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9 August 2002

Mr Richard Selth
Secretary
Standing Committee on Employment and Workplace Relations
Parliament House
Canberra
ACT 2600

Fax: 02 6277 4162

Dear Mr. Selth

Re: Inquiry into Aspects of Australian Workers' Compensation

The Australian Manufacturing Workers Union is pleased to submit brief comment to the Standing Committee on aspects of Australian workers' compensation schemes. The AMWU represents 150,000 members who are covered by eight of the nine Australian schemes. Due to the breadth of the inquiry and the short time frame, the AMWU has not attempted to provide a comprehensive report on all the topics before the Standing Committee.

Our submission merely wishes to highlight, with examples, the problem areas commonly encountered by our injured members. We are unable to comment on the actual costs or incidence of fraudulent behaviour but we have given examples of the significant problems of employer non compliance with workers' compensation legislation.

Significant employer non compliance with workers compensation legislation is encountered in all phases of the compensable injury process. This includes, but is not limited to:

- employers who do not pay premiums
- employers who pay premiums at level lower than what the conduct of the enterprise requires

- employers who fail to process workers compensation claims
- employers who provide incentives to employees not to claim workers compensation
- employers who do not provide suitable duties for injured employees
- employers who fail to give access to quality rehabilitation and vocational retraining services
- employers who discriminate against their injured employees during redundancy processes.

Any discussion of health and safety performance of the manufacturing sector would require considerably more time and an indication of the focus the Standing Committee wishes to undertake. This topic is only addressed in a very perfunctory manner in this submission.

The AMWU is very willing to address, in person, our submission before the Committee.

For further information could you please contact Ms. