

SENATE STANDING COMMITTEE ON
ENVIRONMENT, COMMUNICATIONS AND THE ARTS

QUESTIONS ON NOTICE
SENATE INQUIRY INTO AUSTRALIA POST'S TREATMENT OF ILL AND INJURED WORKERS

Senator Fielding asked on 12 February 2010.

Question

Correspondence between Comcare, CEPU and Australia Post

Senator FIELDING—Has Comcare admitted to the CEPU that Australia Post has admitted—

Mr Kibble—Have we told the CEPU that Australia Post told us—

Senator FIELDING—to pressuring to get employees to attend a FND?

Mr Kibble—Not to my knowledge, not in the way you phrased the question. What I might do for completeness is provide on notice some correspondence between us and the CEPU.

Senator FIELDING—I think that would be advisable.

Mr Kibble—Over the last 12 months or so we have had general discussions with the CEPU and Australia Post. There has been various correspondence between the three parties. I might table that for completeness.

Answer

Comcare has provided the following response:

There has been various correspondence between Comcare, the CEPU and Australia Post regarding matters pertaining to the Senate Inquiry.

A timelines of this correspondence is as follows:

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- Comcare to CEPU - 8 Dec 2008
- Comcare to CEPU - 11 August 2009
- CEPU to Comcare - 14 October 2009
- Comcare to CEPU - 30 October 2009
- CEPU to Comcare - 21 October 2009
- Comcare to CEPU - 6 November 2009
- Comcare to Australia Post - 6 November 2009
- Comcare to CEPU - 5 February 2010

Copies of this correspondence is attached.



Australian Government

Comcare

Chief Executive Officer

Mr Ed Husic
Divisional Secretary
CEPU Communications Division
PO Box 472
Carlton South
Vic 3053

Dear Ed

I refer to our meeting on 10 November 2008 and your letter of 18 November 2008 regarding Australia Post's practices involving its facility nominated doctors in fitness for duty treatment and examinations and how these interact with claims management, rehabilitation and reporting under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and its conditions of licence as granted by the Safety, Rehabilitation and Compensation Commission's (Commission).

As you have alleged that Australia Post has made gross breaches of its licence conditions and the SRC Act, Comcare will investigate, on behalf of the Commission, those matters which might come under Australia Post's conditions of licence which includes its obligation to comply with the SRC Act.

I would expect to be able to report on the outcomes of the investigation, if necessary, by the Commission's first business meeting in 2009. I will keep you informed of progress in the meantime.

Yours sincerely

Martin Dolan



Australian Government

Comcare

Mr Ed Husic
Divisional Secretary
CEPU Communications Division
PO Box 472
CARLTON SOUTH VIC 3053

Australia Post's Injury Management Program and use of Company Doctors for Injured Employees

Dear Mr Husic

Thank you for your letter of 18 November 2008 seeking Comcare's assistance to investigate your claim that Australia Post is in breach of its *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) licence conditions and the Act itself in the manner it uses company doctors in workers' compensation cases.

I apologise for the delay in responding to your letter, although you would appreciate that Comcare wanted to ensure that it undertook a thorough review of your concerns.

Comcare undertakes, on behalf of the Safety, Rehabilitation and Compensation Commission (Commission), various processes to ensure licensed self insurers (licensees) are conforming with their conditions of licence, including complying with the SRC Act and the *Occupational Health and Safety Act 1991*.

The main process is the Commission's licensee improvement program (LIP) which requires a licensee, such as Australia Post, to periodically participate in the Commission's external audits against its conditions of licence and the SRC Act. It also involves the licensee carrying out a yearly program of self audit using the Commission's audit tool and reporting the outcomes to the Commission each year. While the Commission will determine the frequency and mix of internal to external audits, external audit, for a mature licensee such as Australia Post, is usually reserved for the last year of a four year prior of licence, ie just prior to the Commission's decision on licence renewal.

