Pty Limited).

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CSPL derives its funding from three sources:

- Premiums charged to policyholders for providing workers' compensation insurance cover.
- Returns on investments.
- Fees for services.

CSPL receives no government funding.

CSPL, through its wholly owned subsidiary CMI, is the neutral administrator of the statutory coal miners' compensation scheme and the majority of directors feel that it is inappropriate for the organisation to lobby government concerning the retention, abolition or variation of the monopoly. At the board of directors level the views of employers and employees are represented ensuring each stakeholder is in a position to be fully informed of, and to have a say in, the direction of the scheme.

However, where issues arise which significantly effect the operations of the scheme administered by CMI then the board is, of course, prepared to raise these matters with the government of the day and seek appropriate legislative change, if necessary.

Despite its normal reticence to place comment in the public domain the board feels that in the circumstances of the current review it is appropriate to make the following observations concerning the monopoly.

In recent years there have been many legislative changes underpinning significant structural reform in the Australian workplace. As the raft of legislative changes focussing on competition and social reform continue to have impact in the coal community, further changes to the structure of the industry are bound to occur. Structural reform has a cost that falls either to the government or industry or a combination of both depending on the structure of the industry prior to the reform process commencing. For example the downsizing that has occurred in the NSW coal industry of approximately 50% over the past decade has economically impacted on the workers' compensation scheme administered by CMI.

The Coal Industry has been a very strong advocate of user pays principles insisting on minimal cross subsidisation. The CMI structure accords with this industry preference. With coal industry workers' compensation structured as it is, structural adjustment costs will be borne by the industry, unless government specifically agrees to provide funds, for example to support marginal operations in order to conserve employment.

The question of CMI's current monopoly may be considered in this context. It is likely that both a "free market" position or a monopoly for workers' compensation insurance will work efficiently in economic terms. In referring to a "free market" we note that, given the high level of government regulation of the compensation insurance industry, it would be difficult to assert that a true 'free market' in workers' compensation insurance exists.

In agreeing to the establishment of CSPL the NSW Government said that there would be a review after 12 months of operation, and a second after 2 years of operation. The latter review would specifically address whether the CMI monopoly should continue. A copy of the report emanating from the 12 month review was forwarded to you previously. The second review has just commenced and is scheduled to be completed by the end of March 2004. I have attached, for your information, a copy of the terms of reference for this review.

Coal workers move around the industry. They will have jobs with any number of mines across NSW and because of this, they are exposed to the potential for injury in more than one job location during their working life. A vast majority of workers only ever work in the coal industry. Complementing this, coal companies and owners are renowned for change - mines open and close regularly and change legal ownership often. CMI provides injured coal workers with financial security and stability, both personally and for their communities, regardless of the changes in employers and ownership of mines.

It is well recognised that there are inherent health and safety risks in the coal industry. These risks include not only the potential for accidents to occur but also for diseases to occur. Most diseases are of gradual onset, and do not relate to one incident, accident or period of employment with a particular mine. The development of occupational hearing loss, chest disease or occupational cancer occurs over a long span of time, in an industry where workers move between mines. As well as the financial imperative mentioned above, the CMI scheme offers the ability to monitor the entire workforce in respect of the hazards. The costs of disease created through mining coal are then borne by the industry, through its workers' compensation scheme, rather than by the general community or the already overburdened health care system.

Following an independent review of the CMI scheme the board of CSPL has adopted the following objectives in the setting of premium rates. They are:

To be fully funded - ie to collect sufficient premiums to cover the estimated cost of claims and expenses for the following year and to maintain capital adequacy.

- (i) To charge premiums which are fair and consistent between policyholders which:
 - reflect each policyholder's underlying claims risk;
 - change as the underlying risk changes due to changes in operations, risk management and claims management (eg improved return to work).

(iii) To provide an incentive for the policyholders to reduce risk.

In summary, the premium setting process is experientially based with the cost of premiums correlated to the cost of claims for each policyholder.

The board notes that in the submission made by BHP Billiton a figure of approximately \$16,000 per year is quoted as the cost for workers' compensation of

insuring persons working in the NSW coal industry. The actual figure paid by BHP Billiton in the year referred to was \$11,269 per person. Furthermore, for the calendar year 2003 the amount paid by BHP was \$8,834 per person.

