



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION

**Reference: Safety, Rehabilitation and Compensation and Other Legislation
Amendment Bill 2007**

TUESDAY, 30 JANUARY 2007

MELBOURNE

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

**SENATE STANDING COMMITTEE ON
EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION**

Tuesday, 30 January 2007

Members: Senator Troeth (*Chair*), Senator Marshall (*Deputy Chair*), Senators Barnett, George Campbell, Fifield, Lightfoot, McEwen and Stott Despoja

Participating members: Senators Allison, Bartlett, Bernardi, Boswell, Brandis, Bob Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Forshaw, Hogg, Humphries, Hutchins, Johnston, Joyce, Ludwig, Lundy, McLucas, Ian Macdonald, Mason, McGauran, Milne, Moore, Murray, Nash, Nettle, O'Brien, Patterson, Payne, Polley, Robert Ray, Sherry, Siewert, Stephens, Sterle, Trood, Watson, Webber, Wong and Wortley

Senators in attendance: Senators Barnett, Campbell Fifield, Marshall and Troeth

Terms of reference for the inquiry:

To inquire into and report on: Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

WITNESSES

Coleman, Mr John Howard, Federal Secretary, Superannuated Commonwealth Officers Association 14

DIAMOND, Ms Maryanne, Chief Executive Officer, Australian Federation of Disability Organisations 11

Garraway, Mr Lance Matthews, President, Victorian Branch, Superannuated Commonwealth Officers Association 14

HERRINGTON, Ms Sharelle, Divisional Assistant Secretary, Communications Division, Communications Electrical Plumbing Union 1

O’NEILL, Ms Collette, National Policy Officer, Australian Federation of Disability Organisations 11

PERKINS, Mr David, Federal Industrial Officer, CPSU-State Public Services Federation..... 19

POWELL, Ms Sue, Project Officer, Community and Public Sector Union 19

Committee met at 1.59 pm**HERRINGTON, Ms Sharelle, Divisional Assistant Secretary, Communications Division, Communications Electrical Plumbing Union**

CHAIR (Senator Troeth)—We will now commence proceedings for this hearing of the inquiry of the Senate Standing Committee on Employment, Workplace Relations and Education into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006. I welcome the witness from the Communications, Electrical and Plumbing Union. Thank you for your submission. Do you wish to make any amendments or alterations?

Ms Herrington—No.

CHAIR—I invite you to make an opening statement after which committee members will ask questions.

Ms Herrington—Thank you for the opportunity to address the committee on the proposed amendments to the Safety, Rehabilitation and Compensation Act. The CEPU communications division is an organisation of some 35,000 members, the majority of which are covered by the SRC Act. We wish to express our concern with some of the proposed changes as they will impact significantly on the rights and entitlements of our members. Our principal concerns relate to changes to the definition of injury and disease, the removal of journey and recess claims and the calculation of compensation when a claimant is in receipt of superannuation payments.

In essence our submission is that the existing Commonwealth workers compensation scheme is adequately and appropriately funded for the current existing claims regime. There is no indication of a dramatic increase in either claim frequency or cost which would require substantial restructuring of the scheme to ensure financial viability.

Amendments which restrict access to compensation by tightening the definition of injury and disease are unnecessary and inappropriate. They are not required for the financial viability of the scheme and will lead to the exclusion of legitimate work related claims and increased medical, legal and administrative costs associated with the complexity of the entitlement test. Removal of compensation for journey and recess claims is unwarranted and unnecessary. Any argument which relies on a control test as part of the entitlement framework for the scheme is bad policy which ignores the beneficial nature of all workers compensation legislation. In respect of recess claims it is also out of step with other Australian jurisdictions.

We recognise that the issue of compensation and superannuation is a complex one but we strongly urge the committee to consider the fairness of the amendments as proposed. We acknowledge that the amendments go some way towards addressing the existing concern but we feel they need to go further. The deeming rate should be dealt with in a manner consistent with arrangements relating to other legislative payments. Scheme claimants are entitled to be treated as other recipients of legislative payments are treated.

The reduction for a specific group of claimants of normal weekly earnings to 70 per cent from 75 per cent is an anomaly that should be corrected. It is no longer reflective of a notional contribution as the existing superannuation schemes have changed. It is also unfair in that any

existing superannuation contribution by the employees is returned to them. This five per cent reduction in claimants' income goes towards consolidated revenue or the scheme itself, which no other employee or claimant bears.

That is a brief outline of the issues that we wish to cover in our contribution. The rest is contained with some other minor matters in the submission. I would be happy to answer any questions.

Senator MARSHALL—Has there been any level of consultation with the stakeholders in relation to these changes?

Ms Herrington—No, there has not. Consultation with the stakeholders specifically directed at either of the individual unions has not occurred. There has been some limited discussion at the meetings of the Safety, Rehabilitation and Compensation Commission, of which I am a member. The process has been that a paper has been provided to the commission which outlines the government's intentions in this matter and it has been put as an information paper for noting by the commission. There has been very little discussion on it. There has been no referral back, as I understand it, of any of the concerns raised by the commission members. The paper did note the concerns of some of the commission members, my own included, and that was noted in the minutes of the commission meeting. But that has been the extent of any discussion or consultation. There certainly has not been any debate on the actual amendments proposed or the impact or effect of those amendments.

Senator MARSHALL—Do you understand the rationale behind the government's changes?

Ms Herrington—It seems to me that the rationale is about cost containment. Our argument would be that that is, at this point in time, unnecessary. The scheme is adequately and appropriately funded. There is no substantive increase in the frequency, incidence or cost of claims. There has been some extremely good work done by Comcare in relation to the management of stress claims, particularly in the Commonwealth government area. I am not sure the same level of work has been undertaken at this point by the licensees, but Comcare have done an extremely good job in some of the agencies regarding work on stress claims. It is our view that that work should continue and be extended to the licensees themselves. There is a lot of good work being done on the issue of prevention and cost containment through the proper management of claims rather than simply amending the legislation to stop people making claims.

Senator MARSHALL—Will that be the impact of the bill? Will the amendments to the definitions of 'injury' and 'disease' mean that some people that are covered under the existing definitions will not be covered under the new definitions when they are injured at work?

Ms Herrington—Definitely. That will be the substantive impact, particularly in the changes to the definition of 'disease' and also in the changes to the stress component of management initiated action.

Senator MARSHALL—Putting the stress component to one side, what impact does it have in terms of disease?

Ms Herrington—It is a twofold impact. The first issue is the change from ‘material’ to ‘significant’, which is a substantial change. It means that it is a much more rigorous test in that sense to make the claim. To make out the claim, you would need much more substantive medical information. It is probably a more administratively costly exercise to actually look at those claims. You are going to have people that will certainly have a work related injury but there is going to be substantive legal debate, which is unfortunate in this context, about what is ‘significant’ and what is not. There is a list of issues that are also included in the proposed amendments. It is our view that that simply adds to the complexity of the matter because, rather than making it simpler for people to meet the test, it will actually introduce a whole range of issues which, at the moment, there is no requirement for them to prove to the extent that is expected in these amendments. You will find a substantial number of people fall through that net.

Senator MARSHALL—What sort of injuries do you think will become problematic?

Ms Herrington—Certainly most of the heart and stroke related ones will become problematic. There may even be issues with some of the others. Dust diseases and those sorts of things may become more problematic, as will ones where there are potentially other influencing factors in a disease, or potentially where there is some form of predisposition and it becomes an issue as to the extent of predisposition and the extent of work related impact. In some views, the test even now is perhaps too rigorous, but certainly to take the test to ‘significant’ will substantially disadvantage a large number of potential claimants.