Australia Post is currently in its last year of licence and Comcare will be auditing Australia Post's claims management and rehabilitation management systems in this period (2009-10) prior to Australia Post's expected application for licence renewal. An audit involves an examination of randomly selected claim files and rehabilitation case files against the audit tools which are designed to test conformance and compliance of a licensee's claims management and rehabilitation management systems.

Consequently, a detailed case file examination to examine the concerns of the CEPU must await such an external audit. However, Comcare, on behalf of the Commission has had discussions with your officials and Australia Post senior managers.

Ms Melissa Ryan, General Manager, Research and Policy Branch, and Mr Alex O'Shea, Director, SRC Policy Section, met with Mr Burt Blackburne and others on 2 April 2009 to allow the CEPU to further explain its concerns and to provide details of alleged breaches of the Act and Australia Post's licence conditions. Ms Ryan and Mr O'Shea subsequently met with Australia Post senior managers, where the operation of Australia Post's injury management systems and process was discussed as well as the CEPU's specific concerns and allegations.

At the CEPU meeting, your officials outlined that the main concern involved Australia Post's Injury Management (Early Intervention) Program (IMP) and its use of a nationally contracted network of facilitated nominated doctors (FND) for injured employees. The CEPU considered that the IMP and its use of FNDs could be described as 'an evidence collection and information management scheme' directed against the better health and well being of Australia Post employees and designed to minimise Australia Post's workers' compensation liability and to minimise its lost time injury (LTI) Commission indicator measure by passing employees onto sick leave, rather than to provide them workers' compensation benefits.

An example was provided by your officials which detailed an incident where an employee was injured in the course of employment (eg a witnessed motorcycle accident, fall, or other trauma), but was dealt with under the IMP and FNDs rather than the rehabilitation and workers' compensation powers under the SRC Act.

At the meeting, the CEPU officials also contended that Australia Post's managers were benefiting personally from having low recorded frequencies of LTI; consequently the IMP was open to abuse and would encourage poor practice. An example of such abuse was requiring an injured employee to return to meaningless duties (such as watching two hours of TV in a back room per day to avoid a LTI occurrence).

The CEPU also detailed a number of other or supplementary concerns regarding the IMP and Australia Post's practices in managing its injured employees. These are detailed at **Attachment 1**.

Ms Ryan and Mr O'Shea then met with Australia Post's senior HR managers and program managers responsible for the operation of the IMP and FND within the postal network. Comcare put to Australia Post a list of topics to explore the operation of the IMP and the processes of referring injured employees to FNDs. The meeting then addressed the CEPU's specific concerns and allegations regarding the operation of the IMP and FND. These are provided at **Attachment 2**.

Australia Post explained in detail the operation of its IMP, differentiating it from its fitness for duty processes under the arbitrator's determination and how the IMP and the use of FNDs operated within a workers' compensation context. Australia Post also responded to the specific issues related to CEPU allegations in these matters.

Firstly, looking at the concept of best practice injury management in the workplace generally, Comcare encourages all scheme employers to be proactive and to expeditiously manage all employees who notify of a workplace injury, well in advance of any workers' compensation liability decision or even the lodgement of a claim by the employee. Where there is a report of an injury in the workplace, such a proactive approach would involve assisting an injured employee to obtain early and expert medical diagnosis and treatment. 'Best practice' employers would offer the provision of this medical attention without cost to their employees and from local and readily available doctors who have been inducted into the local workplace and have a good knowledge of the range of alternative or suitable duties, should the employee be immediately unfit to return to his or her normal duties. In this way, there would be a seamless transition from acute care to primary rehabilitation (recovery) to tertiary rehabilitation (maintenance at work or return to work), or a smooth transition from injury management to occupational rehabilitation.

Comcare also encourages scheme employers to adopt a model of occupational rehabilitation by developing rehabilitation management systems which seek to either maintain injured employees at the workplace on suitable duties or to return injured employees to the workplace, quickly but in a safe and durable manner. There are positive gains for both the employee and the employer in such an approach and one which is consistent with the aims of the SRC Act.

Comcare's approach to early intervention is supported by general research outcomes and is also followed by other Australian workers' compensation schemes.

