

Tuesday, 28 February 2017

Mr Trent Sebbens  
Ashurst Australia  
GPO Box 9938  
Sydney  
NSW 2001

Dear Mr Sebbens

**Coal Mining Industry Employer Group — AM2014/190 - four yearly review of modern awards — transitional provisions — accident pay provisions**

**Your ref: SNN\AGHM\TZS\02 3000 0722**

Thank you for your brief to provide expert opinion in proceedings which are currently before the Fair Work Commission concerning safety performance in Australian coal mines.

As a specialist occupational physician, I have been involved in health and safety in coal mines predominantly in Queensland since approximately 1993. In that capacity I have been involved in establishing rehabilitation and return to work programs for injured coalminers, supervising health facilities providing on-site care for injured coalminers, assessing coalminers of permanent impairment to determine their fitness to be able to continue to safely perform their duties, and evaluating various health risks on mine sites. Devising strategies and workplace modifications to allow injured workers to return to work often involves the identification of workplace risks which can then feedback into safety programs to minimise the risk for all workers. In performing these duties, I have had to work closely with health and safety managers and departments, and in so doing I also have a general knowledge and awareness of health and safety policies and procedures and their implementation in mine sites.

I have included a copy of my CV as Appendix C.

In addition to my own experience, I have also referred to the information you provided in your brief, listed below:

- CSPL Australian black coal mining summary 2011-2012
- Queensland Mines and Quarries Safety Performance and Health Report, One July 2004-30 June 2015
- Queensland government injury frequency rates (spreadsheet)
- AusIMM bulletin - Director and senior management accountability for workplace health and safety
- Safe Work Table 2.1
- Safe Work Table 2.2
- Queensland mines and quarries safety performance and health report overview 2015-2016
- Queensland Mining Industry Reporting Manual August 2015

- Material produced by Coal Mines Insurance

I have also attached a copy of your briefing letter, letter of instruction and questions as appendix D.

### ***The Australian Coal Industry***

At 30 June 2012, there were 124 black coal made mines in operating in Australia, 81 open cut mines and 43 underground mines (including 29 longwall operations). These figures are broken down on a state-by-state basis, below:

	NSW	Qld	SA	WA	Tas	TOTAL
Underground	30	11	-	-	2	43
Open Cut	32	44	1	2	2	81
Total	62	55	1	2	4	124

The majority of Australian black coal production in 2011-12 was by open cut mining (80 %). Underground production was primarily from longwall mines (18%), with 2% produced by other methods.

In 2011, near the peak of the mining boom, there were 44,000 miners engaged in black coal mines. The table below dissects this employment between open cut and underground mines, and on a state by state basis.

#### Average Production Employment, Black Coal Mines Australia

<b>FY</b>	<b>NSW</b>	<b>Qld</b>	<b>SA</b>	<b>WA</b>	<b>Tas</b>	<b>TOTAL</b>
<b>Underground mines</b>						
2011-12	10,414	5,719	-	-	78	16,211
<b>Open cut mines</b>						
2011-12	13,480	29,526	228	708	25	43,967

In preparing my report, I have considered information from both Queensland and New South Wales coal mines. In my experience, and supported by the material I have reviewed, the safety performance in both states would appear to be similar. New South Wales has a higher proportion of underground coal mines (48%) than Queensland (20%) based on 2012 figures, but I do not consider that this significantly alters my overall opinions. In some cases, I have referred to material from both Queensland and New South Wales, whilst in other cases I might have only used as an example material from one or other jurisdiction. However, any conclusions based on one state's figures can be generalised to the industry overall.

When attempting to make comparisons across jurisdictions, there can be some variation because of differences in definitions, and the slightly differing workers compensation processes. A dictionary of the definitions utilised in the Queensland coal industry is included as Appendix B. To overcome these differences, SafeWork Australia, for example collates information for what they describe as "serious injuries", defined as any injury resulting in more than a week's lost time, to allow comparison between states. This is illustrated in Table 2.

### **Answers to specific questions**

1. *Does the fact that a mine is underground or open cut have an effect on the nature and/or frequency of work-related injuries in the black coal mining industry in Australia (Industry), and if it does, how does it?*

Overall, underground coalmines report a higher frequency of lost time injuries than open cut coal mines in Queensland mines, by an average factor of 2.26 between June 2009 and

September 2016. The 12 month rolling average Lost Time Injury Frequency Rate (LTIFR) up to September 2016 in surface and underground operations are depicted in Figure 1 below.

This may reflect the fact that the underground working environment is more physically demanding, resulting in underground workers being more likely to be certified as unfit than an open cut worker with a similar injury.

Figure 1, below has been collated from data included in the spreadsheet of Queensland Government Injury Frequency Rates.