CHAIR—Is there a definition of ‘material contribution’ at the moment for determining the validity or not?

Ms Herrington—No, usually there has been a court definition over a period of cases of what ‘material’ is seen as. It is a contributing factor—it is very difficult to explain—but it is not ‘significant’ in that sense. ‘Material’ is seen as distinguishable from ‘significant’.

Senator MARSHALL—Are you aware how the premiums for Comcare compare to state systems?

Ms Herrington—The premiums for Comcare are extraordinarily low. In fact, in comparison to other state jurisdictions, from memory, I think they would be just about the lowest. That is taking Comcare as separate from the ACT government, which, although it is part of the scheme, is set as a separate premium. From memory, in the comparative documentation that has recently been released, if it is not the lowest it is very close to the lowest in terms of premiums.

Senator MARSHALL—How will the amended Comcare system compare with state systems in terms of benefits and cover?

Ms Herrington—There is a diverse range across the jurisdictions in relation to the significant as against the material degree. In relation to journey and recess claims, the proposal for these amendments will, I think, put this scheme out of step with some of those in other jurisdictions—particularly in relation to recess claims. Most of the jurisdictions cover recess claims, whether they are on the job or off the job. This proposal is that they are only covered on site—rather than off site. I think it is only South Australia and Tasmania that do not cover those in terms of recess claims. In terms of journey claims, there is a split between

the jurisdictions. Many jurisdictions do cover journey claims, some with some limitations. Comcare currently covers all journey claims, and this will put them out of step with some of the jurisdictions.

Senator MARSHALL—I will move to the calculation of compensation when the claimant is in receipt of superannuation. I am sure some other senators have received some significant correspondence in relation to this particular matter, and you have addressed it in a number of paragraphs. Can you give us an overview of what is the real problem here and what can be done to fix it?

Ms Herrington—I think we have all received correspondence from the same person that you have referred to, Senator Marshall.

Senator MARSHALL—There are a number.

Ms Herrington—There has been correspondence over a number of years on this issue both to the commissioners on the SRC Commission and to the ACTU. I know, going back a number of years, the then SRC commissioner Bill Mansfield wrote to the then minister in relation to this matter. So the issue of the relationship with superannuation benefits has a very longstanding history in terms of the ongoing debate. It would seem to us that, in essence, there are two critical issues. There might be some more peripheral issues, but there are two critical issues that need to be fixed. One is the deeming rate. The deeming rate currently is far in excess of what the actual returns for superannuation lump-sum payments have been at over the past five to 10 years.

Senator MARSHALL—What effect does that have on people's payments?

Ms Herrington—The deeming rate operates as a notional amount that it is said that the person can earn from their superannuation payments or lump sum. So they are taken to have earned that whether or not they have earned it. If they have a lump sum of \$100,000 and the deeming rate is 15 per cent then they will be deemed to have earned 15 per cent of the \$100,000 whether or not they have actually earned it.

Senator MARSHALL—Prior to compensation making up the difference?

Ms Herrington—Then they do the calculation of the compensation. So in essence, through a fairly convoluted formula, that is discounted. The difficulty is that the deeming rate was set in the eighties, when interest rates were substantially higher than they currently are, and that has caused a great deal of grief to a number of people.

Senator MARSHALL—Is it correct that the deeming rates apply to the pre-tax lump sum?

Ms Herrington—Yes, as I understand it, but I would need to verify that because I am not 100 per cent certain of that.

Senator MARSHALL—That is what has clearly been put in the correspondence to me as one of the main problems. So we have a deeming rate that is higher than the real rate and it also applies to a figure that people would never have had to invest in the first place?

Ms Herrington—That is correct.

Senator MARSHALL—And does that have a compounding effect year after year?

Ms Herrington—Again, I would need to check that; I am not sure that it is compound in that sense. But obviously it is calculated each year in terms of what their normal weekly earnings would be; it is a calculated figure each year. In terms of the deeming rate, we should also recognise that the amendments that have been put forward go some way to addressing that. They leave it as an issue for the minister to apply an appropriate rate. Our view is that that is not an appropriate mechanism if other pensions or legislative payments are made by the Commonwealth that use a specific deeming rate, such as veterans' affairs or age pensions or whatever the system might be. If they use a specific deeming rate then we see no reason why the same deeming rate should not apply in these categories of people. We do not think they should be treated any differently in that sector.

Senator MARSHALL—And what are the discrepancies now? Are they significant?

Ms Herrington—I could not tell you off the top of my head, to be honest, but I think they certainly were a while ago. It is difficult to say, because until the minister has indicated what deeming rate they would look to put in it is hard to say whether they will accept the deeming rate that currently exists with others or whether it will be a different deeming rate again. That leaves open the issue that it could be as high as it currently is.

Senator MARSHALL—These amendments do not address or resolve any of those issues for us, so how does this reduction of the NWE from 75 per cent to 70 per cent impact upon people's claims for compensation?

Ms Herrington—This is the part that I consider probably the most unfair of the process. Currently, an employed claimant will go to 75 per cent of normal weekly earnings after 45 weeks, and that is what they are on.

Senator MARSHALL—That is of their old wage?

Ms Herrington—Yes. If they remain employed by a licensee or a department, after 45 weeks they will drop to 75 per cent of their normal weekly earnings. If a person is retired—and remember they are usually invalidity retired, so it is not necessarily their own choice to retire in this process—they are dropped to 70 per cent because there is a five per cent deduction equivalent to what would have been their notional five per cent contribution to superannuation if they had been employed. As I understand it, this comes from the old Commonwealth super scheme where there was a mandatory employee contribution of five per cent. My advice is that that is no longer a mandatory contribution in the current Commonwealth scheme. In that sense, the superannuation arrangements have changed. There is also now choice in terms of superannuation, so there is not an issue that they have to remain part of the Commonwealth scheme.

Senator MARSHALL—Could that five per cent then be put into a choice fund, a chosen fund, and then—

Ms Herrington—That is the other part of the difficulty. It is a notional reduction—

Senator MARSHALL—It is a notional payment; it is not an actual payment.

Ms Herrington—and it does not go anywhere. In effect it goes into consolidated revenue, in that the scheme is not paying it out. The scheme retains it, to the benefit of the

scheme, but this small proportion of people are the only ones that are actually paying that into the scheme, and I consider that unfair.

Senator MARSHALL—And it is not into a scheme where it is—

Ms Herrington—No; it is just the scheme retains it as part of their financial viability.

Senator MARSHALL—So these amendments will reduce by five per cent the income—

Ms Herrington—They are already reduced by five per cent. These amendments do not address that five per cent. That is the significant issue. They go no way to fixing the problem of the notional five per cent contribution, which you could accept if in fact the contribution went somewhere and at some point in time was returned to the individual. If you are employed and in receipt of compensation and five per cent is still going into your super fund, at some point you actually get it back with interest. But this small group of claimants have a real deduction, which is said to be a notional contribution, that they never see in any terms again. It reduces their payments in effect by five per cent.

Senator MARSHALL—I just want to be clear: so these amendments do not cause that reduction; they just do not address—

Ms Herrington—They do not address it.

Senator FIFIELD—I want to follow up on some of the earlier comments in relation to the legislation and the effect it will have on people's ability to claim for injuries which occur during recess breaks and work related journeys. I am not someone with a great familiarity with compensation law, so it surprised me to read that you can actually claim as a work related injury something which happens on a journey to or from work or during a recess break.

