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Committee Secretary
Senate Education and Employment Committees
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Parliament House
Canberra ACT 2600

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Dear Madam/Sir

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

UnionsWA is the governing peak body of the trade union movement in Western Australia, and the Western Australian Branch of the Australian Council of Trade Unions (ACTU). As a peak body we are dedicated to strengthening WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around 30 affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

UnionsWA thanks the Committee for the opportunity to make a submission to this inquiry. We support the ACTU's contention that the Bill is *'unfair and unbalanced and is essentially designed to reduce compensation paid by Commonwealth agencies and current and future private sector 'licenses' for the health, economic and social costs of work related injuries'*.

Rather than 'Improving the Comcare Scheme', the measures the Bill contains would strip benefits from the scheme and result in injured and incapacitated workers being forced onto a scrap heap. This submission does not seek to cover every aspect of the Bill but highlights out main concerns.

UnionsWA also agrees with the ACTU's submission that the three Comcare Bills now before the Parliament are inter-related, and therefore their cumulative impact on injured workers should be considered together. Those other Bills are the

- *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014* and
- *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) 2015*

The *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014* is of particular concern to Western Australian union members because it would invite employers interested in a cheaper scheme with minimal health and safety regulation to join Comcare. Employers be able to avoid the real cost of compensating work injuries and to be free of obligations under State workers'

compensation laws (including the common law) and avoid State health and safety regulations, laws and monitoring.

In WA our state compensation systems currently allow for measures such as

- Arbitration
- Step-down
- Lump sum payments

As the ACTU submission states

If the 2014 Bill allowing the expansions of Comcare were to be enacted an inestimable number of injured workers currently covered by better State schemes will lose rights and benefits including common law rights to sue an employer for negligence.

The particular concerns UnionsWA has about the Comcare Bills include

‘Designated Injury’

The 2015 ‘Improving’ Bill creates a new ‘Designated Injury’ concept which is *not* defined in the proposed section 5C beyond a handful of injuries.

The proposed amendments are designed to exclude injuries and illnesses which at present are connected to employment. These injuries and illnesses will be excluded from compensation under Comcare unless a worker can prove a significant contribution from employment and the tasks the employee is required to do in the job.

Compensation Standard

The 2015 ‘Improving’ Bill proposes that Comcare create new ‘Compensation Standards’ that will disallow compensation by restricting the legislative definition. As the ACTU explains

Without having to pass regulations for designating injuries, Comcare will be given a power to make legislative instruments that have the force of law and specify an ailment and ‘minimum factors’ that must be found to exist ‘before it can be said that an employee is suffering from the ailment’.

Rehabilitation

The proposed Schedule 2 of the Bill on Rehabilitation would weaken the responsibility of the liable employer to assist workers to return to work, yet it also provides those same employers with extraordinary powers to direct injured workers on what health providers they must see and what tasks they must under-take. The proposals take rehabilitation out of the hands of qualified health practitioners and into the hand of employers.

Despite these new powers for employers, the Bill provides for no penalties on employers if they fail genuinely to engage in the rehabilitation process. The Bill ensures that a Workplace Rehabilitation Plan remains valid even when a worker is not consulted. Employers also need only consult with medical practitioners as far as ‘reasonably practicable’ when constituting a plan.

Right to privacy eliminated

The 2015 'Improving' Bill also invades the privacy of injured workers. If it is passed Comcare or an employer can demand that an injured worker provide documents in not less than 14 days. A failure or refusal to do so would be a breach of an obligation of mutuality. Comcare or a relevant authority would also be able to obtain third party documents about injured workers.

Incapacity Payments

The 2015 'Improving' Bill proposes earlier and steeper step-downs. The current scheme provides a worker is entitled to their Normal Weekly Earnings (NEW) for the first 45 weeks of incapacity and thereafter 75% of their NEW until 65, assuming they remain totally incapacitated for work.

By contrast, the new Bill proposes:

- 1 to 13 weeks = 100%
- 14 to 26 weeks = 90%
- 27 to 52 weeks = 80%
- Over 53 weeks = 70%

The Bill also proposes to cap incapacity payments at an earlier date. The current scheme applies a cap on incapacity payments based on 150% of the Average Weekly Ordinary Time Earnings of Full time Adults (AWOTEFA) after the step down comes into effect at 45 weeks. By introducing a step-down at 13 weeks, the Bill applies that cap after only 13 weeks.

The Bill also cuts workers entitlements to eligible allowances. Under the current scheme, there is no timeframe applied to whether allowances are included in a workers entitlement. The Bill only permits that such entitlements be included in the calculation of their incapacity payments for the first 104 weeks after an injury. In addition to the limit on the number of weeks, the allowances will only be included if the worker would have worked overtime during those 104 weeks.

The Bill also proposes to prevent those who are unable to work as a result of a work injury from accruing leave entitlements under their workplace agreement. Under the current scheme, such accruals are permitted for the first 45 weeks of a worker's incapacity. This cut places injured workers' at a significant disadvantage compared with their uninjured colleagues who are able to accrue sick leave, long service leave and annual leave in the same period. There is no justification for this financial penalty against workers. This amendment effectively punishes workers for sustaining an injury.

Compensation entitlements would be suspended where an injured worker is absent from Australia in excess of 6 weeks. Under the current scheme, whilst a worker needs to seek approval prior to departure, there are no cuts to entitlements if a worker travels overseas. In circumstances where a worker is totally unfit for work as a result of a compensable work related injury, it matters not whether the worker lives in Australia or elsewhere.

In conclusion

As the ACTU states, this is an '*inhumane Bill*'

which proposes far reaching changes to the Comcare scheme and would severely disadvantage injured workers covered by Comcare now and in the future. This Bill reduces benefits and removes access to workers compensation entirely for some classes of injuries and illnesses, using a range of new sanctions and exclusions, many of which are yet to be revealed in regulations foreshadowed in the Bill.

UnionsWA joins with the ACTU in calling for the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015* and other related Bills to be amended or rejected.

Please contact me on
matters further.

if you would like to discuss

Yours sincerely

Meredith Hammat
Secretary