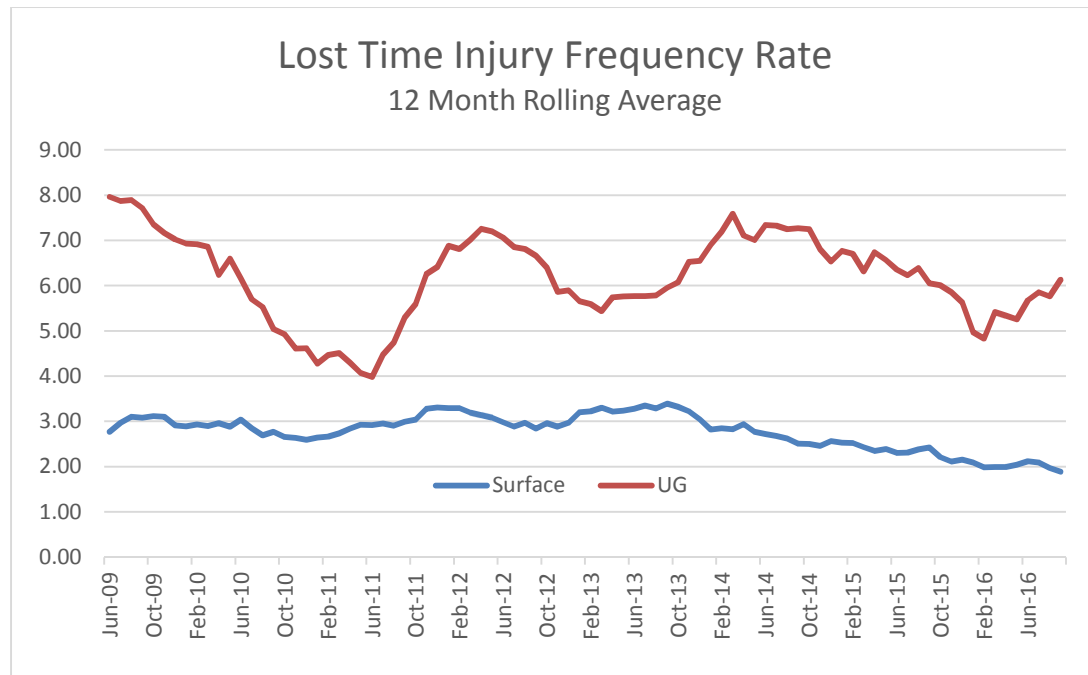


Figure 1 lost time injury frequency rate, open cut and underground operations

The average lost time injury frequency rate (LTIFR) for surface mines was 2.3, whilst that for underground operations was 5.7. However, a review of LTIFRs of individual mines in 2015-16 showed a great variability, greater than that between mining sectors, with rates in underground mines ranging between 20 and zero, and in open cut mines between 11.9 and zero (mines employing less than 100 employees were excluded from consideration).

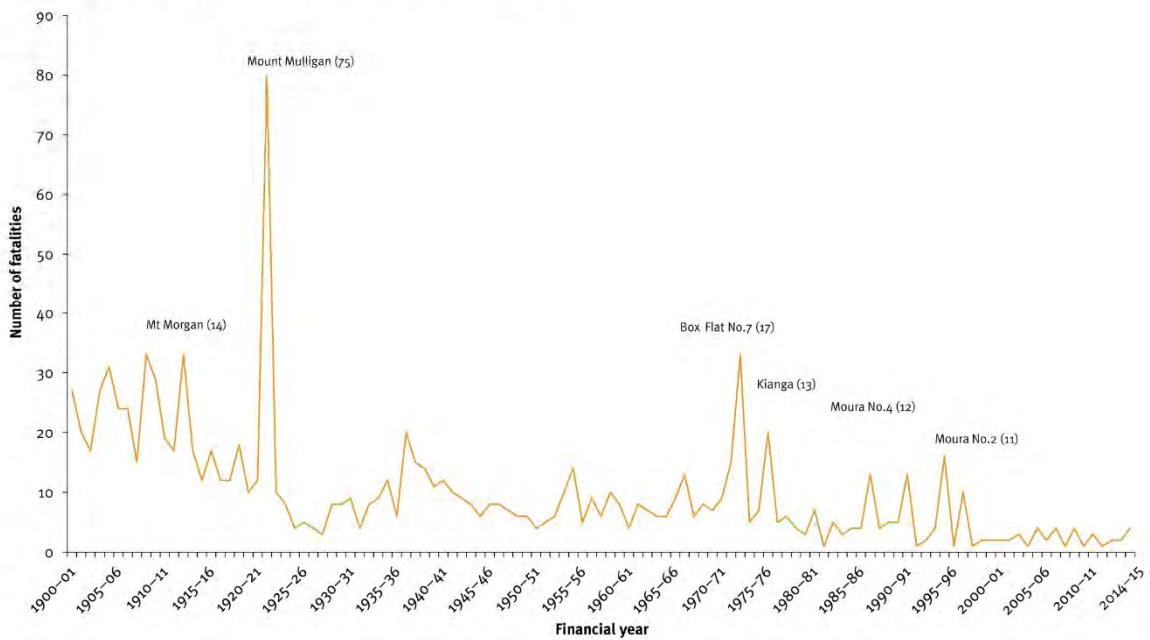
The information available from New South Wales did not permit easy differentiation between open cut and underground operations, but I have no reason to believe that the experience would be different there, based on my experience.

**2. Can you describe the nature and frequency of work-related safety incidents and/or injuries in the Industry from the early 1970s until the present?**

There has been a gradual reduction in work related safety incidents over the last 40 years, or even longer.

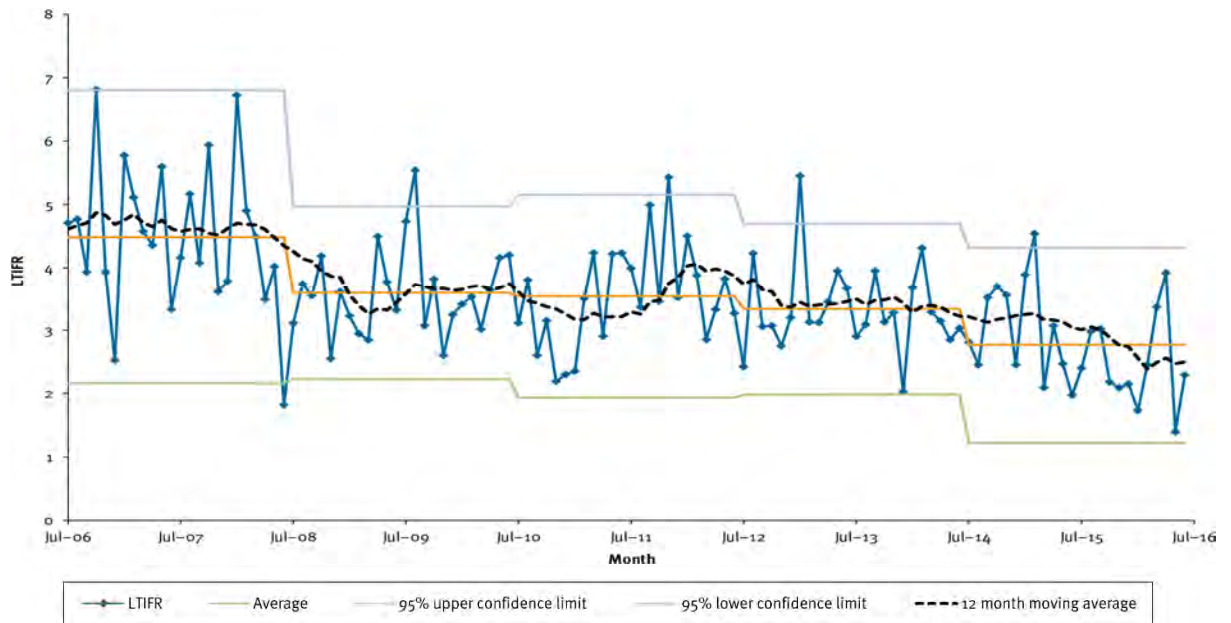
Figure 2 depicts the reduction in fatalities in all Queensland mines between 1900 and 2015. Whilst fatalities representing only a small fraction of all injuries, a reduction in fatalities is usually paralleled by a reduction in other injuries, at least until the injury rate becomes quite low.