I would be interested as to why you think that if you are on a recess break and you are not on the work premises and something happens to you totally unrelated to your work activity you should be eligible for compensation. Also, why is there coverage for travelling to and from work, which is again outside of the control of the employer and something which is totally unrelated to your work?

Ms Herrington—There are two parts to that. One is the nature of workers compensation, which, whether we like it or not, is a beneficial scheme. It is generally no fault. It is not set up as a common-law scheme where you have to prove fault to get compensation. It is a beneficial scheme and it is to do with work related accidents, injuries and illness. Journey claims are a distinct group and they have been upheld over many years, whether through common law or out of the statutory process, to have a relationship to work because of the travel to work, the impact that work has on that travel and the requirement to travel. It is seen as part of the work relationship.

The old test used to be literally from the boundary of the house. Past the boundary of the house was seen as part of the work relationship. That was the process. A number of jurisdictions have cut that back. Some of that goes to where in the statutory scheme you are going to place those injuries. Some jurisdictions will have other schemes—motor accident schemes or whatever—which pick up those types of claims. I am not aware that the Commonwealth has anything like that and I am not aware that all the state jurisdictions have

that process. It becomes an issue of where legislatively in the various schemes you sit that category of injury. In the Commonwealth legislation, it has always been sat in the workers compensation system. From our perspective, that is where it should remain, at least until the point where there is across the board coverage of people for motor accidents or any other accident—it might be something other than a motor accident. You can be on a push bike; you can be walking.

Recess claims are interesting, because if you assume that it is a control test, which is what the implication is if you say the moment they are outside of the premises they are not covered, then you are in fact saying that the worker cannot walk out the door and get a cup of coffee and walk back in the door and still be covered by the beneficial scheme, which is about compensations. That to me is very much like that old master-servant relationship, which says that we are going to control you from your birth to your death and the moment that you are outside our control that is up to you and there is no recognition of the fact that you are there in the workplace doing the work for the employer. You might stop to go down to the coffee shop at the bottom of the building, get a cup of coffee and come back up. Where is the break in the employment if in that process you are actually injured? It is not a control thing. You can be sitting in the workplace at your desk and the roof can fall in. That may not be a control issue, but you will still be covered by workers compensation. There could be a 911 incident. You could be sitting in the tower. You will still be covered for workers compensation. It is not a control issue; it is about the employment relationship. That is how the legislation has been set up for years. It is not control; it is a beneficial piece of legislation. It has to take into account all of the work life and the employment relationship that exists, not just the bits where the person is sitting under the direct eye, as it were, of the employer and doing what they are told.

Senator FIFIELD—You do not have to have a control test as the criteria for determining whether someone is eligible for compensation.

Ms Herrington—Of course not.

Senator FIFIELD—It can just be the fact that they are at the workplace. Something might happen at the workplace that is beyond the employer's control. If it is the roof falling, that is outside the control of the employer, but clearly the employee would not be subject to that if they were not there doing their job. They are not mutually exclusive.

Ms Herrington—No. But, unless you are talking about control, I do not see much difference between that and a person who stops and takes a lunchbreak and goes downstairs to get a sandwich and comes back up in terms of a break in the employment relationship. You are going downstairs to get a sandwich or a cup of coffee. That is still part of the employment relationship.

Senator FIFIELD—I guess it is a matter of where you draw the line. What if, in getting ready in the morning to go to work, you slip in the bathroom? But, anyway, I appreciate hearing your thoughts.

Ms Herrington—The beneficial process or concept of the legislation has generally tended to say that, once you are outside the door of your premises, that is the point at which the other process or legislative framework, if you like, take over.

CHAIR—Going back to injury and disease, you have said that the test for ‘significant degree’ would have the potential firstly to exclude employees with pre-existing genetic conditions—this is at item No. 20 of your submission—and secondly to exclude employees with any underlying disease. Correct me if I am wrong, but is it the case that some insurance companies will not cover people for those particular ailments if they already have a genetic disposition or an underlying disease? Is that so?

Ms Herrington—As I understand it, it is. But I would distinguish that again when talking about a legislative workers compensation framework as opposed to an individual insurance matter between an insurer that you are individually paying a premium to, where you enter into that contract and say, ‘It is for this and this only,’ and you pay the appropriate premium. I would distinguish that quite substantially from the sort of legislative framework that workers compensation is because it is not an individual contract issue in that sense. There would be insurance companies that do and there would be insurance companies, depending on the premium paid, that quite clearly do not.

CHAIR—But say, for argument’s sake, you had an extreme disposition towards asthma, bronchitis and bronchial diseases and you were required by the nature of your work to work in an extremely dusty place. It would be unfair in a way to expect the employer to cover you for absolutely everything in that because of your pre-existing disposition. Would you agree or not agree?

Ms Herrington—No, I would strongly disagree. If the environment is such that it is going to trigger the condition then the employer and the environment are responsible, not the individual with the underlying condition. Many people have underlying conditions that are not visible and not known. You, as it were, take the person as they are. You employ the person to do the job. You should not be having a job which is possibly the sort that is going to trigger those sorts of things.

CHAIR—Even if that limited the employer’s capacity to use his workforce in the most efficient way possible? I am not saying that an employer would send an employee with this known disposition deliberately to work in that environment. If you see what I mean, if he employs that person, that will limit his ability to use his workforce in the most efficient way possible.

Ms Herrington—I understand what you are saying, but I would disagree. We start to be almost getting into genetic selection at that point, where we select workers for the appropriateness of the task that you want them to do, and I do not think that is appropriate. I think the situation is that you take the workers as they come. They are there to do a particular job. The employer is responsible for ensuring that the job they are sent into is safe and prevents disease, illness and injury.

Senator GEORGE CAMPBELL—On the first page of your submission you provide figures at point 11 in respect of the cost of the Commonwealth scheme. It is over four financial years. There is actually a decline or decrease, which is interesting. Do those reports that you took those figures from provide a break-up of the various injuries and diseases that make up that payment?

Ms Herrington—No, I do not think they go into that level of detail. I have one of the recent reports with me, if you want to see it, but it does not, as I understand it, go to that level. It is a fairly high-level calculation. It might give some information by agency, by either self-insurer or Comcare, but it does not split them between actual injury type.

Senator GEORGE CAMPBELL—So it does not break them up between stress related or—

Ms Herrington—No.

Senator BARNETT—The Law Council of Australia referred to the financial impact statement and the saving of some \$20 million under the proposals put in the legislation. They also made reference to the fact that there may be benefits in terms of reduced premiums. Would it make sense to you that if there is a saving of \$20 million or whatever figure, a significant amount of money, then there is likely to be a downward pressure on premiums?

Ms Herrington—I would not have said \$20 million in the overall scheme of things was very much, to be really honest, and I could not personally see that having very much of an impact on premiums at all. Premiums are already quite low in comparison to all other jurisdictions. The other thing you would probably need to take into account is that, to some degree, the nature of the scheme is changing. Many of the new employers, while they are self-insurers, do have the capacity to change the nature of the scheme. That may not impact immediately on premiums but certainly has the capacity to change the mix within the Commonwealth scheme itself. I could not see a \$20 million reduction in comparison with the numbers we are talking about year by year spread across all the Commonwealth agencies. I would think it would be almost negligible in terms of any premium impact.

Senator BARNETT—But it is more likely to have a reduction than an increase.

Ms Herrington—Yes, but it is already an extraordinarily low premium rate.

