



Australian Government

Australian Government response to the
Senate Select Committee on Health Fifth Interim Report:

Black Lung: “It has buggered my life”

FEBRUARY 2019

Introduction

On 28 April 2016, the Senate Select Committee on Health released its Fifth Interim Report: *Black Lung: "It has buggered my life"*.

The Committee inquired into coal mine workers' pneumoconiosis (CWP) following its re-emergence among coal mine workers in Queensland. CWP is an occupational lung disease that is the result of cumulative, long term exposure to dust by a worker. The report is one of six interim reports and a final report on various aspects on health matters pursuant to the Committee's terms of reference. Those reports, the Committee's membership and its terms of reference are available through the Inquiry's home page at

http://www.apph.gov.au/Parliamentary_Business/Committees/Senate/Health/Health

Government response

Regulatory Framework

The health and safety of workers, including mine workers, is of the utmost concern for all governments. All governments are committed to, and the community expects, the highest possible levels of work health and safety. The mining industry's social licence to undertake operations depends on its commitment and performance on worker health and safety. The diagnosis of CWP among coal mine workers in Queensland and New South Wales, where the majority of Australian black coal mining operations are located, is of serious concern for workers, the industry, community and governments.

The Commonwealth, state and territory governments share responsibility for the regulation of workers' compensation and work health and safety across Australia. The Australian Government regulates workers' compensation and work health and safety for employees of Commonwealth entities and a number of self-insured private sector licensees. Comcare is the Commonwealth work health and safety regulator and monitors and enforces compliance with work health and safety laws in the Commonwealth jurisdiction. The Commonwealth does not currently provide a system for mining safety regulation as there are no Commonwealth entities or private-sector licensees with mining operations. State and territory governments regulate workers' compensation and work health and safety for employees working within their jurisdictions and have their own regulators to monitor and enforce compliance.

In New South Wales, Queensland and Western Australia, mining safety is regulated by specialised mining legislation and inspectorates due to the complexity and high risk nature of mining operations in these states. In other jurisdictions, work health and safety in mining is covered by the general work health and safety framework.

Even though the Commonwealth does not regulate mining safety, it continues to work with state and territory governments on matters relating to the sustainable development of our onshore resources in a manner that protects health and safety and the environment. This includes advocating for nationally consistent regulatory arrangements through involvement with Safe Work Australia and other bodies that are then supported and implemented by all jurisdictions.

Response to Senate Committee Recommendations

The Australian Government's response to the recommendations of the Senate Committee has been developed within the national workers' compensation and work health and safety framework, and the related framework of mining safety framework, outlined above.

The Australian Government notes that the majority of the Committee's recommendations are directed towards the Queensland Government and other state and territory governments with regulatory responsibility for mining safety.

The Committee has recommended that the Australian Government establish a National Coal Dust Monitoring Group (Recommendation 1). As noted above, the Commonwealth does not currently provide a system for mining safety regulation as there are no Commonwealth entities or private-sector licencees with mining operations. Given that responsibility for regulating mining safety rests with state and territory governments, the establishment and maintenance of a Coal Dust Monitoring Group is a decision that appropriately rests with them.

At the 5th COAG Energy Council meeting in August 2016, Commonwealth, state and territory ministers with responsibility for resources and energy discussed the identification of CWP in Queensland coal mine workers. The Council publicly reaffirmed its commitment to the health of coal mine workers and agreed to collaborate to raise awareness among former coal mine workers who might be at risk, but did not agree to a national approach to coal dust monitoring.

The Queensland Government has commenced action in regard to the findings of the Committee's report and those from its own independent review of aspects of the state's coal mine worker health scheme (*Review of Respiratory Component of the Coal Mine Workers' Health Scheme* (Monash Review)). The Queensland Government is also considering the findings and recommendations of a number of reports from the Queensland Parliament's own inquiry into CWP, lung dust disease more widely and their regulation in Queensland. Neither the Monash Review nor the Queensland Parliament's reports called for a national approach to the issue.

The Australian Government notes that Safe Work Australia is currently undertaking a review of all Australian workplace exposure standards, including the exposure standard for coal dust. This review will identify if the coal dust workplace exposure standard remains appropriate to support the risk management strategies used on mining sites to eliminate or minimise risks to workers from exposure. The review will not investigate whether the coal dust standard should be measured as a dust load of milligrams per tonne of coal cut. Safe Work Australia's decision regulation impact statement on exposure standards is expected to be published at the end of 2018.

Implementation of an amended exposure standard for coal dust is a matter for state and territory governments with regulatory responsibility for mining safety. To support consistent work health and safety regulation and consistent safety standards for workers across jurisdictions, the Australian Government supports all state and territory governments implementing the workplace exposure standards published by Safe Work Australia. It is important to note however that workplace exposure standards are only effective when used as part of a larger dust management and monitoring program. Only through a multi-level approach including dust level management and appropriate personal protective equipment, health monitoring and training, can the risks of dust exposure be effectively managed.