After examining the intent and documented operation of Australia Post's IMP, Comcare concludes that it seeks to adopt such a system and process. The Australia Post IMP is one which is made readily available through local worksite managers, but on a voluntary or 'opt-in' basis, for employees who notify of a workplace injury (via completion of a P400 form). All staff who lodge a P400 are advised of their eligibility to participate in the IMP, its voluntary nature and its benefits in the form of free and rapid access to medical attention and limited free medical treatment from doctors who are meant to be familiar with Australia Post workplaces. All employees, especially those who lodge a P400 form, are advised of their eligibility to lodge a workers' compensation claim and the availability of a workers' compensation claim form and the claims information pack.

In terms of the IMP's actual operation, Australia Post reports that employee participation in the IMP is high and that it is well supported by its employees. This is to be expected as Australia Post's own research confirms that a majority of its employees do not have a regular treating doctor and without the IMP would need to seek treatment generally in a medical centre/bulk billing clinic, usually from an unfamiliar doctor, with no guarantee that a subsequent visit will be to the same doctor. Such medical practices often have little regard to the objects of occupational rehabilitation, particularly in working closely with the workplace to maintain and injured employee at work or to return him/her to suitable duties.

Australia Post advises that, for many of its employees, the IMP's rapid access to injury diagnosis, acute treatment and medical management in the context of the employee's duties and alternative duties often results in the employee being able to be maintained at the workplace or return to the workplace on suitable duties with nil or minimal loss of time.

That is, it achieves the object of injury management and rehabilitation systems: a quick, safe and durable maintenance at work or return to work.

In certifying fitness for suitable duties under the IMP, it is the responsibility of the FND to specify the functions for which the employee is medically capable as well as documenting any restrictions. It is the responsibility of the manager to provide the employee with duties (restricted or not) matched to the certified functional capacity of the employee and it is the responsibility of the employee to adhere to them, but also to report any problems and to follow any subsequent upgrading of duties. In situations which require it, Australia Post is able to provide assistance from its own in-house or contracted rehabilitation health professionals to assist the manager to devise suitable duties and upgrade programs which align with the functional capacities and restrictions as advised (certified) by the FND.

As a complimentary process to the IMP, employees may also elect to seek primary treatment from their own doctor or local medical officer (LMO). This may result in a similar return to work on suitable duties as under the IMP, but often an incapacity certificate involving days, and sometimes many days, off work will result as the LMO may be less aware of the availability of suitable duties at the worksite and will often err on the side of certifying time off work. Australia Post may respond by having one of its FNDs contact the LMO to discuss a return to work on alternative duties, or ask the employee to see an FND for an assessment of their capability to return to suitable duties. Under the IMP, Australia Post has confirmed that such a request seeks the employee's voluntary cooperation, that is, the FND assessment is not mandatory.

Should Australia Post feel an employee's fitness/unfitness for duties status warrants it, it might seek to arrange a fitness for duties medical assessment under the terms of its 'arbitrators determination'. Australia Post reports that its managers take particular care to explain that such an arrangement stands outside the IMP, is only proceeded with under the delegation of a senior HR manager and is used sparingly, particularly at the early stages of post injury management.

Australia Post also admits that, while it might prefer the medical opinion from an FND in terms of an employee's capability of achieving an early return to work over that of an employee's local doctor who continues to certify incapacity, it stresses that its employees are entitled to follow the advice of the employee's local doctor under the IMP. However, should a workers' compensation claim be lodged, Australia Post is entitled to weigh up the two medical opinions and make a decision accordingly, with that decision being able to be contested externally at the Administrative Appeals Tribunal.

It is Comcare's conclusion that Australia Post's IMP is designed to emulate best practice workplace injury management systems. It is designed to be initiated by workplace managers at the local level with the cooperation of the injured employee. It involves priority access to doctors who are familiar with Australia Post worksites and suitable duties programs in order to either maintain the injured employee at the workplace on suitable duties or to return the employee to the workplace as soon as possible following restoration of some functional capacity. Accordingly, it is not a process which is inconsistent with SRC Act rehabilitation, nor would it be in conflict with Australia Post's conditions of licence.