Senator BARNETT—On this issue of the journey—and you have responded to some questions; I will not go into it too much—for people on the road, the claims that are made go through primarily the motor accident insurance authority in that state; they rely on those private insurance arrangements of each individual.

Ms Herrington—If it is available.

Senator BARNETT—Yes, that is right. Is it not in a way trying to get some sort of clarity in terms of what legal arrangements apply to people travelling to and from work and people on the road?

Ms Herrington—I understand the argument but there are other jurisdictions within Australia that still have journey claims. They see no necessity for clarity to any greater degree. There has always been a situation of cost recovery where a claim is brought in both jurisdictions, as it were, so if there is a claim made back against either the private insurance company or the legislative insurer, the motor accident scheme or whatever, there is cost recovery back to the compensation area. It is not as if it is double dipping in that respect. I think most insurers and claims managers would be fairly comfortable with the existing process in terms of claims recovery.

Senator BARNETT—I have a final question on the journey claims. Do you think it should include as a definition claims for travel to and from, say, an educational institution that is work related or a medical institution or a doctor for work related health requirements?

Ms Herrington—I do think that, absolutely. That is one of the real problems with the changes. It is not just to and from home. You could be sent by your employer for a medical review associated with your compensation claim and potentially, even though you are driving to the review in work hours at the instruction of the employer, you are not covered in that process. I find that unacceptable.

Senator BARNETT—Are there any areas not covered under the current proposals?

Ms Herrington—Not that I am aware of. I think all journey and recess claims are excluded.

Senator MARSHALL—For people that you cover, say a telecom technician who is called in after hours because of a fault and who will then have to drive to the fault, fix the fault—when do they start work? Do they start work when they leave home after the call-out after hours or when they actually get to the job?

Ms Herrington—It has never been an issue up to now. It will be an issue under these proposed changes. The current Telstra technicians will go directly from work to the job. They get their jobs as it were by computer screen—

Senator MARSHALL—From home to job.

Ms Herrington—Yes. They do not go to a depot any longer to pick up the van or anything like that. So my assumption would be that they would be at work, as it were, perhaps from the moment they are on the premises and get into their car or van and move. If they have received their job, I would think they would be at work. Of course, there is no distinction at the moment, because journey claims exist. From the moment they are in the van and on the road they are covered.

Senator GEORGE CAMPBELL—The van would constitute part of the workplace, wouldn't it?

Ms Herrington—Yes.

Senator GEORGE CAMPBELL—Doesn't it have tools and so forth?

Ms Herrington—Yes, it is part of the workplace. From the moment they are in the van they are at work, because they are on their way to their specific job.

Senator MARSHALL—There are a number of scenarios that we could go through. In any case, this is actually a reduction from what is there now. That is what you are clearly saying to us.

Ms Herrington—Yes. And it will complicate the process that exists at the moment. There will be less clarity in the processes for many people than exists now.

CHAIR—Thank you very much, and thank you for appearing before us today.

[2.36 pm]

DIAMOND, Ms Maryanne, Chief Executive Officer, Australian Federation of Disability Organisations

O'NEILL, Ms Collette, National Policy Officer, Australian Federation of Disability Organisations

CHAIR—Welcome. Thank you for your submission. Do you wish to make any amendments or alterations?

Ms Diamond—No, we do not.

CHAIR—I now invite you to make an opening statement, after which committee members will ask questions.

Ms Diamond—The only comment we would make as an opening statement is that the issues we raise in our submission are related to the indirect discrimination of people with disability. We are concerned about changes that might inadvertently cause that to happen. We are happy to answer any questions.

CHAIR—In that case, I note the provisions that you have chosen to discuss in the submission. Regarding the definition of disease, what do you understand by ‘substantially more than material’, when the definition moves to ‘significant’?

Ms O'Neill—My understanding is that at the moment there is no threshold level; there just has to be a causal relationship. This inserts a threshold. Our concern about setting a threshold, as we have outlined, is that we are dealing with people who may have existing conditions. It might, in effect, allow a certain level of discrimination to occur before they would be eligible for any compensation. Particularly for people with existing conditions, that could be exacerbated by workplaces, work conditions or work practices.

CHAIR—So who do you imagine would make the assessment of whether or not the person's condition was significant?

Ms O'Neill—It would be the impact. In the end, as the explanatory memorandum was put out, that sort of thing would be fought out in courts, as you would imagine. Regarding a significant condition, particularly for someone who already has an existing condition, you would imagine it would get quite difficult for that person to tease out what was part of their original condition and how much has been contributed by work. From the experience of our members, there are many situations where people have effectively experienced indirect discrimination. Maryanne, perhaps you would like to give an example.

Ms Diamond—An example of what we are trying to illustrate is someone with an existing condition, like vision impairment, going into a workplace where inappropriate lighting is provided. Often for people who have low vision, particular lighting can make a difference to their job. We would call that ‘reasonable adjustment’ and it should be provided by an employer. If it is not done the person's condition gets worse. I think it would take a long court case to determine how much of that condition's deterioration was caused by the workplace and how much might have been caused anyway.

Another one is markings on steps for not only people with low vision but also people with other disabilities. If they are not there, and people fall down the stairs, did they fall down the stairs because they had a condition or did they fall down the stairs because reasonable adjustment was not made to the workplace? They are just simple examples of what we are trying to avoid.

CHAIR—Thank you. I wanted to inquire about that.

Senator GEORGE CAMPBELL—On that issue, one of the initiatives behind the Welfare to Work bill is to get people with disabilities into the workplace, and I think there is provision for resources for employers to facilitate that by modifying or altering their workplace. Isn't there a potential for this bill to, in fact, counteract that and that, if people with disabilities go into the workforce, they potentially may be non-compensatable for injuries because they have a pre-existing condition that could contribute to that injury—for example, someone in a wheelchair who falls off a particular landing? Senator Fifield and I actually saw a case of a young woman at a university in Western Australia who fell off the stairs. She gave evidence to one of these committees. She was in a wheelchair. So it can and does happen.

Ms Diamond—That would be one of our concerns. The principle behind the Welfare to Work bill was to encourage and support people into work. We do not want to see any disincentive for people—and I think that is what you are getting at—to join the workforce. If compensation was interpreted very strictly so that anyone with a pre-existing condition—and that could be any disability—was not entitled to ever make a claim, that would be a huge disincentive.

Senator GEORGE CAMPBELL—I do not know what 'substantially more than material' means. I think the lawyers would have a feast sorting that one out.

Ms O'Neill—You raised the fact that the workplace modifications program is the program that provides funding to employers. So, yes, employers can look at that. As we note in our submission, employers are currently covered by the Disability Discrimination Act. Indirect discrimination is prohibited, but it is not effective. It is quite difficult to establish in a workplace. Very few people make complaints. I guess in a situation where an employer refuses to make a change or to acknowledge that a change was needed, you could opt to go under the Disability Discrimination Act, but things are going to be pretty rough for your employment. It is not a good thing for an employee-employer relationship to take a complaint. Or I guess you could wait until you were sure that you had a substantial impact on your employment and then choose to get compensation—which of course is stupid as well.

What we are asking for basically is that reasonable adjustment should be referenced so that there is a reminder to employers that they have obligations to employees with existing conditions or employees with conditions that come on.

Senator GEORGE CAMPBELL—The point I was making, Ms O'Neill, is that this could be highly discriminatory to people with disabilities. You could have a situation where there are 100 people in the workforce and five per cent are people with disabilities who may not be compensatable in the given set of circumstances and 95 per cent are compensatable because they do not have that pre-existing condition.

