

**Submission
No 200**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: New South Wales Minerals Council Ltd

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The Honourable Robert Borsak MLC
Chairperson
Joint Selection Committee on the New South Wales Workers Compensation Scheme
Parliament House
Macquarie Street
SYDNEY NSW 2000

22 May 2012

Submission to the NSW Workers Compensation Scheme Committee Inquiry

Dear Mr Borsak

The NSW Minerals Council (NSWMC) is a not for profit, peak industry association representing the State's \$20 billion mining industry.

NSWMC provides a single, united voice on behalf of its 100 member companies: 40 full members (producers and explorers), 25 associate members (junior explorers) and 35 associate members (service providers) and works closely with government, industry groups, key stakeholders and the community to foster a dynamic, efficient and sustainable mining industry in NSW.

NSWMC is committed to healthy working conditions, strong growth, responsible environmental practices and vital regional communities throughout the state.

1. Summary

In respect to the metalliferous mining industry, we generally support the proposed reforms.

In respect to the coal mining industry, NSWMC and its coal members strongly believe:

- There should be no distinction between the workers compensation arrangements for the coal industry and other industries in NSW, and
- In line with other jurisdictions, employers in the NSW coal mining industry should have the option of self insurance.

While at this time, we do not believe it is appropriate to revisit the historical distinctions between the coal industry scheme and the general industry scheme, we do not support the creation of further distinctions between the schemes as a result of the proposed reforms.

2. Background

The NSW mining industry is a highly competitive one. Commodities produced by the industry are traded internationally and our operations must be able to compete against similar ones in Australia and overseas.

Workers compensation costs are a significant element of wages cost to the industry. At a time when the industry is already facing significant costs, keeping our costs of operation competitive with other jurisdictions, both nationally and internationally is critical

The industry is proud of the continued mutual success that companies and employees have had in improving "at work" safety and supporting the early and successful return to work of employees who have been injured. These efforts do not occur in a vacuum. The legislative and administrative framework for workers compensation in NSW has a major impact on our ability to remain competitive and provide ongoing safe work opportunities for our community.



Metalliferous mining operations in NSW are part of the general workers compensation scheme operating in the state. For a number of historical reasons there is a separate workers compensation scheme which applies to the coal mining industry.

3. Metalliferous Mining Industry

Despite progress which has been made in the industry to improve workplace safety and the early return to work of injured employees, workers compensation costs for mining in NSW are relatively high and seem certain to increase given the current underfunded position of the scheme.

Comparison of Current Premium Rates¹

| | NSW | Western Australia | Queensland |
|---------------------------|--------------|--------------------------|-------------------|
| Surface Mining | 3.2% to 5.1% | 0.7% to 1.36% | 1.6% |
| Underground Mining | 4.7% to 6.0% | 4.65% | 3.6% |

These differences are mainly attributable to differences in the legislative framework underpinning workers compensation in each state and, to some extent, the effectiveness of scheme management within that legislative framework.

A continuation or increase in the gap between workers compensation premiums in NSW and the rest of Australia must be resisted if the mining industry is to remain competitive in NSW and continue to deliver the economic, employment and community benefits which are essential to the continued growth of NSW.

We strongly support the proposed reform principles and proposals as currently describe as we believe that they will work to:

- Support our ongoing activities to improve workplace safety
- Provide proper protection for long term injured employees
- Promote an early return to work by injured employees
- More closely align workers compensable injuries to actual "at work" activities
- Improve controls over medical and associated expenses
- Improve the administrative effectiveness of the workers compensation system in NSW.

The proposed reforms at this stage are described in general terms and it is therefore difficult to comment in detail. We look forward to making a more detailed submission as further details are released.

4. Coal Industry

For a number of historical reasons, the coal industry has a separate workers compensation scheme arrangement from the general industry scheme.

Differences between the two schemes mainly arise from the coal industry being excluded from previous amendments to the general scheme, the most recent notable exclusion being from amendments introduced in 2001. The coal industry workers compensation arrangements generally share a legislative framework with the general industry scheme apart from these exceptions.

Funds to support workers compensation arrangements in the coal industry are held separate to the general scheme and are administered by a company established for that purpose. That company is owned jointly by NSWMC and the Construction, Forestry, Mining and Energy Union (CFMEU).

The coal industry scheme is currently in a stronger financial position than the general scheme. However, this has not always been the case and levels of minimum capital requirements are currently being brought up to the desired long term level considered appropriate for the scheme.

Improvements to the performance of the scheme over the last 5-6 years can be largely attributed to:

¹ Comparison based on current gazetted premium rates.

1. A reduction in long term injury frequency rates in the industry
2. Increased industry activity and associated high levels of employment demand
3. Improved administration of the scheme
4. Improved return to work programs in the industry
5. Some recent recovery (marginal) in investment returns.

Unfortunately, some of these factors cannot be relied on to continue and the current favourable position of the scheme's finances in comparison to the general scheme is therefore not certain to prevail in the future. As has happened in the past, it is likely that the coal industry scheme will have periods where it outperforms or underperforms the general scheme.

For this reason, the current (and perhaps transitory) better financial position of the coal industry scheme when compared to the general scheme should not be a factor when considering how proposed reforms might apply.

As a principle, NSWMC believes there should be no distinction between the workers compensation arrangements for the coal industry and other industries in NSW. At this time, we do not believe it is appropriate to revisit the historical distinctions between the coal industry scheme and the general industry scheme. However we strongly believe that there is no reason to create further distinctions between the schemes.

Where a reform proposal would impact an aspect of legislation or administration which is currently no different for the coal industry compared to the general industry, and the reform is considered a sensible and logical one, NSWMC believes there should be no special exclusion of the coal industry from its operation. Reform proposals which would impact an area where there is a current distinction between the coal industry and the general scheme should be examined and applied in such a way as to preserve the status quo in relation to distinctions between the two schemes.

Due to the complex form of the legislation in this area and in particular, the way in which the legislation may exclude application to the coal industry, it is not possible to be specific about some of the proposed reform proposals until they are developed in more detail. The reform proposals which on first reading appear to clearly have equal applicability to the coal industry as to the general scheme include, but may not be limited to:

- Reform 2. Removal of coverage for journey claims
- Reform 3. Prevention of nervous shock claims from relatives or dependants of deceased or injured workers
- Reform 9. Remove "pain and suffering" as a separate category of compensation
- Reform 13. Cap medical coverage duration
- Reform 14. Strengthen regulatory framework for health providers
- Reform 16. Exclusion of strokes/ heart attack unless work a significant contributor.

NSWMC would like to make further submission as these reforms are developed, particularly to discuss the detail of how particular reforms may apply to the arrangements for workers compensation in the coal industry.

Yours sincerely,


Stephen Galilee
CHIEF EXECUTIVE OFFICER