However, Australia Post admits there have been instances where employees have unfortunately been mis-diagnosed by one of its FNDs or where employees have been returned too early or on duties which have proved too ambitious. There have also been examples where line managers have exerted pressure on employees to 'voluntarily' attend an FND treatment or assessment.

Comcare subsequently sought further information from Australia Post regarding its process to oversee and remediate such situations. Australia Post reports that all complaints by employees toward management behaviour in applying the IMP are investigated by Australia Post. Further, to ensure the ongoing integrity of the IMP, Australia Post reports that it takes any misuse of the IMP – whether by medical practitioners, managers, or employees – extremely seriously and would welcome the CEPU bringing to its attention any such specific issues or allegations. Australia Post also has a 'whistleblower' facility under its Employee Grievance process which can be utilised.

Australia Post also reports that since 2005 it has appointed a senior manager to oversee the IMP and that reports to senior management on the number of treatments and assessments under the IMP are provided on a monthly basis. The contracted FND provider also monitors the medical practitioners engaged under the program and undertakes reviews with Australia Post bi-monthly. The ongoing training of these doctors is managed and reviewed by the same company.

In regards to issues raised concerning the provision of appropriate and meaningful duties, Australia Post reports that it is committed to providing its injured workers with real duties that are in keeping with their medical restrictions, but that it would welcome the CEPU bringing to its attention any specific issues.

Australia Post acknowledges its IMP links to workers' compensation and it confirms that, once an employee's claim is accepted, the injury is managed under the SRC Act.

In summary, without the benefit of auditing Australia Post's claim and case files, but after detailed discussions with CEPU officials and Australia Post managers, including examining IMP documentation, Comcare can conclude that Australia Post's IMP has been established as a mechanism to effectively manage employees injured at work by adopting the best practice approach of making available, through an FND, early diagnosis and treatment of injuries with an emphasis on matching an employee's current functioning to available duties in the workplace.

This process is able to integrate into vocational rehabilitation if and when a claim for workers' compensation is received and determined. While it might be argued that an employee notification of an injury (eg via a P400 form) could invoke Part III (rehabilitation) under the SRC Act prior to a determined claim, scheme employers have the choice to establish separate injury management systems which operate prior to the finding of workers' compensation liability. The success of these separate injury management systems will largely depend on the levels of employee participation and how well they integrate with rehabilitation under the SRC Act. It is Comcare's view that Australia Post's injury management system performs well and in conformance with its conditions of licence and in compliance with the SRC Act.

While Australia Post has admitted to a number of instances where there have been shortcomings, it has also demonstrated its capacity to identify and remediate them. It has also demonstrated that it has a strong level of management oversight of the operation of its IMP, it has an employee complaints and grievance handling system, and would invite the CEPU to provide it with information where it believes it is not operating effectively.

In providing advice to the Commission about Australia Post's performance under the LIP in 2009-10, particularly through the claims management and rehabilitation audits, Comcare will pay close attention to the issues the CEPU has raised.

Thank you for bringing this matter to my attention.

Yours sincerely

Steve Kibble
A/g CEO

11 August 2009

Supplementary issues raised by CEPU on Australia Post's IMP and use of FNDs in dealing with injured employees

The CEPU claimed that:-

- there was a lack of clarity to employees on whether they were attending a FDN for treatment or for assessment with the implication that these distinct roles have very different responsibilities, including issues of privacy;
- injured employees who attend their own doctor and receive medical certification were being threatened that a refusal to also attend an FND examination will jeopardise the finding of workers' compensation liability;
- FNDs are not being trained in post injury management, lack familiarity with Australia Post worksites and consequently have little knowledge or appreciation of the working environments and range of duties to which they send injured employees back with "fit for light duties" certificates;
- FNDs issue 'retrospective' certificates which certify an employee fit for duties or fit for light duties from a date in the past - and prior to the FND examining the employee;
- when an FND issues a 'fit for light duties' certificate, it is the manager who determines the nature and extent of the light duties (with the implication that the FND does not then ratify or further certify those duties as appropriate); and
- the IMP/FND does not seem to have a process whereby incompetent doctors can be taken out of the system.