Ms O'Neill—Yes.

Senator GEORGE CAMPBELL—So it is highly discriminatory in that sense.

Ms O'Neill—Yes, and it puts people in a very difficult position.

CHAIR—As there are no further questions, I thank you very much for appearing before the committee.

Proceedings suspended from 2.45 pm to 3.13 pm

Coleman, Mr John Howard, Federal Secretary, Superannuated Commonwealth Officers Association

Garraway, Mr Lance Matthews, President, Victorian Branch, Superannuated Commonwealth Officers Association

CHAIR—Welcome. Thank you for your submission. Do you wish to make any amendments or alterations?

Mr Coleman—No.

CHAIR—I invite you to make an opening statement after which committee members will ask questions.

Mr Coleman—First of all, I thank the committee for the opportunity to present to you today our concerns and views on the proposed changes to the legislation. It is probably useful to let you know why our organisation comes to be involved with Comcare legislation. We have a rather proud record of assisting those of our members who have been unfortunate enough to be injured in the workplace or who suffer a work related illness. That has given us the opportunity to see how the legislation is administered, and it is from that background that we believed it was appropriate for us to make our submission to your committee. I have been with the organisation about five years. We have a couple of volunteers in our organisation in Canberra who have helped quite a number of Comcare clients to ensure that they receive their correct entitlements. It is through that background that we make our submission.

In summary, with few exceptions, we have concerns that many of the proposed changes will strip away, quite significantly, a number of the compensation coverage elements that exist in the present legislation. That gives us cause for concern because it is going to affect public servants who, in our opinion, have faithfully served successive governments over a number of years. We do not have any problems with the fact that organisations—and that applies both to government and private organisations—wish to ensure that costs are controlled and contained within their organisation. However, we feel that that single objective has perhaps overlooked some of the implications of those changes.

We also believe that the changes seem to have ignored a number of factors which, to us, seem to be quite relevant to the legislation and to the changes. There have been, for example, quite significant societal changes. As an example, I noticed in the explanatory memorandum accompanying the legislation that there is concern within Comcare and, obviously, within the government that the incidence of claims for mental illness has increased significantly. In our opinion, that seems to have ignored the fact that there has been quite a significant increase in the extent of mental illness in Australia generally. In fact, between I think it was 1999 and 2004-05, the incidence of mental illness increased by about 60 per cent, and that is from a Bureau of Statistics health report. So we have those concerns.

We also have concerns that, whereas the main thrust of the changes seems to be focused on saving program costs to Comcare, based on the documentation we have read, there does not seem—or there is certainly no mention that I can see in the documentation—to have been a closer look given to some of the other aspects of administration of the Comcare legislation. As

an example, I cite the costs of the not insignificant high number, in our view, of appeals to the AAT because clients of Comcare believe that the right decision has not been made. Whilst I do not have the actual costs of that, I have statistics on the number of cases that proceed to the AAT, which suggests to me that that particular aspect of that administration, rather than the actual legislation perhaps, deserves some attention.

CHAIR—Do you have anything to add to that, Mr Garraway?

Mr Garraway—No.

Senator MARSHALL—Can you go through some detail about the problems with the deeming rate?

Mr Coleman—Certainly. The deeming rate, as the explanatory memorandum has indicated, has been a rate that has been out of touch with reality, if I can put it that way, for quite some years. We are very pleased to see that there is a decision to make the deeming rate more relevant to the current interest rates that are achievable. However, we still have concerns that that deeming rate is not being set at the same level that it is for the assets test for assessing entitlement to the age pension. We see no reason that someone receiving a lump sum payment by way of superannuation—that is, a former public servant—should be capable of earning a higher interest rate on that money than an applicant for the age pension. In fact, we think it is quite discriminatory. I have not seen anything yet that can convince me or our organisation that that is fair or reasonable.

Senator MARSHALL—Is it correct that the deeming rate applies to the pre-tax lump sum amount?

Mr Coleman—That is another concern that we have. We have a member in Queensland, who I understand has made a submission to your inquiry, who received a lump sum. He has done some sums—and I cannot quote you the figures—and has estimated how much that has disadvantaged him by virtue of the fact that it was based on the pre-tax rather than the post-tax amount, because it is obvious that, at the end of the day, you can only invest the money you have after tax, not the amount you have prior to tax being applied to the lump sum payment.

CHAIR—Will that change to any great extent with the new superannuation laws coming into being in July 2007 of no tax? Isn't it no tax after the age of 60?

Mr Coleman—No, it is not no tax after the age of 60 if you belong to an unfunded scheme, and both the Commonwealth and Defence schemes are unfunded schemes.

CHAIR—Yes, I am sorry; I should have thought about that.

Mr Coleman—There will be some relief by way of the 10 per cent tax offset or tax rebate, whichever you wish to call it, but there is still going to be tax paid. I might add, just on that point, that it is a concern of our organisation that quite a few Commonwealth and Defence superannuants—not just our members—will receive little, if any, benefit from those changes. Because of the low superannuation pension they receive—the average Commonwealth and Defence superannuation pension is slightly over \$20,000 a year; that is about \$1,200 less than the combined married rate of age pension—they are currently paying little, if any tax, because of the application of the senior Australian tax offset and, prior to age 65, due to the application

of the low-income tax offset. So, whilst the government's changes—which, I have to say, our organisation does welcome—will benefit, and benefit to a fairly large extent, the minority of Commonwealth and Defence superannuants who are fortunate enough to be receiving a high superannuation pension, there will be a much larger proportion of those superannuants who will receive little, if any, benefit.

Mr Garraway—There is another issue with the deeming rates. When it was set up for Centrelink, it was set up on the basis that the deeming rates would be aligned with the cash rates, because the customers could receive a benefit without risk; whereas, if you are looking at the long-term bond rate, to invest at that level there is always an element of risk involved. So it was set up at a conservative level for Centrelink purposes.

Senator MARSHALL—It would appear that a decision has been made that people should continue to contribute to superannuation while they are on Comcare payments, and thus the notional five per cent is deducted in terms of the contribution to a public sector scheme. If people who are receiving compensation are in a non-public sector scheme—a scheme where the employer contributes nine per cent—does Comcare pay nine per cent on top of the payments for those people, or are those people not required to be in superannuation?

Mr Coleman—I am not sure of that.

Mr Garraway—I am not sure.

Mr Coleman—The issue on that for us, obviously, as I have said in our submission, is that, whilst the five per cent is deducted from the 75 per cent that the injured worker would otherwise receive, that five per cent is not paid into a superannuation fund. It serves no other purpose, as far as we can see, than to reduce the amount of compensation that the injured worker receives. It is also—and I believe the explanatory memorandum acknowledged this—considerably higher than the two per cent that members who paid into the more recent PSS Scheme had to contribute. That was only a minimum of two per cent. So for quite some years injured Commonwealth public servants have had an unjust amount, if I could describe it as that, deducted from their compensation payment.

Senator MARSHALL—Is it deducted by virtue of legislation or legislative requirement?

Mr Coleman—It is. There is a formula within the legislation that sets out how the fortnightly payments are to be arrived at. First of all, other income is taken into account, but then there is provision within the legislation—and I cannot quote you the section of the legislation—that enables Comcare to deduct that notional superannuation contribution.

Senator MARSHALL—Is this the appropriate bill to address that issue, or would it require separate legislation?