The Australian Government acknowledges there are national implications for former coal mine workers who might be living interstate. Coal mine workers are a mobile workforce and a portion of the workforce will move between mines within a jurisdiction, across state boundaries and internationally. In this regard, the Commonwealth provides a response to health concerns through Medicare should medical treatment not be available through workers' compensation...

Current and former coal mine workers are eligible for Medicare services if they have a disease associated with dust exposure. These services may include a standard attendance with a general practitioner, respiratory testing and a chest x-ray. However, addressing ongoing work-related dust disease compensation, screening, treatment and support are the responsibility of the relevant jurisdiction regardless of whether those affected are no longer employed. The Australian Government notes that the Queensland Government and the industry in Queensland have commenced action to address the systemic issues which have led to the re-emergence of the condition there and to address the range of issues associated with the health monitoring of past and present coal mine workers. It also notes that Queensland and New South Wales meet on a regular basis in regard to CWP.

Recommendations and Government Response

National Coal Dust Monitoring Group

Recommendations	Government response
Recommendation 1	
<p>4.12 The committee recommends that the Commonwealth Government establish a National Coal Dust Monitoring Group comprised of representatives from mining companies, state governments, technical experts and industry stakeholders such as mining unions, and that it urgently undertake an analysis as to the cause of the serious and widespread breaches of dust mitigation measures in the industry. Following the analysis, the National Coal Dust Monitoring Group should develop and implement a work program for effective coal dust mitigation measures aimed at the immediate reduction of coal mine workers' exposure to harmful levels of coal dust.</p>	<p>The establishment and maintenance of a National Coal Dust Monitoring Group is a matter for state governments given that responsibility for regulating mining safety rests with them.</p>
<p>4.13 The committee recommends that Safe Work Australia reviews current coal dust exposure levels and the current Australian and international academic and industry literature on the safest possible workable threshold for exposure to coal dust, with a view to developing a best practice national maximum exposure level. Safe Work Australia should report its findings to the National Coal Dust Monitoring Group, including whether the exposure level should be measured as a dust load of milligrams per tonne of coal cut, as distinct from time weighted averages for exposure.</p>	<p>The Australian Government supports the review of the workplace exposure standard for coal dust currently being undertaken by Safe Work Australia (SWA).</p> <p>The review will involve using trusted and respected domestic and international sources of data and standards to help ensure that the Australian workplace exposure standard for coal dust will be generally consistent with the exposure limits used in other countries.</p> <p>Further, whether the exposure level should be measured as a dust load of milligrams per tonne of coal cut, as distinct from time weighted averages for exposure is also outside of the scope of the current review.</p>
<p>4.14 The committee recommends that all Australian States and Territories adopt the national standard for coal dust exposure. The standard would then be subject to</p>	<p>Implementation of an amended workplace exposure standard for coal dust will be a matter for each jurisdiction. The</p>

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Recommendations	Government response
<p>regular review by the National Coal Dust Monitoring Group, with the review being based on dust reading and disease data provided by the mine regulators in Australian jurisdictions.</p>	<p>Australian Government supports a nationally consistent approach to implementation of workplace exposure standards published by Safe Work Australia. However, the Australian Government notes that compliance and enforcement activities for dust control management including the use of exposure standards is the responsibility of the regulators and is not a role for Safe Work Australia which is a national policy agency.</p>
<p>4.15 The committee also recommends that in the short-term, coal mining companies adopt the lowest Australian level (2.5 mg/m³) for coal dust exposure until a national standard has been agreed upon and implemented with a more rigorous, independent testing regime instigated as soon as practical in Queensland.</p>	<p>This is a matter for relevant mining jurisdictions and coal mining companies. However, the Australian Government notes that there is currently a national standard for coal dust exposure.</p>
<p>4.16 The committee recommends that until the national standard has been developed and adopted, state governments advise mining companies that coal workers should be withdrawn from areas subject to unsafe dust levels without penalty. In addition, the Queensland government and the Department of Natural Resources and Mines should instigate a process of formal warnings followed by naming in a public register for non-compliant companies, along with additional sanctions for non-compliance.</p>	<p>This is a matter for relevant mining jurisdictions.</p>
<p>4.17 The committee recommends that mining companies operating in Queensland, in consultation with the Queensland Government, technical experts and industry stakeholders, urgently employ more effective coal dust mitigation measures to immediately reduce coal mine workers' current exposure to coal dust.</p>	<p>This is a matter for the Queensland Government and coal mining companies.</p>