**Figure 1.1: Fatalities in Queensland mines (all sectors), 1900–2015**



*Figure 2 Fatalities in All Sectors of Queensland Mining, 1900-2015*

In addition, figures from the past five years demonstrate a fall in the lost time frequency rate, as illustrated in Figure 3, below



*Figure 3 Qld LTIFR 2005-2015*

Data published by Jim Galvin<sup>1</sup> shows a reduction in three-year rolling averages for fatalities, lost time injury frequency rate and fall of ground incidents in New South Wales

<sup>1</sup> Galvin, J. Director and Senior Management Accountability for Workplace Health and Safety. AusIMM Bulletin February 2016

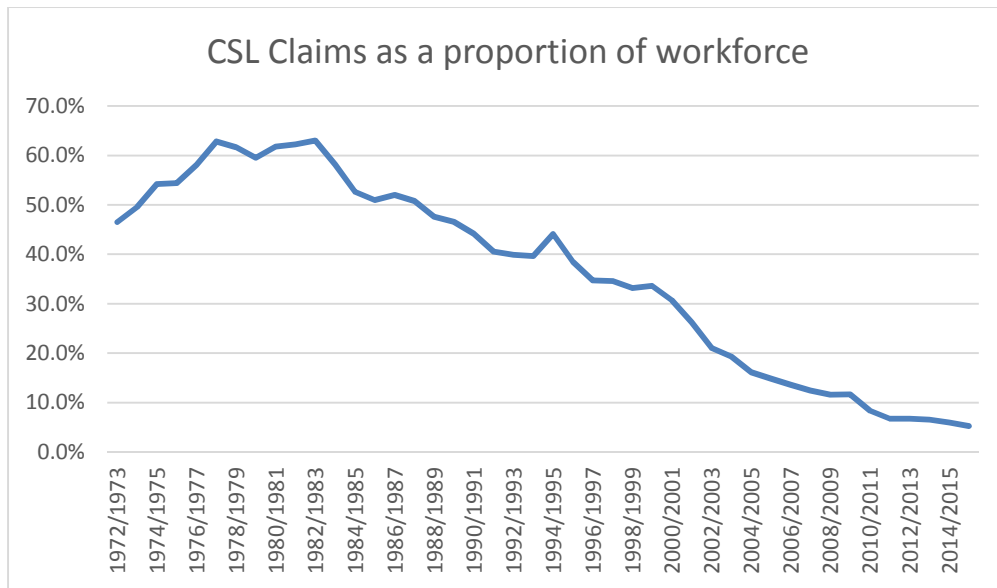
coalmines between 1975 and 2015 as depicted in Figure 4. Whilst there is more variability in the fatality rate, because of smaller numbers, the figure illustrates the significant reduction in the LTIFR since approximately 1980, and the parallel reductions in fatalities and lost time injuries over that time.

Fall of ground (FOG) incidents referred to in the figure refer to roof falls and rib falls, and the reduction in these incidents can be attributed to better management of mine geology, reflecting improved safety culture and performance.



Figure 4 Trends in Safety Performance Measures, New South Wales Coalmines 1975-2015

I have also plotted the data from items 1 and 2 provided by CMI workers compensation to show the number of claims as a percentage of the number of workers exposed to risk as Figure 5.



*Figure 5 Claims as a proportion of workforce*

You will note that there is a significant downward trend in the number of claims, from a peak of 63% in 1982/1983 to 5.3% in 2015/2016.

Each of these sets of figures provides a different perspective on the frequency of accidents, but all show a consistent downward trend in injury rates from the early 1970s, or even back to the turn of the last century in the case of fatalities.

This demonstrated trend is consistent with my observations.

3. *Can you describe how the nature and severity of the work-related safety incidents and/or injuries in the Industry has changed or developed (if it has at all) since the 1970s until now?*

The number of days lost as a result of injury is a commonly accepted measure of injury severity. Figure 6 illustrates the trend in lost time severity injury in Queensland coal mines between 2011 and 2016. There has been a significant ongoing reduction for all coal mines, greater in underground mines.

Figure 4: Lost time injury severity rate (days away from work and on alternative duties), 2011–16

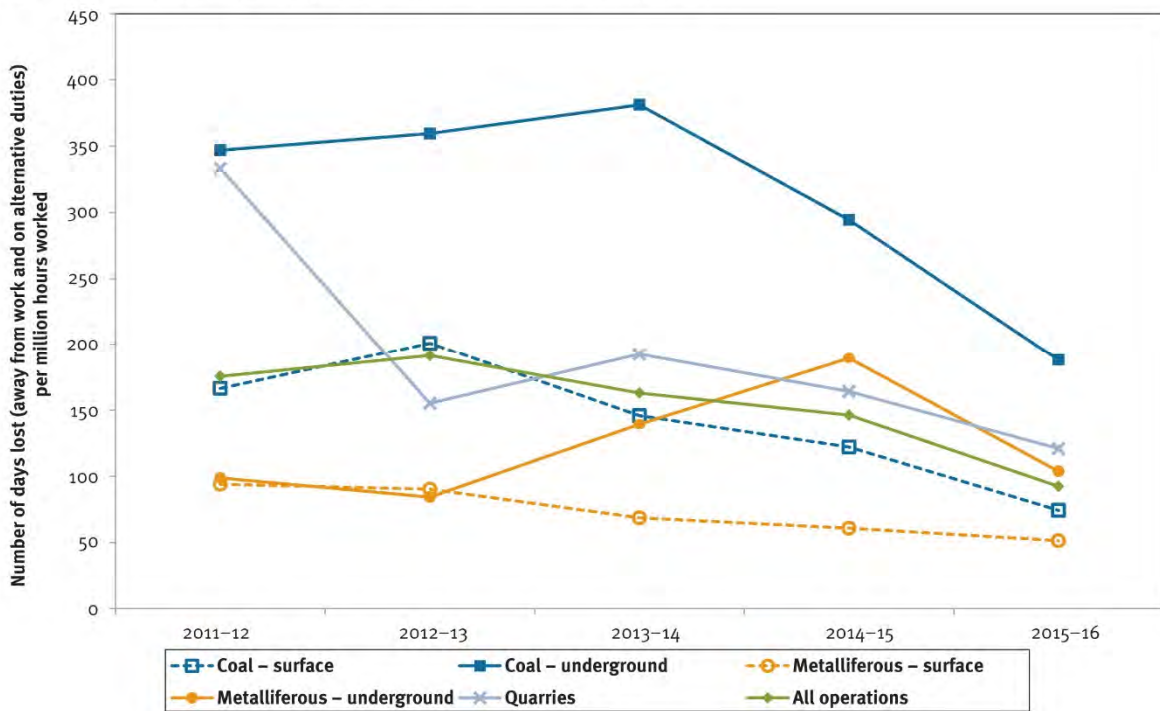


Figure 6 Lost time injury Severity Rate (Qld Mines)

This trend is consistent with that which I have observed over the past 20 years. In addition, staff in clinics I have worked with who treat a high proportion of mining injuries report a significant reduction in the severity of injuries which they see from the coal industry.