Mr Coleman—I guess the best way I can answer that is to say that, as I understand it, the current legislation enables Comcare to make that five per cent notional contribution deduction. So, yes, I believe that changing the legislation to remove that would fix that problem.

Senator MARSHALL—The rest of your submission is very clear; so I thank you for that. I do not have any further questions.

Senator BARNETT—Thanks very much for your submission. It is quite comprehensive and very helpful. I have just a couple of questions. With regard to the likelihood of a savings for Comcare as a result of the amendments, do you accept that there will be savings? Secondly, do you accept that there is more than a reasonable likelihood that that will provide a downward pressure on premiums?

Mr Coleman—I do not think there is any doubt that savings will result from the changes. Our organisation has concerns, however, that perhaps there has not been enough acknowledgement of the fact that there will be quite significant cost shifting. At the moment Comcare meets the medical costs as well as the loss of income costs for injured public servants. If some of those provisions that are proposed in the bill are withdrawn, the costs of some of those things will shift to other government programs such as Medicare and the PBS, as well as to private health funds, and even to Centrelink in terms of income support payments. So it is a concern of ours that perhaps that has not been appropriately considered or taken into account. I am not privy, as I am sure you would be aware, to the background regarding how those savings were arrived at, but that is a concern of ours, and I note from reading some of the other submissions that it is also a concern of other people who have made submissions to your committee.

I was quite intrigued, for want of a better word, to note that, whereas the main driving force behind the changes seems to be a desire to contain or reduce costs, particularly with regard to the incidence of mental illness as opposed to physical injury, having read Comcare's annual report this morning, in 2005-06 they came in under budget by almost 10 per cent—18-point-something million out of a budget of just over \$200 million. That raises the question: why is there this concern about a blow-out, or what appears to be the case—the case that Comcare is putting? It also seems to have overlooked the fact that, as I understand it, there has been a not insignificant increase over the last few years in the number of public servants who have had to be recruited to implement government programs such as, going back a few years, the GST; and in more recent times there has been the Work Choices legislation. It must surely follow that, if you have an increase in the number of employees, the cost of the compensation scheme covering those employees is also going to increase.

Senator BARNETT—Do you accept that Comcare premiums across the country are at a low level in comparison to others?

Mr Coleman—I confess that I have not looked at that in detail.

Senator BARNETT—Fair enough. In terms of this issue in your submission about journeys to and from work, which you feel very strongly about, do you accept the proposition that you have a system at the moment that covers journeys to and from work but you also have, as you have already touched on, motor accident insurance, private insurance covering those claims, and you have Medicare and public hospitals in terms of the health claims, so, in a way, you are sort of doubling up, and this might help to align industry administrative arrangements so that there is not a double-up in terms of the payment of premiums and so on? Do you see the argument in favour of getting clarity in terms of who pays for physical and health costs and other costs regarding journeys to and from work in that arena?

Mr Coleman—I guess the first point I would make in responding to your question is that one of the fundamental principles on which the changes seem to have been based is that an employer should not be responsible for any actions over which it has no control. I guess in theory that is not unreasonable logic. But if we are going to agree with that reasoning, surely we have to apply it equally to employees, because an employee has no control over the fact that they have to go to work. To go to work, they have to catch a bus or a train or drive a car. So, if we want to absolve the employer of responsibility, surely we have to accept the same argument in terms of employees because they have to travel to get to work. They do not have any control over, for example, someone who sails through a red light and smashes them up at an intersection. To come back to the main thrust of your question—that is, who should pay—again, I have a concern that the cost shifting in net terms, as far as government expenditure is concerned, possibly will not be as great as the explanatory memorandum seems to be suggesting.

Senator BARNETT—We have had a bit of debate about the control factor in terms of journeys to and from and who is responsible. I think your points and your submission are well noted and I appreciate them.

Mr Coleman—There is another concern we have about the removal of compensation coverage for people travelling to and from work. I know that other people have made this same observation in their submissions, or some have. We are encouraging Australians to be healthier, and one of the ways to do that is to exercise regularly. Quite a number of people, not just in the public sector but also in the private sector, choose to ride or walk to work to get that exercise. I am quite sure that a good number of them would stop doing that once they learn that they are not going to be covered if they are unfortunate enough to suffer an injury on the way to work.

Senator BARNETT—Because the risks are higher?

Mr Coleman—Yes.

CHAIR—Thank you very much for appearing before us today.

[3.33 pm]

POWELL, Ms Sue, Project Officer, Community and Public Sector Union

PERKINS, Mr David, Federal Industrial Officer, CPSU-State Public Services Federation

CHAIR—Welcome. Thank you for your submission. Do you wish to make any amendments or alterations?

Ms Powell—No.

CHAIR—I invite you to make an opening statement, after which committee members will ask questions.

Ms Powell—The Safety, Rehabilitation and Compensation Act has been in force for nearly 20 years now, and the CPSU believes that it is good legislation and that it continues to provide a fair and effective workers compensation scheme. CPSU believes that a number of the amendments proposed represent a significant shift away from the original intent of the legislation. These amendments threaten the integrity of the no-fault workers compensation system created by the legislation. This will not only dramatically increase the hardship suffered by Commonwealth employees during times of injury or illness; it also presents broader societal concerns regarding cost sifting, the responsibility of employers and the recognition of psychological injury. The scheme has a good return-to-work rate, and the CPSU sees no need to change the legislation in most areas. The changes proposed to the definition of injury from that which work has a material contribution to a significant contribution will shift costs from the employer to the community and lessen employers' commitment to prevention and rehabilitation. There is no public policy reason to make such a change, given that Comcare performs extremely well in the areas of prevention and rehabilitation.

CHAIR—Ms Powell, you are reading the executive summary of your submission. That is fine, but you should take it that the senators are familiar with that.

Ms Powell—These are the points that I want to emphasise.

CHAIR—By all means, yes.

Ms Powell—The exclusion of injuries arising from reasonable administrative action is open ended and dramatically changes the no-fault nature of the scheme generally and specifically for psychological injury. Such an approach is regressive, discriminatory and counter to broader public policy regarding mental illness. In addition, the approach will lead to increased disputation and consequential delays in rehabilitation outcomes. Part of this comes about as there is no definition of 'reasonable' proposed in the legislation. So there is great potential there for disputation.

The exclusion of travel between the employee's residence and the employee's usual place of work from workers compensation coverage is regressive and shifts the cost of insurance from the employer to the community and on to the individual in some cases. Travel to work is an integral part of the employment arrangement, and employers' responsibilities in this area

should be maintained. The assumption that employees will have access to other forms of insurance is flawed, particularly in the case of cyclists and pedestrians. Certainly there has been a great push for a healthy lifestyle, and cycling is seen as one of the ways of achieving that. We are particularly concerned that there will be no coverage for cyclists under this scheme—for those who choose to cycle to work and possibly during their recess. The cost to the employer could be minimised through the proper use by Comcare of the existing cost recovery mechanisms.

The exclusion of temporary absences from work for workers compensation coverage is also regressive and shifts costs to the community. As we have identified in our submission, the use of work breaks for health promotional activities are provided by lots of Commonwealth government departments and they will be compromised. Again, there is potential for disputation as it is not clear what would and what would not be covered during that period. Also the government policy of promoting a healthy lifestyle and the need to address the increase in obesity in the Australian population are important things that we see can be achieved through people exercising during their breaks, and this will be curtailed if work breaks are no longer included in workers compensation.

The reduction of incapacity payments on invalidity or redundancy fails to take into account the need for incapacitated employees to save and plan for their retirement. In addition, it shifts the cost of the employee's retirement from the employer on to the community. We see it as important that people who are in that situation are still able to plan and save for their retirement.