Issues for discussion with Australia Post to explore it's system of early intervention injury management following notification of workplace injury or illness

- Process for employees notifying on an injury or illness (P400 lodgement)
 - who provides form
 - who receives form
 - who else is notified

- Process for lodging a workers' compensation claim
 - access to claim form
 - access to claim information (eg requirement to provide: m/c, witness statements, supporting material)

- Process for managing 'early intervention' action following injury notification or w/c claim lodgement
 - when to use fitness for duties processes
 - when to use SRC Act processes [s57, s36, s37]

- Instructions to site managers on advice of P400 notification which may involve lost time
 - referral to FND
 - treatment - V - report on RTW/suitable duties
 - option for employee to elect to seek treatment/report from LMO
 - is attendance at FND examination compulsory for employee

- What are employee expectations following P400 lodgement?
 - is there a brochure or instruction which explains option to undergo FND or LMO treatment for acute injury/medical condition
 - what is employee expectations on FND/LMO reporting requirements in terms of fitness for duties/alternative (light) duties/total incapacity

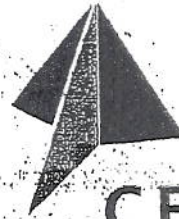
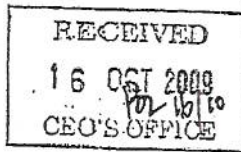
- If FND/LMO certifies fit for modified or alternative or restricted duties – what happens?
 - who contacts employee
 - how are suitable duties selected
 - how is employee inducted into suitable duties program
 - what documentation does employee receive
 - who monitors adherence to suitable or restricted duties
 - what happens if employee reports difficulty with duties
 - who upgrades suitable duties

- who downgrades suitable duties
- Role of FND in assisting in determining workers' compensation liability
 - completion of certificate or report that provides medical opinion on extent of employment contribution (disease) – reporting for workers compensation liability purposes
 - certification for ongoing incapacity/capacity
 - role of FND to inform the injured employee of the FND's role and relationship with Australia Post
- What happens if W/C claim is accepted and employee is under suitable duties program?
 - is a s36 assessment required
 - basis for making a s37 determination
 - difference between suitable duties program and SRC Act rehabilitation program

Addressing specific issues related to CEPU allegations

- Comment on CEPU's reports from Australia Post employees who have been:
 - 'sent to company-paid doctors (FNDs) after a serious workplace injury only to be forced back to work before they were physically able, including with broken limbs'
 - 'fired after suffering work-related injuries'
 - 'been denied workers compensation coverage for an injury because Australia Post won't accept evidence from the employee's own GP' (
- Comment on Australia Post's relationship with FNDs and examining specialists which:
 - 'puts pressure on doctors who rely on big clients such as Australia Post to give false diagnosis and inappropriate treatment, compromising their professional practice'.
- Comment on Australia Post's system of rewards and pay bonuses for executives:
 - 'who reduce the costs (by) roft(ing) workers of their entitlements and personal safety'.
- Comment on allegation that Australia Post seeks to reduce lost time injuries (LTI) by:
 - 'rebadging time off associated with injuries as sick leave' or other leave or to require staff to attend the workplace when not fit for any duties (eg to watch TV or to carry out menial tasks etc)

GEN 09/103
4.6-009



CEPU

14th October, 2009.

The Chief Executive Officer,
Comcare,
GPO Box 9905,
CANBERRA, ACT. 2600.

*Urban
reply*

COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

Dear Sir,

**RE: AUSTRALIA POST'S INJURY MANAGEMENT PROGRAM AND USE
OF COMPANY DOCTORS FOR INJURED EMPLOYEES**

COMMUNICATIONS
DIVISION

ABN 22 401 014 898

Len Cooper
Divisional President

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139-155 Queensberry St
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We refer to the above matter and your letter of 11 August 2009.