#### 4. Describe:

- (a) the risk management techniques used in the Industry in relation to managing or reducing risks to safety in the workplace and/or work-related injuries; and
- (b) how these techniques have changed or developed (if they have at all) since the 1970s until now?

I have observed positive health and safety initiatives directed towards multiple risk factors, from consideration of health and safety aspects at design and purchase of equipment through to health and safety reporting systems which ensure that follow-up corrective action is taken.

From my perspective as an occupational physician, I have seen the growth and implementation of effective rehabilitation and return to work programs in the coal mining industry, often with the employment of on-site rehabilitation and return to work coordinators. Such programs have been demonstrated to be effective in reducing the duration of incapacity. More importantly, assessment of causation in these injuries, and/or devising suitable workplace modifications to ensure that injured workers can return to work as soon as possible without risk of further injury has identified a number of preventive strategies which can then be implemented to the benefit of all workers.

I have also been involved in programs looking at fatigue management, seeking to integrate the strands of appropriate rostering, fatigue management devices, and identification and management of medical conditions which might contribute to fatigue.

Underpinning all these initiatives has been a change in management attitude, so that the safety initiatives have been driven and supported through all levels of management, resulting in the demonstrated reduction in frequency and severity rates.

Throughout my involvement with health and safety in the coal industry, I think the most significant change I have observed has been the much greater awareness and involvement of senior managers, and in particular the Site Senior Executive (SSE under Queensland legislation) in management, and an understanding that safety management is an integral part of overall management. Companies which manage their safety programs well are usually well-managed overall.

**5. Describe:**

*(a) the length of time before injured workers return to work after a work-related safety incident and/or injury; and*

*(b) how this number has changed (if it has), since the 1970s until now; and*

In respect of questions 5(a) and 5(b), I believe that I have addressed this in my answer to Question 3 above.

*(c) whether the statistics in the Industry are at all different from other industries?*

In appendix A, Table 2, I have simplified the statistical material provided by Safe Work Australia to remove all subcategories, except those related to mining, and then sorted it by reducing frequency of lost time injury frequency rate in 2013-2014. You will see that mining overall has a lower LTIFR (4.6) than the all industry average (5.9), and that coal mining with a LTIFR of 6.7 ranks behind a number of industry sectors including transport, postal and warehousing, health care and social assistance, agriculture, forestry and fishing, manufacturing and construction. On this basis, I would conclude that coal mining has only a slightly higher injury rate than the all industry average, and ranks behind agriculture, forestry and fishing, and construction which I would consider to have an equivalent physical demand.

I have been and remain involved in a number of industries, including more recently as a member of the Health and Community Services Industry Sector Safety Committee which is appointed to advise the Workplace Health and Safety Board in Queensland. As such, I am provided with statistics covering a range of industries, and I consider that the figures presented in

Figure 2 are consistent with information that I have seen.

**6. Describe any changes or trends in the Industry and whether they have changed or developed (if they have), since the early 1970s, in relation to the following areas:**

*(a) the number of work-related safety incidents and/or injuries occurring in the Industry;*

A number of the figures in this paper illustrate an ongoing reduction in several indices of injury rates and severity. However, the high potential incident rate (An event, or series of events, that causes or has the potential to cause a significant adverse effect on the safety or health of a person )has remained static over the past 5 years, as depicted in Table 1 below.



Table 1 High potential incident rate (per 1000 workers), 2011–16

	2011–12	2012–13	2013–14	2014–15	2015–16
Coal–surface	41	46	47	45	47
Coal–underground	55	61	64	49	62
<b>All coal</b>	<b>43</b>	<b>48</b>	<b>50</b>	<b>46</b>	<b>49</b>

Whilst it would be clearly desirable to see a reduction in high potential incidents, some comfort may be taken from the fact that these are being identified and reported, so that appropriate corrective action can be taken.

*(b) the nature and severity of work-related safety incidents and/or injuries occurring in the Industry and*

I have addressed this in my answer to Question 3, above. Duration of incapacity is often considered to be a proxy of severity, and so in Figure 7, below, provides additional information about the severity of claims.

*(c) the length of time before an employee returns to work after a work-related safety incident and/or injury.*

The figures provided by Coal Services have been plotted in Figure 7, and show that most injured miners return to work within 3 weeks of their initial injury, but there is a long tail of more protracted claims extending up to approximately 52 weeks. I note that there is an abrupt drop off after that time.

Figure 8 contained in Appendix A provides a more detailed breakdown year by year. There is a trend a return to work within the first week to occur less frequently, but this is almost completely taken up by an increased rate of return to work in weeks 1-13. Again, there is a relatively small proportion of claims which extend beyond 52 weeks.