Mr Perkins—Thank you for the opportunity to address the committee. By way of background, I worked in the early eighties as an adviser to workers in the New South Wales Workers Compensation Commission. I spent 18 months advising workers with a range of different injuries about their rights and how to go about sorting out their situations. I am fully familiar with the impact of injury on people in the workplace. At times it can be quite devastating and very sad.

Later, I was involved in negotiations for the Trades and Labour Council of New South Wales with the Unsworth Labor government about the reforms in 1987 and then later with John Fahey in 1989. So I am aware that in workers compensation systems there needs to be a balance. Cost is always a consideration, and there needs to be a balance wrought between what is fair and what is affordable.

In terms of our submission—I take it that you have read it—our specific concerns are enumerated or listed there. We say that there is no really pressing economic imperative for reductions in benefits or access to benefits at the moment. Comcare is an affordable scheme at the moment; it is a very efficient scheme. We are aware that, with greater worker intensification, the stress that is imposed gives rise to stress related injuries: depression, anxiety et cetera. You can note from the studies have been done that those stresses are often felt in work areas such as police, social work and those sorts of social welfare areas, and consequently there is a rise in stress claims. It is not simply a matter of people having a predisposition and they are then being tipped over.

In relation to journey claims, we feel that there is a strong argument that if the proposed amendments go through they will discriminate against people in remote, rural and outlying suburban areas where there is simply no availability of public transport. There is a lot of evidence that suggests that motor transport is much more dangerous and much more risky than bus or rail travel, by public transport, so the proposed reforms will adversely impact upon people in remote, regional and outlying suburban areas.

A further point that I would like to emphasise is that if certain claims are not accepted then the provisions in the workers compensation act do not kick in and people are denied the opportunity to be rehabilitated through work. That, I think, leads to longer injury, longer illness and higher cost to the community generally as well as the human cost to the people suffering. I simply make those points.

Senator BARNETT—Thank you for your submission. Your thoughts are well noted. I have a quick question in terms of costs. Do you accept that there will be a cost saving as a result of the amendments, and do you think that may have an impact of downward pressure on premiums?

Ms Powell—The explanatory memorandum suggests that there will be cost savings. That may result from the fact that there will be potentially fewer people able to claim under the workers compensation scheme. But the scheme currently has low premiums and it has a good return to work rate. We see no financial necessity to change the scheme from what it is because it is already one of the best performing compensation schemes in the country. So we do not see that that is a justification for changes.

Senator MARSHALL—The CEPU, in their submission, say:

The test for “significant degree”—

this is in terms of the amendment to the definition of ‘injury and disease’—

would be made extraordinarily difficult and would have the potential to

- Exclude employees with pre-existing genetic dispositions;
- Exclude employees with any underlying disease ...

Do you agree with that?

Mr Perkins—Yes, it must clearly do that. If, for example, it were a depressive illness that someone had a predisposition to in their family, by tightening the definition of the connectedness with work it clearly does pick up those types of underlying disorders. I think the CFMEU used the example of heart disease.

Senator MARSHALL—How will those matters be resolved between the claimant and Comcare?

Mr Perkins—One would have thought that a claim would be made and that the assessors would look at the act and would reject it and then, at least in some circumstances, it would end up being disputed.

Senator MARSHALL—Where would it be disputed?

Mr Perkins—The Comcare system, as I understand it, goes to the AAT.

Senator MARSHALL—And what does that involve? Does that involve legal counsel? Given the change of definition and what we have talked about, there are going to be some cost savings. Given that there is nothing in this bill that talks about administrative efficiency, there are going to be cost savings obviously as a reduction of payouts and a reduction of claims.

Mr Perkins—It must lead to more disputation because the definition is more arguable. There is a lot more scope for argument about the connectedness to the employment so there must be more disputation in the appropriate forum.

Senator MARSHALL—Someone has told us about the potential for \$20 million in savings. I am not sure where that has come from and we will talk to the department and possibly Comcare about that tomorrow. If there are savings on one hand, it may lead to a reduction of premiums, but then there will be extra costs through litigation and other systems as a consequence of these changes. Obviously you have members that you look after. Do you expect an increase in litigation and an increase in legal costs as a consequence of this? Who ultimately pays for that? I would have thought that a narrower definition gives a lot more scope for argumentation around the meaning and increased legal and dispute resolution costs. But we also should not forget the human costs that are involved of people who are in limbo, in a sense. They are incapacitated and unable to work. Then there is the consequence of falling back on sickness benefits or social security arrangements. There are all sorts of costs that become socialised if they move out from a compensation system.

Ms Powell—Currently the CPSU does represent people who have a claim for compensation under the existing legislation. Also, as we have pointed out, there are certainly a lot of grey areas, particularly when you talk about reasonable employer action. What is ‘reasonable’? There is immense potential there for dispute about what ‘reasonable’ means and who defines it. Is it the employer, the employee or Comcare? Where is that assessment made about what is reasonable? Certainly CPSU has represented members in the past on those issues, but if the definition is narrower and there are more of our members disputing the Comcare decision or putting a case before Comcare because it is a grey area, it is not clear and they want to have it tested then there will be an increase in legal costs because it will be tested through the courts. It is not something that the union will probably have the time to do for all of our members; plus there will be legal costs involved. We will have to use legal counsel, which will increase the costs as well.

Senator MARSHALL—Obviously there will be an increased cost to Comcare as well.

Ms Powell—Yes, their legal costs for attending as well.

Senator MARSHALL—Is leave as a consequence of a compensatable injury or illness at work approved leave under the Workplace Relations Act?

Ms Powell—I am not sure.

Mr Perkins—I understand it is. It is sick leave we are talking about.

Ms Powell—It would have been sick leave to start with, but then, if it is a compensatable injury, it is not sick leave.

Senator MARSHALL—Being absent from work because of a Comcare claim is not something that you can be terminated for—is that right?

Mr Perkins—Presumably while there is a paid entitlement it is paid sick leave.

Senator MARSHALL—Yes, that is right.

Mr Perkins—Presumably it runs into unpaid sick leave and then it comes at some point to debate about whether the person should be returning to work at all or not.

Senator MARSHALL—Whether it would be authorised or not.

Mr Perkins—Yes, whether it is authorised or not.

Senator MARSHALL—So, if you have a genetic disposition which excludes you from a compensatable claim and you are absent from work, would that be authorised leave or would it be unauthorised leave?

Ms Powell—I would think authorised leave.

Senator MARSHALL—It would be authorised leave?

Mr Perkins—Presumably one would go to a medical practitioner, obtain a medical certificate and—

CHAIR—They would get a medical certificate, yes, under the heading of sick leave.

Mr Perkins—And presumably the employer would look at the certificate. I am not sure, in the Commonwealth area, what rights an employer has in that context to get a second medical opinion, but presumably the person would also be being advised and the doctor would be making the assessment in terms of the definition and whether it fitted the definition. That is obviously a difficult question for lawyers, let alone medical practitioners.

Senator MARSHALL—Once you have exhausted your sick leave entitlement and you are still injured or ill but not covered by Comcare, is that authorised leave?

Mr Perkins—I do not know.

Ms Powell—It may be, dependent on what is in your enterprise bargaining agreement; there may be provisions in there. As an example, some agreements, if you exhaust your sick leave, allow for you to convert some of your long service leave or annual leave and take that so that you can still maintain an income. It could be approved leave in that sense. So there are different provisions in different agreements that affect that.