We are astounded at the findings of your "discussion" team. To find nothing and naively accept the Post line that it is only a few rogue managers have abused injured workers leaves us wondering if these safety concerns are being given serious consideration by your organisation.

We note your comments that your discussion team did not have the benefit of the findings of an investigation, and that an "external audit" will soon be carried out. Thus your team was limited to doing no more than chat to Australia Post. But to then conclude:

In summary without the benefit of auditing Australia Post's claims and case files, but after detailed discussions..., including examining IMP documentation, Comcare can conclude that Australia Post's IMP has been established as a mechanism to effectively manage employees at work

This is an extraordinary shift in emphasis and is a tribute to the manipulative skills of Australia Post in their dealings with Comcare.

It has also come to light that you have performed nothing more than a "desktop" examination into the grave concerns that our members have regarding the use of these FNDs in Post. No employee was questioned or asked about their experiences. Comcare merely examined the written material put before it, had conversations with ourselves and Post and then put forward an opinion that it thought things were largely satisfactory with the system - but that it would conduct a proper audit next year, leaving current employees at the mercy of a system that may or may not pose a threat to their well-being.

We are now advised that this audit is occurring this year, despite advice to the contrary. The CEPU and its members would like to make submissions as part of this process and would like to be informed as to whether Comcare intends to open this matter to public scrutiny.

4. Comcare fails to recognise the distinction between fitness for duty and a medical opinion.

Your letter states:

Australia Post is entitled to weigh up the two medical opinions.

True. If there were two medical opinions, one from the treating doctor and one obtained pursuant to section 57 of the Act, then the statement is correct.

However, your advisors avoid the facts. There are not two medical opinions. The Post scheme relies on a contest between an independent treating doctor's medical opinion, and a fitness-for-duty assessment by a company FND (GP).

5. Comcare ignores its own policy, and supports unlawful activity.

Your letter states:

Australia Post is entitled to weigh up the two medical opinions.

Your advisors are well aware that there are not two medical opinions. The company doctor provides a "fitness for duty" assessment. Your own policy is unambiguous. See Policy 330/4/1028.

Para 3: If information regarding an employee's medical condition is collected for an employment related purpose (for example... to assess their fitness for duty) it should not in principle be used for a compensation related purpose (for example to support a decision to continue or cease liability).

Your policy indicates that a fitness for duty assessment could only be used where

- There is written permission by the injured worker
- There is alleged fraud
- Comcare itself has a reason

No written permission has ever been sought, nor has there been an allegation of fraud. Your advisors know and were clearly informed of this breach. Thus your letter constitutes ongoing encouragement for Post to breach your own policy.

Did Comcare advise Post of their breach of the law and the Comcare policy by routinely using fitness for duty assessments for compensation purposes?

We reserve our position on legal action under the Privacy Act. Clearly your policy is devastating evidence against Post. Your position may become an embarrassment, but that is the effect of your unqualified support for Post.

Comcare cannot conclude that the FND is a voluntary policy

Your letter states:

- At Page 3 that the visit to the FND is "on a voluntary or "opt-in" basis".
- At Page 4 "the FND assessment is not mandatory".

This is simply untrue.

Individual responses will not – and should not – be made available to the licensee. It is our view that Post's actions are clearly in breach of these Comcare requirements by Post distributing this bulletin. How will Comcare guarantee the protection of employees who wish to be involved in the audit?

"Rogue" Managers

We dismiss suggestions that our complaints are just about a few "rogue" managers. See our attached references in the _____ case. The whole state administration was involved. The local manager acted at the direction of the state HR manager. The examples are spread across Australia. They are supported by evidence and documentation, not assertion. Our documentation provided five detailed examples, and details from a number of other cases. Even your discussion team told us of an example where a manager (must have been an ex FND) sent an ambulance away after a postman recovered from unconsciousness, after being hit by a car. Because he seemed OK, he continued his mail delivery on the motorbike. No LTI. They must be tough these postmen.

