

Inquiry into the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015

CEPU Communications Division (CWU) submission to the
Senate Standing Committee on Education and
Employment Legislation

8 May 2015

Introduction

This submission is prepared by the Communications Electrical and Plumbing Union (CEPU), Communications Division (CWU) for the Senate Inquiry into the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015*.

The CWU has had direct experience with Comcare since it was first established.

The CWU represents approximately 23,000 workers in the postal and telecommunications industries.

The CWU represents industrial workers, retail workers, technicians and administrative workers within private and public employment sectors. The CWU is the major union representing workers in Australia Post, Telstra, Optus and Visionstream. These employers are self-insurers licensed under Comcare.

CWU members work in industries that unfortunately are at the top of the list of Australia's deadliest jobs.

Truck drivers and posties recorded the highest number of deaths on the job in 2012.¹ Transport workers accounted for nearly one-third of all workplace deaths that year. Vehicle collisions caused most fatalities. Motorcycle crashes occur in significant numbers accounting for about 30% of all workers' compensation claims within Australia Post.²

Muscular stress while lifting, carrying or putting down objects (manual handling) is the most common cause of serious injury across the postal industry. Manual handling is about 43% of all workers' compensations claims within Australia Post.³ Machinery hazards persist in causing injury and being struck by moving objects such as mail handling equipment.

Our postal members also work in the retail trade. The retail trade is in the top 10 most dangerous line of work.⁴ The most common cause of serious injury for retail workers within Australia Post is manual handling, slips, trips and falls, being struck by objects, verbal abuse and threats from customers and armed hold ups. The system of work itself contributes to musculoskeletal injury because of the burden of standing all day upon the body.

Our members in the postal industry are also at risk of particular diseases such as, asbestos related disease, dermatitis and noise induced hearing loss from exposure to hazardous chemicals, dust and noise.

Thousands of workers are injured each year in Australia Post and sometimes killed. The cost to Post is a \$120 million liability on their balance sheet with \$11.3 million for claims in 2012/13 and \$10 million for 2011/12.⁵ But the cost to workers, their families and the community is far greater.

¹ Lifeinsurancefinder.com.au Sourced from Safe Work Australia National Data Set for Compensation-based Statistics 2012, and Traumatic Injury Fatalities Database 2012.

² Sourced from Australia Post National health & Safety Committee

³ Sourced from Australia Post National health & Safety Committee

⁴ Lifeinsurancefinder.com.au

⁵ Australia Post Annual Reports

In the telecommunications industry, workers continue to be exposed to risks associated with both traditional and evolving forms of work and workplace demands.

Our field workforce members continue to suffer muscular injuries associated with work in confined spaces (pits, ceilings, spaces under houses), work which also involves potential exposure to hazardous substances, including (but by no means limited to) asbestos.

Office and call centre-based workers are vulnerable to overuse injuries arising from the repetitive nature of their work and/or ergonomically unsound work settings. High levels of stress may also be associated with such work especially due to pressures to raise “productivity”.

The union is indeed aware of a growing number of stress-related compensation claims across all functional areas in the industry as performance pressures are intensified by new forms of individual performance monitoring (e.g. GPS-based) and measurement.

Big job cuts in the postal and telecommunications industries have the effect of making workers more reticent to speak up against unsafe, unhealthy and unacceptable working conditions. In some workplaces workers (injured and uninjured) are pushed to do unsafe work and threatened with disciplinary action if they refuse.

The CWU submits that the proposed changes to the Comcare scheme will have a significant detrimental effect on injured and incapacitated workers who are already the most disadvantaged and vulnerable. This is the exact opposite of what should happen if people were serious about improving the Comcare scheme.

On the Bill

The *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015* was introduced into Parliament on the 25th of March 2015 and referred to the Senate Education and Employment Legislation Committee on the 26th March 2015 for inquiry and report by the 16th June 2015.

In essence the Bill restricts rights to access workers’ compensation and cuts compensation payments to injured workers.

The Bill is not about improving Comcare. It is about reducing workers’ compensation paid by Commonwealth agencies and current and future licensees.

