Submission by the
Communications, Electrical and Plumbing Union
(New South Wales Postal & Telecommunications Branch)

to the
Senate Standing Committee on Environment,
Communications and the Arts

Inquiry into Australia Post's treatment of Injured and ill workers

23 November, 2009

Prepared by the Branch Secretary Mr Jim Metcher

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1. My name is Jim Metcher and I am the Branch Secretary of the NSW Postal and Telecommunications Branch of the CEPU.
2. The position of Branch Secretary is an elected position that I have held since 1996.
3. I have held various other full time positions in the Branch since 1990 to 1996.
4. Prior to becoming a full time officer of the Union I was employed as a Postal Delivery Officer and then Delivery Manager with Australia Post from 1980 to 1990.
5. During my time as a full time officer with the Union, I have been directly involved in workers compensation and health and safety matters for the Union with Australia Post.
6. For example, I am responsible for introducing into Australia Post, the long standing practice of employee interviews with the involvement of a Union representative during the reconsideration review process to resolve workers compensation claims and setting up DWG structures and the joint Health and Safety training of health and safety representatives with Australia Post in 1991 when the Occupational Health and Safety (C&E) Act 1991 was initially introduced.
7. I consider myself being a person with a fair understanding of the workers compensation processes within Australia Post that is regulated under the Safety Rehabilitation & Compensation Act 1988.
8. From 1999, I noticed an increase in employee grievances caused by the introduction of a new policy for managing employees with non work related injuries by Australia Post, known as the 'non stat policy'.
9. Up until the introduction of the new non stat policy, Australia Post made fair assessments and decisions to make reasonable adjustments in the workplace for employees to continue in gainful employment despite having a non work related injury or disability.
10. Since the introduction of the non stat policy, employees who suffer from a non work related injury or when liability is not or no longer accepted with workers compensation claims, it is deemed that these employees are a cost burden by Australia Post and are identified for removal from employment by being directed onto sick leave under the non stat policy if they are unable to perform the inherent requirements of the duties to the position employed against.
11. Once directed onto sick leave, the employee has 78 weeks to return to work and be able to perform the inherent requirements of the duties to the position employed against or the employee faces compulsory medical retirement without any financial benefit or income protection.
12. An overwhelming majority of employees placed into this situation are not eligible for total or a partial permanent disability benefit provided for under the Australia Post Superannuation Scheme and usually become unemployable long term if not permanently and rely on (subject to eligibility) Government provided income support benefits for the rest of their livelihood.

13. Shortly, following the introduction of the non stat policy, large numbers of employees were being directed onto sick leave and were facing the potential of being medically retired that had the effect of being no different to having their employment terminated by Australia Post.
14. By 2002, the application of the non stat policy by management was just out of control with employees being removed from their employment by Australia Post with the most minor non work related medical restriction.
15. It got to such an appalling level that the Union had to find a way of challenging Australia Post to the treatment of employees with non work related medical conditions that were destined for becoming another permanent unemployed statistic not to mention the trauma these affected employee and their families were experiencing in terms of just falling apart.
16. In early 2002, I led a campaign that involved widespread publicity involving a team of legal representatives commencing an employee lock out type proceedings against Australia Post in the Australian Industrial Relations Commission and commenced a disability discrimination action in the Federal Court of Australia in the matter of ***Sarah Daghlian and Australia Post.***
17. We had around 20 employee witnesses along with their supporting families at the time, ready to give evidence in the AIRC matter to tell their story on how they were being locked out of their employment by Australia Post despite being able to continue to work in gainful employment once reasonable adjustments were made to the workplace.
18. At the same time we had Ms Sarah Daghlian before the Federal Court who was being discriminated against by Australia Post due to her disability.
19. The AIRC matter resulted in a settlement between Australia Post and the Union. The settlement involved for all NSW and ACT employees directed onto sick leave (most of the employees had not received any income for a long period of time) being put back on the payroll until their non work related medical conditions were being jointly reassessed for returning back to work as soon as practicable.
20. As a result of the joint assessment, all employees with non work related medical conditions apart from I recall two or three were allowed to be returned to work following reasonable adjustments made to the workplace.
21. In addition, a consent Order was made by the AIRC under the General Conditions of Employment Award (the Award) on 25 November 2002 to the establishment of the Australia Post Medical Review Board of Reference to be chaired by an AIRC panel member for the purpose of determining future appeals made by employees who felt they were wrongly directed onto sick leave under the non stat policy.