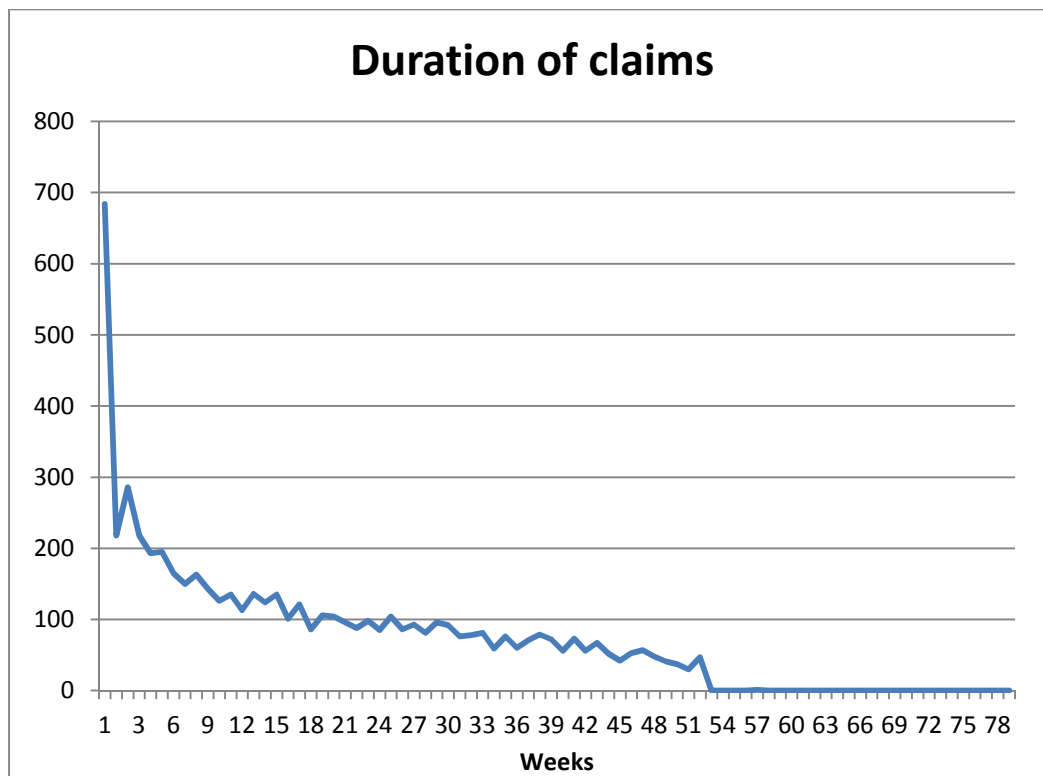


Figure 7 Average duration of claims NSW 1989-2016

It is clear from the various statistics reviewed that there is a clear and continuing downward trend in statistics which look at both the frequency and severity of injuries in the coal industry in both Queensland and New South Wales.

I certify that I have read the expert witness provisions contained in Expert Evidence Practice Notes (GPN-EXPT) and I agree to be bound by those rules. To the best of my ability, this report has been prepared in accordance with the Rules.

The factual matters stated in this report are, so far as I am able to determine, true and correct. I believe that I have made all appropriate inquiries. I have listed in the body of the report all material which I have relied upon in its preparation. The report contains reference to all matters which I regard as significant. The opinions stated in this report are genuinely held by me. I understand that my duty is to the Court, and I believe that I have complied with that duty.

Please do not hesitate to contact me if you have any further specific questions arising from this report.

Yours sincerely

A handwritten signature in black ink that reads "Keith Adam". The signature is written in a cursive style with a long, sweeping tail on the letter "a".

Keith Adam  
M.B.,B.S., F.A.F.O.E.M., C.I.M.E.  
Specialist in Occupational Medicine

## Appendix A

### Tables and Figures in Landscape Format

Industry of employer	Frequency rate (serious claims per million hours worked)					Incidence rate (serious claims per 1000 employees)				
	2009-10	2010-11	2011-12	2012-13	2013-14	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Non-metallic mineral mining and quarrying</b>	*12.2	14.4	*12.2	*9.6	10.1	*28.0	32.9	*27.5	*22.5	24.9
Transport, postal and warehousing	11.6	11.3	11.7	10.3	9.3	21.7	21.3	22.1	19.3	17.4
Health care and social assistance	10.9	10.4	10.2	9.7	8.7	15.4	14.9	14.9	13.8	12.5
Agriculture, forestry and fishing	11.2	10.3	10.5	10.5	8.6	22.0	20.2	20.8	20.6	17.4
Manufacturing	10.5	10.3	10.4	9.2	7.9	19.8	19.7	20.0	17.6	15.0
Arts and recreation services	8.7	8.4	8.3	6.8	7.3	11.1	10.6	11.0	8.8	9.2
Construction	9.2	8.9	8.9	8.2	7.2	18.3	17.8	17.8	16.7	14.7
Public administration and safety	9.4	8.8	7.5	7.8	6.9	16.0	14.8	12.8	13.6	11.7
<b>Coal mining</b>	<b>7.4</b>	<b>7.0</b>	<b>7.4</b>	<b>9.1</b>	<b>6.7</b>	<b>16.2</b>	<b>15.6</b>	<b>16.4</b>	<b>20.1</b>	<b>14.3</b>
Administrative and support services	8.6	9.4	8.3	7.4	6.5	13.8	15.2	13.4	12.1	10.5
Accommodation and food services	6.6	6.9	6.9	6.8	6.3	8.2	8.4	8.6	8.5	7.8
Wholesale trade	8.1	8.6	8.1	6.3	6.1	15.4	16.3	15.2	12.0	11.6
<b>All industries</b>	<b>7.5</b>	<b>7.4</b>	<b>7.2</b>	<b>6.6</b>	<b>5.9</b>	<b>12.4</b>	<b>12.2</b>	<b>12.1</b>	<b>11.0</b>	<b>9.8</b>
Exploration and other mining support services	7.9	7.1	9.2	7.4	5.6	18.1	15.8	20.0	17.3	13.0
Retail trade	6.1	6.1	6.2	5.9	5.4	8.3	8.3	8.5	8.1	7.3
Other services	5.5	5.6	6.3	6.0	4.9	9.4	9.7	10.9	10.4	8.6
<b>Mining</b>	<b>5.9</b>	<b>5.4</b>	<b>5.3</b>	<b>5.1</b>	<b>4.6</b>	<b>13.5</b>	<b>12.5</b>	<b>12.2</b>	<b>11.7</b>	<b>10.4</b>
<b>Metal ore mining</b>	<b>3.8</b>	<b>3.0</b>	<b>3.6</b>	<b>4.2</b>	<b>4.2</b>	<b>8.9</b>	<b>7.1</b>	<b>8.7</b>	<b>9.8</b>	<b>9.7</b>
Education and training	5.3	5.4	5.3	4.6	4.2	8.4	8.5	8.3	7.2	6.5
Electricity, gas, water and waste services	5.5	5.3	4.8	4.5	3.9	11.0	10.2	9.4	8.7	7.5
Rental, hiring and real estate services	4.8	4.5	4.2	3.1	2.8	8.5	8.0	7.7	5.7	5.0
Information media and telecommunications	2.1	2.0	2.1	1.5	1.7	3.7	3.5	3.9	2.7	3.0
Professional, scientific and technical services	1.7	1.8	1.5	1.3	1.1	3.2	3.3	2.8	2.4	2.1
Financial and insurance services	1.5	1.6	1.4	1.1	0.9	2.8	2.9	2.6	2.1	1.7