Mr Perkins—Generally, acceptance of a workers comp claim creates an ongoing relationship in terms of expectation and obligation for return to work, so you have the employee and the employer working towards a return to work. The rehab and early return to work provisions kick in, so that you have people focusing on the disability that is causing the incapacity and the best way to get someone back to work at the earliest possible time. It saves a lot of money in the long run when you get people back into harness, so to speak, and it saves a lot of not only personal anguish and pain but also cost to the community generally. It is obviously an advantage for a matter to come under the workers comp legislation because of those rehabilitation and return to work mechanisms that kick in.

Senator MARSHALL—With the change of definition, none of that is accessible if your claim is not accepted?

Mr Perkins—That is right.

Senator GEORGE CAMPBELL—In their submission the CEPU give us some figures with respect to the cost of Comcare. I think the figures were 2002-03, \$476.9 million; 2003-04, \$486.23 million; 2004-05, \$341 million; and 2005-06, \$354 million. Over that four-year period the cost of administering the scheme has in fact substantially reduced. What is interesting about that is whether that is commensurate and whether there had been substantial growth in employment in the public sector at the same time. Given those figures, what is your assessment of why these changes are being promoted at this point in time?

Ms Powell—Why these proposals are being promoted? I see it as a cost-saving exercise and I cannot see the justification for it. Certainly if you look at those figures and you see that the cost has decreased over the four years mentioned in that submission then there is no justification. It talks about there being a balance between the cost to the employer and the benefit to injured workers. We see that balance as being tipped totally in favour of the employer and their saving money, and that comes at the expense of injured workers and rehabilitation back to work.

One of the examples is the removal of the claims at recess. That results in a saving of only 1.5 per cent of total claim costs. That is such a miniscule amount. The benefits that employees get from being able to participate in things like getting up and walking around or going out and having some exercise at lunchtime or in a recess break far outweigh the miniscule savings that are being proposed. In our view it is certainly not justified as a saving, because the scheme is well run and it has, as we put in our submission, a good return to work rate.

In fact, some of the things that are in our submission were comments from Comcare itself at a presentation it did recently. It says that it has the best return to work rates, low levels of workplace injury and disease, the lowest incidence of claims resulting in one to two weeks compensation since 2001, effective rehabilitation schemes and lower standard premiums. They were Comcare's comments about its own scheme. As we said, in our view we cannot see that there is any justification for these changes. It really is a well-performing scheme and it has low premiums as well.

Mr Perkins—I think that also, from an employer's point of view, there is an argument that on the face of it seems attractive, and that is: 'We have no control over the situation on recess and journey claims.' In a sense, that is true, except for, as we touch on in our submission, where you site your plant or your office et cetera. But control on the face of it is sort of a nonissue in a sense because the journey and recess claims are in effect an insurance provision that, from an employee's point of view, extends cover for the journey from the home to work and the return. From an employee's point of view, that is important. It is risky getting from home to work and vice versa. I think the control issue is not that critical. The costs are relatively small.

If control was to be the only issue, you would knock over the uninsured liability component. Employers in the workers compensation schemes take on a liability for employees of companies which do not have workers comp insurance. In New South Wales it is called the uninsured liability scheme. Every employer takes that obligation on. That is part of the scheme. It is just a group insurance arrangement. They pay for it and it covers employees over whom these employers have no control. You can look at control, but it is not

the critical issue. You have to look at the scope and the social welfare nature of the scheme itself. Control in a sense is not so critical.

Senator GEORGE CAMPBELL—Just on that issue, it seems to me that they are measuring the cost of covering the recess issues and the to and from work issues, but they have not taken into account the benefits that accrue to them through improved health and fitness of their employees, in either productivity terms or reduction in the amount of sick leave that may be utilised by these employees. It is simply a very narrow focus on the cost element without looking at the benefit that is being contributed in an area.

Ms Powell—That is right. There is no emphasis on the benefits. As we listed in our submission, there are many agencies that now have a focus on providing healthy activities for their employees that they can participate in. Certainly many agencies have done health surveys and things like that and found that the health of their employees is costing them money, and they have addressed it themselves, which is perhaps one of the reasons why some of these costs are going down. The departments are running health systems at lunchtime, in the workplace and outside of the workplace. They are encouraging people to get up, get out and walk around. Certainly in many areas of Australian employment, workers are now chained to a desk with a screen in front of them, so it is important—in fact, they are encouraged—to get up, walk around, go outside and have a break, and not sit there for long periods of time. The standard in the Commonwealth used to be five minutes in every 30 minutes. They are encouraging people to get up and go away from their desk and their screen, change their view, get outside and walk around, and not sit at their desk and consume lollies, with all of the health risks that come with that. They are encouraged to get up and be active and to address that. The departments see that there are returns in terms of the increased welfare and health of their employees and also fewer claims for issues like occupational overuse syndrome. Injuries like that did have a peak a number of years ago. Even though we are spending more and more time at a computer—and more and more people are—those issues are not coming forward because they are being addressed through health issues like that.

Senator GEORGE CAMPBELL—It would seem that some of these amendments are in fact going to detract from that.

Ms Powell—That is what we are suggesting—that they will detract from people being confident that they can go out and do that and they will be covered. It is also discriminatory in that, if your employer is able to provide a facility within the building that you work in, then you can participate in one and you will be covered; however, if you work in a building where the employer cannot afford to or does not have to actually provide it, then you cannot do that because you will not be covered. If you leave the building, then you are on your own, whereas if you do it within your building, then, if it is in the canteen just going to get a cup of tea you are covered; if it is doing a lunchtime class, then you are covered. But if you go out of the building, then you are not covered. It could be that you work for the same employer but it is in one building and not in another. So it is very discriminatory in terms of what facilities the employer is able to provide whether or not you are covered, and yet the employer wants all of their employees fit and active and able to participate in these schemes.

CHAIR—As there are no further questions, we thank you very much for appearing.

Mr Perkins—I would like to make one more little comment. I would like to touch briefly on the issue of the catastrophically injured. It was noted in the introduction to the Productivity Commission report in 2004. A lot of journey claims are catastrophic car accidents—and over 50 per cent of road deaths occur in rural areas—and it may be that you cannot prove fault. With just a moment's inattention on a road, you can be very catastrophically injured—I think in Australia it is maybe 200 or 300 people per year, not only from road accidents but also from diving into rivers and things. At the moment, the workers comp journey claims pick up some of those people, either through workers comp or through common law, where you can prove fault. But, if this amendment goes through relating to journey and recess claims, if you are catastrophically injured, nothing is going to pick you up. Unfortunately the situation in our country at the moment is that no government at the state or federal level has come to grips with that problem, and mostly the people who are catastrophically injured end up in nursing homes. We are talking about 200 or 300 people.

CHAIR—So you would not be covered, even if you were, for argument's sake, a Telstra engineer or a Telstra mechanic on your way to fix a fault in a country exchange and you were in your car or van, which in that instance would be your workplace?

Mr Perkins—I am not saying that. I am talking about journeys to and from home, not work related journeys. Work related journeys are clearly still picked up. I am talking about those people who would be excluded from journey claims who suffer catastrophic injuries. At the moment, I am not sure what number it would be—tens, scores or what. I guess, looking at it, you would think, rather than excluding those claims altogether, why not look at excluding the less serious but maintaining a safety net for the catastrophically injured?

CHAIR—Thank you for that. That is on the record. Thank you very much for appearing before us today.

Committee adjourned at 4.03 pm