22. Ms Sarah Daghlian was successful in the Federal Court case on her disability discrimination claim brought against Australia Post. The findings to disability discrimination by the Federal Court were significant and an order for compensation and costs were made by the Court against Australia Post.
23. During the height of the campaign, the publicity and community reaction to the treatment of Australia Post against their sick workers was significant across the nation due to the overwhelming media reporting that even extended to international media reporting in some countries.
24. From around 1999, Australia Post introduced two further new policies being the Attendance Improvement Management Systems (AIMS) and the Injury Management (Early Intervention) Programme (IMP).
25. At the height of the controversial AIMS policy, employees were directed to attend and in most occasions same day compulsory medical assessments during a sick leave absence. Same day compulsory medical assessments occurred once a sick leave absence was deemed not to be genuine by the management irrespective of the employee's illness and/or the employee furnishing a medical certificate from their treating doctor to support a sick leave absence.
26. The compulsory medical assessments under AIMS were only required to be undertaken by company doctors' who are equivalent in qualifications to that of a General Medical Practitioner.
27. The company doctors were given the description of Facility Nominated Doctors (FNDs) by Australia Post.
28. Sick employees within all levels in Australia Post were subjected to fear and intimidation by management with the threat of being disciplined and/or required to produce a medical certificate following every sick leave absence as punishment if they did not attend the FND assessment.
29. FND medical reports containing employee's personal medical information were forwarded to the management by the FNDs and at times were being misused. In many cases management were reported, disclosing the personal medical conditions of sick employees between each other and on occasions within the workplace.
30. Women employees were the most vulnerable under the controversial AIMS policy, by attending for work sick, in fear of being disciplined and/or to avoid being a target for harassment by management because of not attending for work when sick.
31. The controversial AIMS policy in terms of employees being compelled to attend same day FND medical assessments during a sick leave absence ended in an agreed settlement with the Union that is included in the current Australia Post Enterprise Agreement 2004.
32. Under the IMP policy in its infant stage, employees were encouraged voluntarily to attend FND medical assessments when they notified a work related injury.
33. The enticement for an employee to attend a FND assessment was promoted around easy access to a qualified independent doctor for treatment and management of a work related injury or illness.

34. The FND consultations would be free of charge without the employee having to foot up front consultation fees required by medical practices who did not bulk bill or where medical practitioners sought up front payments pending a workers compensation claim being made by the employee and liability for the injury being accepted.
35. Shortly after the Australia Post Agreement 2004 was certified in December 2004, Australia Post moved to a new extreme level in practice with their IMP policy, by compelling injured employees to attend FND assessments once a work related injury was reported or employees would face disciplinary action.
36. Australia Post made no mention whatsoever of their intentions for doing so during the Agreement negotiations.
37. The authority relied upon by Australia Post for directing injured employees to attend an FND assessment following the reporting of an injury in the workplace, was made under the fitness for duty section within the Award.
38. Australia Post in our view was in breach of the Award despite the extreme and unfair actions that are taken against injured employees who were already having their work related injury or illness treated and managed by qualified nominated medical practitioners.
39. FND medical assessments resulted on average 9 out of every 10 injured employees being fit to attend for work under restrictions irrespective to the severity of the work related injury or illness.
40. In comparison, the same FNDs when called upon by management to provide medical assessments or opinions for employees with non work related injuries, then in most cases it had an opposite effect, where the FND usually determined the non stat employee unfit to perform their normal work irrespective of the medical opinion made of the equally qualified treating doctor saying they were fit to return to work.
41. Before too long, medical assessments certified by employees treating medical practitioners were becoming irrelevant and discarded by management where only FND medical assessments were being recognised by the management.
42. FND medical assessments are always heavily relied upon by the workers compensation section in terms of determining liability and/or paying workers compensation claims where conflicting medical assessments are submitted by injured employees treating medical partitioners.
43. At around the same period of time, it was revealed cash bonuses were being increased and extended across the management levels of the Corporation. The primary eligibility for cash bonus rewards being awarded to management is in terms of managing and reducing lost time injuries in the workplace under the IMP policy.