Table 2 Comparison of Industry LTIFRs - Extracted from SafeWork Australia

## Duration of claims 1989-2016

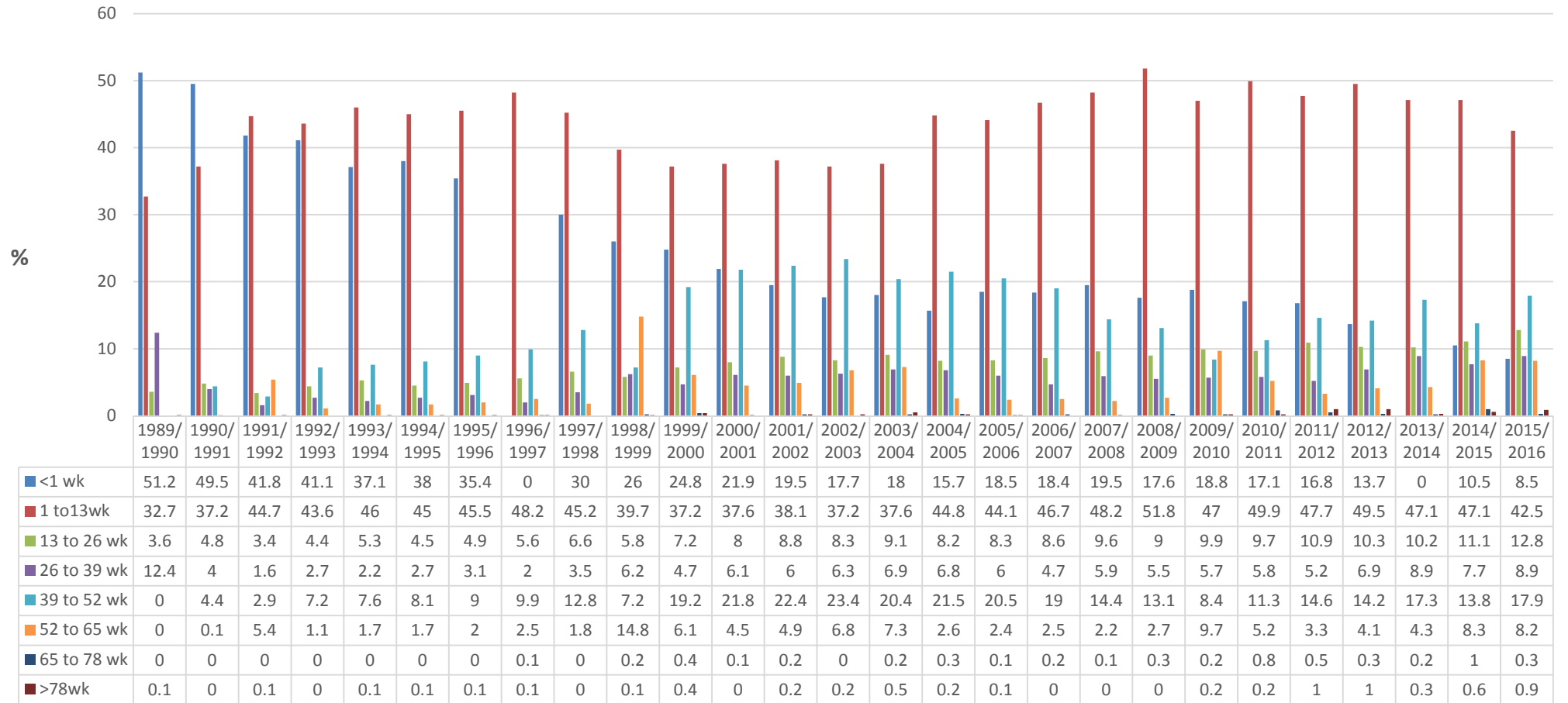


Figure 8 Duration of Claim, 1989-2016

## Appendix B – Definitions under the Queensland Coal Mining Safety and Health Act 1999

<b>Days on alternative duties</b>	The number of days a worker is unable to perform his/her regular job and has been assigned other temporary or modified duties. Alternative duties include a changed work environment, roster or shift pattern.
<b>Days lost</b>	All rostered shifts that a worker is unable to work because of injury, not including the day of the injury. This also includes days lost because of recurrences of injuries from previous periods and days on alternative duties after returning to work. A fatal injury is treated as 220 days lost (as per Australian Standard AS1885.1–1990, Clause 6.17).
<b>Disabling injury</b>	A work-related injury or disease resulting in a worker being unable to fully perform his/her regular job. Either light or alternative duties are performed.
<b>Duration rate</b>	The average time (days) lost and the time (days) on alternative duties for each LTI or DI. In this report, time lost includes all time lost for an incident to date
<b>High potential incident</b>	An event, or series of events, that causes or has the potential to cause a significant adverse effect on the safety or health of a person.
<b>Lost time injury/disease</b>	An incident resulting in a fatality, permanent disability or time lost from work of one shift or more. The shift on which the incident occurred is not counted as a shift lost.
<b>Lost time injury frequency rate</b>	The number of lost time injuries/diseases per million hours worked.
<b>Lost time and disabling injury frequency rate</b>	The number of lost time injuries/diseases and disabling injuries per million hours worked.
<b>Medical treatment injuries</b>	Those incidents, which were not lost time injuries or disabling injuries, for which first aid and/or medical treatment was required by a doctor, nurse or person qualified to give first aid.
<b>Severity rate</b>	The time (days) lost and time (days) on alternative duties per million hours worked.
<b>Total recordable injury</b>	Includes the number of fatalities, lost time injuries/diseases, medical treatment injuries and disabling injuries.
<b>Total recordable injury frequency rate</b>	The number of total recordable injuries/diseases per million hours worked.

## **Appendix C - Curriculum Vitae**

### **Associate Professor KEITH WILLIAM JAMES ADAM**

#### **Qualifications:**

- M.B., B.S., University of Queensland 1975
- Fellow of the Australian College of Occupational Medicine 1986.
- Fellow, Australasian Faculty of Occupational and Environmental Medicine, Royal Australasian College of Physicians 1994.
- Certified Independent Medical Examiner, American Board of Independent Medical Examiners 2000
- Registered as a Specialist in Occupational and Environmental Medicine since 1990.