The Bill further shifts the burden of work injuries onto injured workers and their families and the community i.e. public welfare and health systems.

The proposed changes under the Bill are unnecessary and unfair. The CWU is opposed to this Bill.

Key points why the CWU is opposed to the Bill

The list of cuts to benefits is long. Some of the key changes that the CWU oppose include:

- *Cuts to lump sum compensation* payable for Permanent Impairment for most injured workers and removal of the already modest pain and suffering payment.

- *Sweeping changes to eligibility requirements* will mean many injured workers are locked out of workers' compensation entirely. Firstly, Comcare gets powers to change what is and isn't a "designated injury" for the purposes of compensation. Secondly, the Minister gets a power to create a "Compensation Standard" setting the minimum factors that must exist before liability is accepted for a compensable injury. Thirdly, a 'susceptibility' to injury now counts against the worker.
- *A further change to eligibility for compensation arises from change to the definition of 'injury'* to exclude from compensation mental and physical injury that can be said to result from any management action in the form of any "direction given for an operational purpose or purposes" or "anything done in connection with such an action".
- *Significant reduction of weekly loss of earnings payments* (known as 'incapacity payments') and earlier cut-off dates.
- *Expansion of sanctions against workers*, including removal of income and medical support if a worker fails to meet their obligations.
- *Employers will make final decisions on return to work* - employers will have the right to impose health related work capacity decisions and workers will have no independent right of review.
- *Harsh job search requirements* (like Centrelink) for injured workers – if the employer says they can offer no 'suitable employment' the injured worker will need to take up self-employment or find work with a new employer, which is unrealistic for some injured workers, particularly in regional Australia.

Implications of proposed key changes for workers

The CWU submits that there is little or no thought as to the implications for injured workers in the proposed changes to the Comcare scheme.

Many workers in the postal and telecommunications industries undertake dirty, dangerous and monotonous jobs increasing the risk of injury or aggravation of ailments. For example in the postal industry truck drivers and posties suffer serious injuries from vehicle collisions and need time to recover. Cuts to benefits (*lump sum and weekly earnings*) and removing access to workers' compensation entirely for some injuries and illness through devices such as '*designated injury*' and '*susceptibility to injury*' would severely disadvantage these workers.

Musculoskeletal conditions are significant within Australia Post. The changes to eligibility requirements ('*designated injury*') potentially rule out any or every musculoskeletal injury from workers' compensation.

Labour practices such as the use of fixed term employees and contractors in the telecommunications and postal industries can make it increasingly difficult to determine the point of injury. The changes to eligibility requirements ('*designated injury*' and '*significant contribution test*') will mean many of these workers are locked out of workers' compensation entirely.

Australia Post and Telstra have an aging workforce. The changes to eligibility requirements (*'susceptibility' to injury*) will mean many of these workers are also locked out of workers' compensation entirely for some injuries and illness that might be claimed to have arisen given the workers' age.

Injuries arising from serious employment discrimination, harassment or bullying are not uncommon within Australia Post and Telstra. The changes to 'management action' will exclude workers in these situations from workers' compensation entirely.

Many workers who are injured in the course of their employment are able to do alternative duties but medium and long term job prospects can be grim for injured workers even within large organisations like Australia Post and Telstra. For example, in Australia Post work related injuries are suddenly deemed no longer compensable and workers are dealt with under the company's Non Work-Related Injury Policy leading to termination of employment. The changes in relation to no *'suitable employment'* will make it easier for employers to get rid of injured workers. Some of these cases have ended up in the courts such as, *Watts and Australian Postal Corporation 2014 FCA*.