44. It also soon became apparent that long standing health and safety obligations in the workplace in terms of workplace injury investigations and injury prevention measures was deteriorating rapidly due to records of loss time injuries being avoided to be made at all costs by management given the incentive of obtaining lucrative cash bonus rewards.
45. It has only been revealed recently that management cash bonuses are also recognised as part of salary for calculating superannuation benefits under the Australia Post Superannuation scheme which provides for a 'defined' superannuation benefit. Yet interestingly at the same time, Australia Post rejected employee claims for their one off Corporate bonus under wage deals to be recognised for superannuation benefit purposes.
46. Senior Managers are constantly gloating where they are able to live off cash bonus rewards and being able to afford salary sacrificing of the total or majority of their nominal salary for superannuation purposes.
47. It is without doubt that the Australia Post Superannuation Scheme will not be financially sustainable in meeting increasing liabilities in the future long term without regular and rising contributions having to be made by Australia Post into the fund that will be largely be caused by cash bonus rewards recognised in addition to nominal salary for calculating management superannuation benefits.
48. In April 2006, the Australian Industrial Relations Commission (AIRC) issued a decision against Australia Post for wrongly applying the Award as an authority when directing employees to attend FND medical assessments relating to workplace injury/illness.
49. Shortly after this AIRC decision was made, Australia Post were questioned by the Senate Committee during an Estimates Hearing about the AIRC decision and whether Australia Post would abide by the AIRC decision and reconsider their controversial IMP policy in terms of wrongly forcing employees under duress to attend FND assessments for work related injuries.
50. The same FND medical assessments that are being ordered under the disguise for determining an employee's fitness for duty and then being passed onto the workers compensation section for making workers compensation determinations without the knowledge or consent of the injured employee and by doing so are also allegedly breaching privacy provisions.
51. Australia Post deliberately misled the Senate Committee in the Estimate Hearing when they indicated that they were appealing the AIRC decision as there was no legal ability to do so and where in only a matter of weeks on 30 June 2006, Australia Post made a new Determination No 6 of 2006 under section 89 of the Australian Postal Corporation Act (the Determination).
52. The Determination provided Australia Post with a new authority for amongst other things, to direct employees to attend FND fitness for duty medical assessments for any reason at all, including work related injuries. An authority that is not available to any other employer organisation in the nation.

53. Australia Post did not engage in consultation with the relevant Unions or their employees to the introduction of the Determination. A notice was only issued to the relevant Unions with a staff information bulletin issued to employees shortly after, to the effect of the Determination.
54. Under the Determination, if an employee fails to abide by the direction to attend an FND medical assessment then they may be subject to disciplinary action and charged for the costs of the FND consultation fees by recovering such costs from the employees pay.
55. The Determination provided Australia Post with an open ended authority to apply its IMP policy in terms of employees required to attend FND medical assessments to overcome the decision against them by the AIRC.
56. In NSW and the ACT, all employees who report an injury or illness in the workplace are initially directed verbally by management to attend an FND medical assessment. The verbal direction by the management normally contains threats of disciplinary action if an employee indicates they do not want to attend an FND assessment and irrespective of an injured employee wanting to only be treated and managed by their nominated treating medical practitioner.
57. In addition, a number of injured employees reported cases of being threatened by management with not being paid workers compensation for loss time or treatment for their injury or illness if they failed to attend the FND assessment.
58. In fear of being disciplined or not receiving workers compensation entitlements, employees generally attend FND medical appointments.
59. When an employee refuses to follow the verbal direction to attend an FND medical assessment they then receive a standard formal notice directing them to do so. The notice always contains the threat of disciplinary action and recovery of FND consultation costs if they fail to attend the FND appointment.
60. This action by Australia Post creates the culture where a lot of injured employees end up being reluctant to double up and attend their normal treating doctor for treatment and management of their injury or illness, unless the employee is unable to comply with the FND fitness for duty assessments.
61. In many of the employee grievances that come to our attention, it is at the stage of when employees are unable to meet FND medical assessments or when the workers compensation section denies liability for the injury or where liability is not accepted for payment of wages under workers compensation.
62. It is generally found in a lot of cases that the employees have no medical evidence outside of the FND medical assessments to support their workers compensation claim when the Union or legal representatives makes an assessment to the likely success of a reconsideration review and/or appeal to the Administrative Appeals Tribunal.