Conclusion

Our complaint has nothing to do with the management of injured workers at work, or rehabilitation of injured workers. It is about a scheme devised by Post under its "Principal Determination" to:

- under the guise of "fitness for duty", gather evidence that the injured worker is fit for work even if the duties are non-existent, inappropriate or menial.
- use the evidence in breach of the Privacy Act (and Comcare's specific jurisdictional advice) to eliminate lost time injury by converting the injured workers leave from compensation leave to sick leave, reducing Post's balance sheet contingent liability and impressing Comcare.
- encourage and enriching line managers, HR managers and senior managers through a pay-bonus scheme directly linked to LTI.

We regard it as grossly immoral for "motivated" managers to take advantage of the most vulnerable persons in the workforce – injured workers. And then wave your letter as justification for its debased system. This is particularly appalling when their targets are a large number of new Australian employees who need advice, a large number of persons in low paid jobs and a large number of persons in precarious jobs. These are people who cannot afford to object when threatened that they might lose pay or hours if they do not get back to work and reduce LTIs.

Worse still: using an FND fitness assessment to deny workers compensation liability today will help the corporation side step its responsibilities to cover medical costs that may arise as our members retire and potentially experience a deterioration of their condition. Post will merely cost shift to the public system, because of the failure to properly acknowledge their liability now.

We have attached a number of comments relating to specific matters raised in your letter.

Yours faithfully,

Ed Husic,
DIVISIONAL SECRETARY.

Enc.

EH:kr

This is an admission that:

- Post directs the compensation delegate – there is no independent decision by the delegate
- Post prefers the company FND (just a hired GP) over the independent treating Doctor
- Post breaches Comcare Policy by using fitness for duty assessment in compensation
- Post punishes injured workers by preferring the company FND if the worker elects to follow the treating Doctor's advice (Post force them to take sick leave)
- Post does not see the obvious conflict of interest of the paid company FND.

An extraordinary admission #2

Comcare records at page 5 of the letter:

Australia post acknowledges its IMP links to workers' compensation and it confirms that, once an employee's claim is accepted, the injury is managed under the SRC Act.

CEPU is well aware of this practice. Thus, for Post, it is important to pressure staff to get to an FND as soon as possible, usually within 24 hours of the actual injury, no matter how traumatic, so that they can get company FND evidence that the injured worker is fit for work.

And the FND delivers as per contract. 95% of injured workers referred to an FND are fit for duty. Independent treating Doctors only average 6%.

But, when is a claim "accepted"? In discussions during litigation, Post preferred that "accepted" meant when the compare delegate determined the claim. Thus this is delayed until Post has its evidence.

A look at the scheme

In [redacted] case, the scheme is unambiguous. [redacted] a postman, sustained a serious cut to his hand requiring stitches. His treating Doctor determined four days leave, then a reassessment. Everyone knows (Post Statistics prove it) that in 19 out of 20 cases, the company FND will find an injured person fit for work. So too with [redacted]. This explains what follows.

The Manager in her signed statement about the FND said:

- "I advised [redacted] that it was compulsory to attend after discussing it with [redacted] (A/State HR Manager) and that he would face disciplinary action if he chose to not attend and advised it may jeopardise the determination of his claim. (sic somewhere)..."
- I also mentioned that any decision to not attend would only have ramifications for him...
- I spoke to [redacted] (State HR manager) and she advised that I was to contact [redacted] and advise him of the duties available and that his claim may be effected (sic) if he refused to come to work (contrary to his treating Doctor's advice)
- I mentioned that his non acceptance could jeopardise his compensation claim and that his claim may only be accepted for medical costs and that the time may have to be deducted from his sick leave. In this case he would not get averaged overtime or shift payments..."

This was all the day filling the injury! Within 24 hours of the injury!

