



xstrata
coal

Workers' Compensation and OHS
Productivity Commission PO Box 80
Belconnen ACT 2616

To the Commissioner,

I am writing to you regarding the current Government inquiry being managed by the Productivity Commission into *Workers' Compensation* as well as *Work, Health and Safety* in Australian industry.

Xstrata Coal Australia Pty Limited is one of Australia's leading producers of export thermal coal and the largest producer of coal in NSW. Through the operation of its mines, the Company controls around **20%** of Australian thermal and semi-soft coking coal exports, and employs close to one-third of the non-contractor based workforce in NSW coal mines.

Xstrata Coal is aware of and supports the submission lodged by the New South Wales Minerals Council on behalf of its members, including Xstrata Coal. In addition, Xstrata Coal would like to take this opportunity to further emphasize from an operational perspective, the significance of those issues relating to workers compensation and health management that currently face the NSW coal industry.

Continual improvements have occurred in Xstrata's safety performance over recent years, both in terms of lower incidence of injuries and lower injury frequency rates. In complete contrast to this positive trend, workers' compensation insurance premium rates at most sites have substantially increased by around 50% over the same period. In some cases, premiums are now calculated on more than 20% of the notional earnings paid to each employee. Furthermore, these rises have taken place in an economic climate characterized by falling international coal prices and a strengthening Australian dollar.

This scenario is indicative of the predicament confronting major coal producers in our industry and is clearly unsustainable. If allowed to continue, it will severely impact the competitiveness of the NSW and Australian coal industry with negative consequences to our nation's export sector.

Whilst Xstrata Coal has made significant advances in promoting safe and productive workplaces, structural issues at an industry level continue to impact on our ability to achieve desired levels of improvement in key areas of health and injury management. These include some aspects of current legislation as well as the under-performance of the industry's monopolistic workers' compensation insurance provider, Coal Mines Insurance, a subsidiary of Coal Services Pty Limited.

The problematic internal processes and structural inefficiencies of Coal Mines Insurance are now well documented following a number of recent independent reviews. These include the Ernst and Young Report (actuarial study), Milliman Sano Report (injury and claims

management), and the Wallace Report (disputed claims resolution). While it is a strong view of the Company that fundamental changes are required in the provision of workers' compensation insurance in this industry, it is not the intention of this submission to comment on these reports, other than to state that a number of the findings have been raised by member companies with the insurance provider over the past few years. Rather, I wish to focus your attention to the operational impact of current workers' compensation legislation on the NSW coal industry.

A key aspect of an operation's health and injury management process is the provision of an effective 'return to work' program. To be 'effective', the program depends on active employee participation in rehabilitation processes that aim to effectively restore the injured employee to their pre-injury level/scope of duties.

Over the past 15 years, government has recognized and removed a number of legislative impediments via the implementation of mainstream workers' compensation reforms. I confirm that an important objective of these actions has been to engender positive behaviour of participants in return to work programs to achieve an efficient and effective resumption of normal duties by an injured worker. This included addressing the monetary disincentive to return to work being propagated in a climate of high and ongoing eligible compensation payments.

In 2003, a number of the 'negative motivators' previously identified and removed from mainstream legislation continue to prevail in the NSW coal industry.

For example, the operation of section 11 (1) and 11 (2) of the NSW Workers' Compensation Act 1926, allows for partial deemed total incapacity with respect to injury status linked to higher compensation payments. These payments are accessible for an indefinite period and eligibility legally afforded to an employee without the need to be undertaking rehabilitation.

The General Purpose Standing Committee No.1 Report into the effect and efficiency of reforms to the Workers' Compensation Act 1987 cited, in cl.2.16 of their fourth interim report (Aug 2002), the importance of 'investigating and monitoring of the "cultural" effects.... particularly (giving regard to) weekly benefit continuance and impairment benefit climates', as well as 'potential cultural "knock-on" effects' of legislation.

The impact of legislation on participant behaviours in the health and injury management process remains a critical area of influence in the management of these issues. Within the coal industry specifically, the perception (and in many cases, realisation) of high financial return from participation in the compensation payment cycle, often promotes opportunism among the parties involved and is conducive to a culture of maximizing gain by construing false, delayed or exaggerated outcomes from the process.

Differences between mainstream and NSW coal industry regulatory frameworks that further contribute to potential for participant abuse of the NSW coal industry compensation claims process include, but are not limited to:

- no requirement to demonstrate employment was a "substantial contributing factor" in injury occurrence when progressing a claim;
- no qualifying eligibility rules before redemptions are considered (for example, after rehabilitation and return to work options exhausted);
- no qualifying eligibility rules before common law claims progressed (for example, after all medical costs, non-economic losses considered in statutory claims processes);
- lack of structured, transparent model for assessing medical impairment.

The Company acknowledges it has an inherent obligation to continually assess and improve its workplace safety management approach, for the prevention of injury, post-injury response and assistance offered to injured workers to return to work.

In support of this obligation, the Company is seeking, as part of the Productivity Commission's recommendations to the Minister, further legislative reform to secure improved practices within the NSW coal industry that focus participants on the fairest, and most appropriate, processes and outcomes in health and injury management.

Yours sincerely,

Mick Buffier
Chief Operating Officer
Xstrata Coal Australia Pty Limited