63. This in turn locks out an employee from the outset of their work related injury being recognised as being liable by Australia Post or the employee receiving workers compensation entitlements for the payment of treatment and loss of income for an injury occurring within an Australia Post workplace.
64. Another standard process applied by the workers compensation section is determinations being made to not accept liability for paying compensation by preferring the opinion of the FND medical opinion to that of the employees treating doctor's medical opinion who are just viewed as being irrelevant when determining claims.
65. Many employees with short term injuries usually give up in pursuing their workers compensation entitlement beyond the initial delegate determination stage, in particular if the employee has sick leave credits available to offset loss of income.
66. I have constantly argued the relevant point with Australia Post to how an employee can receive approval for sick leave pay and not workers compensation payments if an employee is suppose to be considered fit for work under controversial workers compensation determinations being made against liability to pay wages for a work related injury.
67. The lack of education and understanding by the employee to the reporting of an injury from the outset (P400) and having to make a claim for workers compensation for loss of time and/or treatment is alarming, but understandable given employees are not familiar with what they are expected to do following an injury occurring in the workplace and then genuinely rely on the management for guidance.
68. A management guidance driven by a culture of avoiding records being made of injury reporting (P400), loss time injuries and for workers compensation claims being discouraged to be made altogether.
69. Where an FND medical assessment is only involved, it becomes almost impossible for the injured employee to obtain a successful reviewable decision to receive their legal entitlements given the role of the FND and the influence by management with the FND from the outset of the injury.
70. The reconsideration review process is also of a major concern, where the process is not undertaken by an independent assessment other than by a name and title sitting next door in an office to the initial delegate for determining claims within the workers compensation section. For as long as I can remember this is the process Australia Post adopts under the present license provisions provided for by Comcare for managing workers compensation claims as a self insurer.

71. In general, workers compensation delegates, litigation officers (reconsideration review group), rehabilitation providers, health and safety management along with the general workplace management liaise with each other under the coordination and influence of the Human Resources management group in terms of managing employees end to end from the outset of the injury through to the workers compensation claims process and then followed by the application of the non stat policy and disciplinary action against injured employees. The FND role and their medical assessments is the primary vehicle in this process.
72. When you add into the mix, the management cash bonus rewards that generates increasing superannuation benefits you have an ideal 'scheme' of a systemic culture across the organisation to manipulate the workers compensation systems and by doing so reducing overall costs and liability in association with workplace injuries that is in turn reducing health and safety associated costs in the workplace. A cost savings according to a senior executive estimated to be in the order of around $40 million per annum.
73. An injured worker should receive support from their employer in;
    - recovering from their injury safely;
    - having access to independent rehabilitation providers in the preparation and management of return to work programmes;
    - returning to a pre-existing condition as soon as practicable; and
    - receiving their workers compensation entitlements.
74. Unfortunately, this is not presently possible within Australia Post for a lot of injured employees and their families who have fallen victim to the 'scheme', given the current management culture adopted by Australia Post is to manage injured employees from receiving their legal rights to workers compensation or even in some cases the right to maintain their employment.

Recommendations for Senate Inquiry Consideration

75. Determination No 6 of 2006 in its current form is inappropriate and should be rescinded. Prior to any consideration for a Determination to be made by Australia Post should be subject to consultation and agreement with employees and their representatives on the basis that a Determination will not result in employees being worse off in terms of present employee terms and conditions of employment.
76. Employees should receive regular education and training throughout employment on the process for reporting an injury and the making of a workers compensation claim where treatment and loss of time is in association with a work related injury or illness.

77. Injured employees should have access to independent support and assistance in the completion of documentation including the necessity of providing supportive medical evidence when making a claim for workers compensation.
78. Injured employees should have the right to receive treatment and management of their injury by choice of their qualified medical practitioner without being threatened or intimidated with disciplinary action or fear of their workers compensation claim being denied.
79. Section 57 of the SRC Act should only apply only where an independent medical opinion is required for the purpose of assisting in the determination of a workers compensation claim.
80. Reviewable decisions of workers compensation claims should be undertaken by an independent assessor external to Australia Post.
81. Injured employees should have the right to nominate an independent rehabilitation provider in the preparation and management of their return to work programme in consultation with the nominated treating medical practitioner.
82. The present audit processes being undertaken of Australia Post workers compensation systems should be subject to an external examination and report to whether the current audit processes are appropriate or in need of improvements.
83. Only limited authorised Australia Post management personnel should have access to injured employee's personal medical information and files.
84. Management cash bonus rewards measured against the level of loss time injuries recorded in the workplace should cease forthwith.

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Note: The CEPU National Submission to this Inquiry s relied upon in terms of supportive data and evidence to the statements contained in this submission.