ATTACHMENT 2

PRINCIPAL DETERMINATION EXTRACT

CLAUSE 10. FITNESS FOR DUTY

- (a) Australia Post may direct an employee to:
- (i) obtain and furnish to Australia Post a report from a registered medical practitioner concerning a medical assessment of the employee's fitness to perform all or part of his or her duties; and/or
 - (ii) submit to a medical examination by a registered medical practitioner determined by Australia Post, for the purpose of a medical assessment and a report to Australia Post concerning the employee's fitness to perform all or part of his or her duties.
- (b) If Australia Post considers that an employee is incapable of performing duty or constitutes a danger to other employees or the public due to the employee's state of health, Australia Post may direct the employee to:
- (i) obtain and furnish to Australia Post a report from a registered medical practitioner; or
 - (ii) submit to a medical examination by a registered medical practitioner determined by Australia Post.
- (c) On receipt of the medical report provided in accordance with clause 10(b), the employee may be directed to take sick leave for a specified period, or, if already on sick leave, or other leave, the employee may be directed to continue on leave for a specified period, and the absence shall be regarded as sick leave.
- (d) An employee to whom a direction is given under clause 10(a) or 10(b) must comply with the direction.
- (e) Where an employee fails to comply with a direction under clause 10(a) or 10(b) without reasonable cause, the employee may be subject to the Employee Counselling and Discipline Process and the fees payable for the examination may be charged against the employee and deducted from salary.



Australian Government

Comcare

Mr Ed Husic
Divisional Secretary
CEPU Communications Division
PO Box 472
CARLTON SOUTH VIC 3053

Dear Mr Husic,

**RE: AUSTRALIA POST'S INJURY MANAGEMENT PROGRAM AND
USE OF COMPANY DOCTORS FOR INJURED EMPLOYEES**

Thank you for your letter of 14 October 2009 in which you expressed concern regarding the findings of Comcare's 'desk top' examination of Australia Post's management systems in dealing with its injured workers.

I note that you acknowledge that Comcare will conduct external audits of Australia Post as a self insured licensee. These audits are currently being undertaken, and will not be undertaken next year as reported. As previously advised, Comcare undertakes such audits using the Safety, Rehabilitation and Compensation Commission's methodology and audit tools. Therefore these audits will look at a broad range of compliance issues, including the role of facility nominated doctors, as would be expected by the Commission and other stakeholders.

The audits are not able to examine the fitness-for-duty scheme devised by Australia Post under its 'Principal Determination' which you claim inappropriately gathers evidence, breaches privacy and encourages abuses by line managers through the payment of bonuses. However, where such a scheme operates to intersect or bring it under the OHS Act and SRC Act requirements of Australia Post as a self insurer, then it will be within scope of the current audit program to consider those issues.

Yours sincerely

Paul O'Connor

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AUSTRALIA'S SAFEST WORKPLACES

21 October 2009

Caroline Walsh
Comcare
GPO Box 9905
Canberra ACT 2601

Fax:

Dear Ms Walsh

Re: Comcare audit of Australia Post as part of self insurance arrangements

I am writing to suggest that Comcare investigate the stories of the following members who have made compensation claims, while Comcare undertakes your audit into the claims management and rehabilitation management systems of Australia Post.

It is the experience of our union that Australia Post exerts pressure on employees to attend Facility Nominated Doctors (FNDs) quite improperly.

- [REDACTED]
- [REDACTED]

It is the experience of our union that Australia Post managers actively try to undermine compensation claims quite improperly. These are claims that cannot be construed as anything but work related injuries.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

It is our experience that Australia Post prefers the FNDs opinions over the treating doctor leading to:

a) employees being refused compensation

- [REDACTED]
- [REDACTED]

b) returned to work too early

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

c) poor treatment outcomes

- [REDACTED]

- [REDACTED]

or

d) being given duties that have proved to be too ambitious and which further injure employees.

- [REDACTED]
- [REDACTED]

We would welcome a meeting with your auditor in relation to Australia Post's treatment of these and other injured workers. A meeting is required as it is very difficult to explain the complexities of these cases on paper. We are available at short notice and would be happy to provide Claim Numbers for these and many more cases to you to illustrate our claims. These problems are systemic and need to be addressed. I would ask that you do not provide Australia Post with these names until we have been able to fully explain our complaints.

Yours faithfully

Joan Doyle
Secretary
Communication Workers Union
Postal and Telecommunications Branch Victoria