Company doctors override medical certificates and return to work programs of treating doctors. There are many examples within Australia Post where a treating doctor determines a worker can return to work on full duties but Post refuses to allow the worker to return preferring the opinion of their company doctor. There are also many examples where company doctors send workers back to work prematurely. For example posites who have had broken legs have been made to return to office work within two days. There are examples where workers have re-injured themselves because Australia Post management have pushed them to work beyond their restrictions. For example a driver was forced to polish wheel nuts on the trucks by hand subsequently reinjuring his shoulder. The changes to allow *employers to make final decisions on return to work* will severely encroach on the rights of workers to follow the advice of their own doctors in relation to treatment and rehabilitation. Some of these cases have ended up in the FWC and the AAT such as, *Ranasinghe and Australian Postal Corporation*. Not all workers have the financial capacity or resilience to take complaints about rehabilitation and return to work to the AAT. Others are worn down by the process.

Comcare self-insurers least effective of all workers' compensation schemes

Employees of self-insurers under Comcare are currently disadvantaged in terms of workers' compensation coverage when compared to employees of organisations paying premiums to the Comcare Scheme.

Comcare self-insurers, such as Australia Post and Telstra, when compared to scheme contributing employers, on a percentage basis, accept less claims for compensation, have more appeals against self-insurer decisions lodged with the Administrative Appeal Tribunal (AAT), pay less compensation to injured workers and spend more money on legal, administration and regulatory matters.

Comcare self-insurers, such as Australia Post and Telstra, do not have an independent intermediate body to review claim disputes. The dispute resolution occurs through a fully internal reconsideration process. Australia Post and Telstra do their own reconsiderations or employees are forced through a litigious process at the Federal Administrative Appeals Tribunal (AAT).

AAT cases are costly, lengthy and difficult to win for employees who do not have the resources that are available to big companies.

Self-insurance provides incentives for self-insurers to suppress claims. Most would be aware of the Senate Inquiry into Australia Post's treatment of ill and injured workers (November 2009) and the complaints about the introduction of Australia Post's network of Facility Nominated Doctors (FNDs) to return injured workers to work for the purpose of avoiding lost time injuries.

InjuryNET had (still has) a contract with Post. There was no formal tendering process for this contract. The details of the contract and payments to InjuryNET are commercial in confidence, and not open to public scrutiny. The InjuryNET web page sets out the KPI of the company:

"How is network performance measured?"

Key Performance Indicators include:

- Lost Time Injury Rates
- Lost Hours
- Duration until return to pre-injury duties or permanent alternate duties " ⁶

The "effectiveness" of the FND scheme can be judged from the following statistics discussed in Senate Estimates hearings:

Unfit for Work

If injured worker referred to OWN Doctor	95% deemed unfit for work
If injured worker referred to FND Doctor	6% deemed unfit for work

No one has been able to explain this massive difference in medical opinions, other than to make the obvious conclusion that one group is grossly biased.

Under the scheme injured workers must attend the FND for assessment. Failure to attend exposed the employee to disciplinary action. Over a period of 2 years between 2003 and 2005 there were 8,000 referrals to FNDs.⁷ The cost of this service was \$1.42 million.⁸

Australia Post now has a WorkReady program where injured workers are encouraged to attend the company doctor for free. However if the company doctor sends the worker to a specialist, Post won't pay for the specialist consultation. It is the same for ultrasounds, scans, x-rays or other diagnostic procedures etc. Post won't pay.

Injured workers unwittingly fall into the WorkReady trap when they go to the company doctor and find themselves up for hundreds of dollars when claims for compensation are subsequently rejected.

⁶ <http://www.injurynet.com.au/html/practitioners.cfm>

⁷ Inquiry into Australia post's treatment of injured and ill workers. CEPU submission to Senate Standing Committee on Environment, Communications and the Arts

⁸ Inquiry into Australia post's treatment of injured and ill workers. CEPU submission to Senate Standing Committee on Environment, Communications and the Arts

As well reports by company doctors who have treated or examined the injured worker are used by Australia Post against the worker, potentially undermining any claim for compensation.

Conclusion

It is difficult to identify many benefits for workers under the current ComCare scheme, particularly for workers under Comcare self-insurers when compared to better State compensation schemes. Notwithstanding this the Bill proposes to alter the Comcare scheme to provide even less or no support to injured workers. This is unnecessary and unfair. The Bill severely disadvantages injured workers and should be rejected.

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