#### **Current Position:**

Currently Chief Medical Officer and Senior Occupational Physician – Sonic HealthPlus. In that role, Dr Adam has clinical oversight of the 200+ occupational physicians, occupational physician registrars and medical practitioners working for Sonic HealthPlus. He also supervises the quality of the drug and alcohol testing performed by Sonic staff, and assisted in developing the quality assurance program which permitted Sonic to achieve NATA accreditation for this testing.

Dr Adam has been involved in establishing and maintaining health surveillance program in a number of industries. Early in his career, he established a blood lead monitoring program for employees of a battery factory, and this program is still being run by one of his former employees. He assisted Boeing to develop preventive strategies and health surveillance for employees who were performing deseal-reseal work on F111 aircraft after the RAAF contracted the work out. He continues to supervise a program of health surveillance for pesticide workers working with organophosphate and carbamate pesticides.

Dr Adam is retained on a consultant basis by Yancoal, Curragh Qld Mining, and the Queensland Fire and Rescue Service. He was appointed Chief Medical Officer for Pacific National in 2005, and in that capacity oversees compliance with the National Standard for Health Assessment of Rail Safety Workers. He was involved in the development of the first National Standard for Health Assessment of Rail Safety Workers in 2003 and 2004. More recently, he was invited by the National Transport Commission to participate in the current of that standard, and has also been involved in the development of a national training program for Authorised Health Practitioners in the rail industry.

Dr Adam was engaged by the Department of Mines to assist with the revision of the Queensland coal industry health scheme in the 1990s, and was involved with the implementation of the program at that time. Since then, he has maintained his involvement in the coal industry as a nominated medical adviser, and acted for a time as a consultant to Anglo coal. In addition to his ongoing involvement with Yancoal and Wesfarmers, he has been consulted by a number of mine operators concerning specific health issues which have arisen from time to time. Dr Adam was recently a member of the industry Reference Group which has been convened to oversee the review of health monitoring within the Queensland coal industry following the recognition of several cases of coal workers pneumoconiosis in coalminers, and has been invited to chair The Technical Working Group – Medical which charged with implementing the recommendations of the review of the Coal Miners' Health Scheme undertaken by Prof Malcolm Sim et al for the Department.

**Other Appointments:**

- Adjunct Associate Professor, Workplace Health and Safety, University of Queensland 2010-Current
- Member, Health and Community Services Industry Sector Health and Safety Committee established under the Workplace Health and Safety Act 1989. 2008 - current.
- Member, General Medical Assessment Tribunal, Q-Comp 2003 – 2006
- Deputy Chairman, General Medical Assessment Tribunal, Q-Comp 2006-present
- Chief Health Advisor on Asbestos, Minister for Education and Training, Queensland Government
- Expert Member, Workplace Health and Safety Board, established by the Minister for Employment and Industrial Relations under the legislation, 1997-2001.
- Member, Chemical Risks Management Reference Group established by Workplace Health and Safety Council. 1995 -1997
- Member, Medical Expert Committee on National Rail Standard, National Transport Commission 2003, 2012, 2016

**Further Study:**

- June 1986 completed intensive course in Occupational Medicine- National Occupational Health and Safety Commission University of Sydney.
- November 1995 completed National Short Course in Environmental Health, Adelaide University
- 2000 completed course in use of American Medical Association Guides to the Assessment of Permanent Impairment conducted by American Board of Independent Medical Examiners

**Other Professional Associations:**

- Regional Censor, Australasian College, then Faculty of Occupational Medicine 1988-2005
- Director of Training, Queensland, Australasian Faculty of Occupational Medicine 2008-2010
- Chartered Professional Member, Safety Institute of Australia
- Member, Australian & New Zealand Society of Occupational Medicine

**Awards**

- May 2006 Certificate of Outstanding Service, Australasian Faculty of Occupational Medicine, RACP.

**Research and publications**

- Chief Partner Investigator, "Does Self Management Increase The Effectiveness Of Vocational Rehabilitation For Chronic Compensated Disorders?" ARC Linkage Grant LP0989499
- Does self-management for return to work increase the effectiveness of vocational rehabilitation for chronic compensated musculoskeletal disorders? - Protocol for a randomised controlled trial Niki Ellis, Venerina Johnston, Susan Gargett, Alison MacKenzie, Jennifer Strong, Malcolm Battersby, Rebecca McLeod, Keith Adam and Gwendolen Jull BMC Musculoskeletal Disorders 2010, 11:115
- Prevention of Occupational Skin Cancer Kerry Adam, Peter Soyer, Keith Adam in Kanerva's Occupational Skin Diseases (Eds. Thomas Rustemeyer, Peter Elsner, Swen Malte John and Howard I. Maibach). Springer - 2012.

## **Appendix D - Briefing Letter, Letter of Instruction and Questions**



Our ref: SNN\AGHM\TZS\02 3002 0722  
Senior Consultant: Adrian Morris  
Direct line: +61 2 9258 6025  
Email: adrian.morris@ashurst.com  
Contact: Trent Sebbens, Counsel  
Direct line: +61 2 9258 6313  
Email: trent.sebbens@ashurst.com

Ashurst Australia  
Level 11  
5 Martin Place  
Sydney NSW 2000  
Australia

GPO Box 9938  
Sydney NSW 2001  
Australia

Tel +61 2 9258 6000  
Fax +61 2 9258 6999  
DX 388 Sydney  
www.ashurst.com

30 January 2017

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BY EMAIL**

Dr Keith Adam  
Specialist Occupational and Environmental  
Physician and Chief Medical Officer  
Sonic HealthPlus

Email: Keith.Adam@sonichealthplus.com.au

The logo for Ashurst, featuring the word "ashurst" in a lowercase, bold, sans-serif font.

Dear Dr Adam

**Coal Mining Industry Employer Group – AM2014/190 - four yearly review of modern awards – transitional provisions – accident pay provisions**

We refer to our recent discussions.

We confirm that we act for the Coal Mining Industry Employer Group (**CMIEG**) in relation to an application by the CMIEG to vary the accident pay clause in the *Black Coal Mining Industry Award 2010* (**BCMI Award**).

We are instructed to engage you to provide expert opinion in proceedings which are currently before the Fair Work Commission in matter number AM2014/190 (the **Proceedings**).