The current scheme rate for CMI is 9.8%. This compares with the NSW WorkCover rate for underground mining of 9.9%.

Comments were also made about CSPL's solvency levels. Since its creation CSPL has enhanced its solvency levels by approximately \$70M. This is ahead of its capital management plan which has as its prime targets, to maintain a fully funded scheme, to reduce the overall scheme rate and to meet APRA solvency requirements should they become applicable to CMI.

I trust that you will find these comments of assistance.

Yours faithfully

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Managing Director/CEO

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Independent Review of Monopoly Arrangement of NSW Coal Industry Workers' Compensation Scheme

Preamble

The NSW Government has agreed that the coal industry workers' compensation scheme administered by Coal Mines Insurance Pty Limited, a subsidiary of Coal Services Pty Limited, is to be independently reviewed two years after the commencement of the Coal Industry Act 2001, as recommended in the Grellman Review of 2000.

The primary purpose of the review is to critically assess the scheme's monopoly arrangements in the context of the most efficient delivery of workers' compensation services to the NSW coal industry.

Terms of Reference

- 1) Determine whether the current monopoly arrangement administered by CMI is the most appropriate vehicle to deliver a sustainable and competitive workers' compensation insurance scheme for the NSW coal mining industry.
- 2) Measure scheme costs and outcomes of the CMI scheme against
 - o NSW WorkCover
 - o The Queensland coal industry scheme.
- 3) (a) Undertake an analysis of projected CMI premiums and costs under the following scenarios/assumptions:
 - (i) Projected savings from a previous study undertaken by Ernst & Young materialise.
 - (ii) Projected savings from the Ernst & Young study fail to materialise.
 - (iii) The CMI scheme is incorporated into the NSW WorkCover scheme by 2005 (governing legislation and delivery mechanisms, including self-insurance).
 - (iv) Greater alignment of key scheme drivers between NSW WorkCover and CMI schemes by 2005 (work with shareholders to identify drivers for analysis).
 - (v) The Commonwealth Government introduces "opt out" provisions and large employers withdraw from the CMI scheme.
- (b) Assess likely future trends in claims liabilities, including an assessment of likely trends in common law and redemption claims, having regard to the age profile of the industry and possible future changes in the industry's workforce and/or legislation.

- (c) Examine the impact of the current workers' compensation arrangements on the viability of the NSW coal industry and any potential flow-on implications to the State of NSW and contrast the outcome of such examination with 2, 3(a) and (b) above.
- 4)
 - (a) Evaluate the restructuring efforts of CSPL to realise the benefits of industry specialisation.
 - (b) Against the background of CSPL's Operational Plan, review and report on the current CSPL initiatives to reduce claim costs and improve outcomes for injured workers, including recent and ongoing reforms of:

Injury and claims management processes, including scope for providing alternative work arrangements and enhancing vocational retraining.

Dispute resolution processes, aimed at ensuring that key scheme objectives such as easy access, equity, fairness, efficiency and affordability are achieved.

The opportunity to integrate objective medical assessments into the dispute resolution process.

Injury prevention initiatives, including transferring research information/results to the industry.
- 5) Compare return to work legislative drivers, incentives and barriers against other comparable and mainstream schemes. Against this background:

Compare return to work strategies and outcomes in the NSW coal industry against other comparable schemes, with particular reference to injured labour hire workers and contractors.

Assess the impact on premiums of not providing sustainable on/off site rehabilitation for injured workers based on current industry participation rates.

Review the prevalence and effectiveness of representative mine site accident prevention practices and their impact on respective colliery claim rates over the last 5 years.
- 6) Determine:
 - (a) recommendations to ensure workers' compensation arrangements for the NSW coal industry that are sustainable, competitive, equitable with other NSW industry sectors and efficiently managed.

- (b) if it is recommended that the current monopoly arrangement should cease to exist,
 - (i) the likely impact on medium to small employers in the industry;
 - (ii) the likely impact on employees/contractors in the industry;
 - (iii) the method and level of funding required to meet appropriate prudential and solvency standards, including provision for incurred but not reported (IBNR) claims in the current scheme.
 - (c) a fully costed action plan with definitive timeframes.
- 7) Provide advice/comments on issues emerging during the review which may further enhance the administration of the scheme or the corporate governance of CSPL.