Coal dust monitoring in Queensland

Recommendations	Government response
<p>Recommendation 2</p> <p>4.31 In light of emerging problems identified in the mining industry the committee is concerned that safety standards in all jurisdictions may not be providing a safe working environment for mine workers. The committee therefore recommends that the state governments identify best practice dust monitoring devices or similar best practice technology to be used in all Australian coal mines. The Queensland government should review the protections provided under the Coal Services New South Wales model and identify which aspects should be applied to any new legislative regime in Queensland.</p> <p>4.32 The committee also recommends that the state governments require that dust monitoring be undertaken in a consistent and methodical way, which monitors dust levels in all relevant parts of the mine during both maintenance and production times.</p> <p>4.33 The committee also recommends that state governments increase public transparency and accountability around dust monitoring. Dust monitoring data should be made publically available as a means of increasing accountability and restoring coal mine workers' confidence in the regulatory system.</p>	<p>These recommendations are matters for relevant mining jurisdictions.</p>

Database of coal dust suppression techniques

Recommendations	Government response
<p>Recommendation 3</p> <p>4.34 The committee recommends that the proposed National Coal Dust Monitoring Group in consultation with mining companies, state governments, technical experts and industry stakeholders, and with the support of Safe Work Australia, create and manage a database of best practice dust suppression techniques and management of dust sampling data. This would enable coal mining companies to continuously improve their safe work practices and provide increased protection for coal miners.</p>	<p>This is a matter for relevant mining jurisdictions. The Australian Government notes that Safe Work Australia is a national policy body and is not responsible for the creation or management of best practice databases for specific risks or areas of concern.</p>

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<i>Recommendations</i>	<i>Government response</i>
4.35 The committee recommends that the establishment of the database, and its day to day running costs, be funded by the state government and the coal mining industry.	
4.36 The committee recommends legislation requiring mining companies' input on, and compliance with the database must be instigated at both federal and state government levels.	
4.37 The committee recommends that the National Coal Dust Monitoring Group, and state based bodies, also facilitate cross-jurisdiction information sharing about coal dust mitigation measures.	The Australian Government notes that the Conference of Chief Inspectors of Mines, which comprises the heads of all state and territory government mining safety regulators, provides a forum for information sharing across jurisdictions about mining safety measures, including coal dust mitigation, and the enforcement of mining safety legislation.

Best practice dust control forum

<i>Recommendations</i>	<i>Government response</i>
Recommendation 4	
4.40 The committee recommends that, in addition to the National Coal Dust Monitoring Group, the Queensland Government, in consultation with mining companies, technical experts, unions, and industry stakeholders, form a standing dust committee or similar forum, in the near to medium term, to achieve best practice dust control in Queensland coal mines and to address the concerns raised about the current mitigation and monitoring issues.	This is a matter for the Queensland Government.

Fund for former coal mine workers

<i>Recommendations</i>	<i>Government response</i>
Recommendation 5	
4.54 The committee recommends that the mining industry, through its representative bodies, must create an industry-wide fund to provide compensation for coal mine workers who contract CWP. The fund's aims should include identification of, and communications with former mine workers who may require CWP	The Australian Government notes that coal mine workers who have developed CWP are likely be eligible for compensation under state and territory government workers' compensation schemes, which could include lump sum payments and

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<p>screening and compensation for travel, medical, and other costs associated with undergoing CWP screening and diagnosis. Workers' access to compensation from this fund should not be time-limited in any way.</p> <p>4.55 The committee also recommends that state governments provide a means for former and current miners to seek assistance which is independent of their employers and Nominated Medical Advisors such as a hotline or helpdesk, to be funded by the industry and independently administered by an organisation such as the Lung Foundation Australia.</p>	<p>reimbursement of medical costs and associated travel costs,</p> <p>This is a matter for relevant mining jurisdictions.</p>

Queensland Government's review of regulations

Recommendations	Government response
<p>Recommendation 6</p> <p>4.68 The committee recommends that the Queensland Government gives the highest priority to its review of coal dust regulations as part of its five point action plan. To achieve this the committee recommends that the Queensland Government take note of the concerns expressed by the committee in relation to the mine Directives, particularly the enforcement of these Directives and the need for the information contained within the Directives and rates of compliance to be able to be audited and reported on. Directives issued by government departments should use standardised language and have a rigorous process for auditing, compliance, and data collection.</p>	<p>This is a matter for the Queensland Government.</p>

Regulatory capture

Recommendations	Government response
<p>Recommendation 7</p> <p>4.72 The committee recommends that the Queensland Government direct relevant officials to undertake independent, high level, training on avoiding regulatory capture.</p>	<p>These recommendations are matters for the Queensland Government.</p>

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Recommendations	Government response
<p>4.73 The committee recommends that in developing this training the Queensland Government have regard to the Better Practice Guides developed by the Australian National Audit Office in relation to regulatory capture.</p>	

Nominated Medical Advisors

Recommendations	Government response
<p>Recommendation 8</p> <p>4.78 The committee recommends that in the short term the Queensland Government mitigate the risk of regulatory capture of the Nominated Medical Advisors by making the role an independent statutory position, selected through a rigorous process conducted by Queensland Health in consultation with the Department of Natural Resources and Mines and specialists groups such as the Thoracic Society and the Lung Foundation.</p>	<p>This is a matter for the Queensland Government.</p>