**Expert report**

We are instructed to engage you to provide expert opinion for the purpose of the Proceedings. We will separately send to you a list of the specific questions on which we wish to be provided your expert opinion. We will also separately send to you materials to assist in your analysis and the preparation of your expert report.

We request that you provide an expert report in relation to your analysis and conclusions, in relation to the questions we will provide to you, for use in the Proceedings.

**Confidentiality**

As information produced as part of your analysis and report will be subject to client legal privilege, confidentiality will need to be maintained in relation to that information and the report.

Please ensure that any written documents, including your expert report, together with all drafts and supporting materials produced for the purpose of preparing your report, and any associated correspondence, is marked "*Strictly Confidential and Privileged*" on each page of every document.

Please ensure that all notes or other documents produced in undertaking your analysis are also marked "*Strictly Confidential and Privileged*" on each page.

Please provide all such documents, and your accounts, directly to us. We ask that your report be kept strictly confidential as it is to be used for the purpose of legal proceedings. You are not authorised to provide this letter or your report to any other person or party.

Dr Keith Adam

**Expert guidelines**

We **enclose** for your review a copy of the Federal Court of Australia's Practice Note GPN-EXPT entitled "Expert Evidence Practice Note" (the **Guidelines**).

While the Fair Work Commission is not bound by the rules of evidence, in undertaking your examination and analysis, and in preparing your expert report, please comply with these Guidelines. In particular, please ensure that your report sets out your specialised knowledge. Please also ensure your report contains an acknowledgment that you have read the Guidelines and agree to be bound by them.

If you have any questions in relation to this matter please contact Adrian Morris on (02) 9258 6025 or Trent Sebbens on (02) 9258 6313.



**Adrian Morris**  
Senior Consultant

**Trent Sebbens**  
Counsel

Enc

Dr Keith Adam

**List of questions to be addressed in report**

1. Does the fact that a mine is underground or open cut have an effect on the nature and/or frequency of work-related injuries in the black coal mining industry in Australia (**Industry**), and if it does, how does it?
2. Can you describe the nature and frequency of work-related safety incidents and/or injuries in the Industry from the early 1970s until the present?
3. Can you describe how the nature and severity of the work-related safety incidents and/or injuries in the Industry has changed or developed (if it has at all) since the 1970s until now?
4. Describe:
  - (a) the risk management techniques used in the Industry in relation to managing or reducing risks to safety in the workplace and/or work-related injuries; and
  - (b) how these techniques have changed or developed (if they have at all) since the 1970s until now?
5. Describe:
  - (a) the length of time before injured workers return to work after a work-related safety incident and/or injury; and
  - (b) how the statistics relating to the length of time off work have changed or developed (if it has at all) since the 1970s until now?
6. Describe:
  - (a) the number of work-related safety incidents and/or injuries occurring in the Industry in 2016;
  - (b) how this number has changed (if it has), since the 1970s until now; and
  - (c) whether the statistics in the Industry are at all different from other industries?
7. Describe any changes or trends in the Industry and whether they have changed or developed (if they have), since the early 1970s, in relation to the following areas:
  - (a) the number of work-related safety incidents and/or injuries occurring in the Industry;
  - (b) the nature and severity of work-related safety incidents and/or injuries occurring in the Industry and
  - (c) the length of time before an employee returns to work after a work-related safety incident and/or injury.

When answering the above questions, please source and identify in your report, and attach, any publications, reports, surveys, data, inquiries or studies that you have relied upon to express your opinion. When answering your questions, please also set out the basis of your knowledge in relation to your answer.

Our ref: SNN\AGHM\TZS\02 3002 0722  
Senior Consultant: Adrian Morris  
Direct line: +61 2 9258 6025  
Email: adrian.morris@ashurst.com  
Contact: Trent Sebbens, Counsel  
Direct line: +61 2 9258 6313  
Email: trent.sebbens@ashurst.com

Ashurst Australia  
Level 11  
5 Martin Place  
Sydney NSW 2000  
Australia

GPO Box 9938  
Sydney NSW 2001  
Australia

Tel +61 2 9258 6000  
Fax +61 2 9258 6999  
DX 388 Sydney  
www.ashurst.com

03 February 2017

**CONFIDENTIAL AND PRIVILEGED  
BY POST**

Dr Keith Adam  
Specialist Occupational and Environmental Physician and  
Chief Medical Officer at Sonic HealthPlus

Level 5 West Tower  
410 Ann Street  
BRISBANE Qld 4000



Dear Dr Adam

**Coal Mining Industry Employer Group (CMIEG) – AM2014/190 - four yearly review of modern awards – transitional provisions – accident pay provisions**

We refer to our letter dated 30 January 2017 and our recent discussions.

We **enclose** with this letter a USB drive containing the following materials:

- (a) a report from Coal Services Pty Limited entitled *Australian Black Coal Mining Summary 2011-2012*;
- (b) a report by Queensland Mines and Quarries entitled *Safety Performance and Health Report, 1 July 2014–30 June 2015*;
- (c) an excel spreadsheet of data published by the Queensland government<sup>1</sup>;
- (d) an article in the AusIMM Bulletin published in February 2016 entitled 'Director and senior management accountability for workplace health and safety';
- (e) two tables of data published on the SafeWork Australia website in respect of the number, frequency rate and incidence rate of serious claims by industry (2009-10 to 2013-14), and number, time lost and compensation paid for serious claims by industry (2008-09 to 2012-13)<sup>2</sup>; and
- (f) documents produced by Coal Mines Insurance Pty Ltd in response to an order for production, issued at the request of the CMIEG.

To the extent that you consider it relevant, you may wish to refer to these materials in your report. If you do rely on these documents, please set out your reasons why you consider these documents to be relevant or useful.

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<sup>1</sup> Downloaded from the Queensland Government website page on "Safety performance reports and statistics", under the subheading "Injury Frequency Rates". Please see <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/accidents-incidents/safety-performance>

<sup>2</sup> Downloaded from the Safe Work Australia website page on "Statistics", under the subheading "Statistical tables by industry" <http://www.safeworkaustralia.gov.au/sites/swa/statistics/pages/statistics>

Dr Keith Adam

We note that you should not be limited to these materials, and should identify and refer any other materials you consider relevant in your report.

If you have any questions, please contact Trent Sebbens on (02) 9258 6313 or Elysse Lloyd on (02) 9258 5620.



**Ashurst Australia**

Enc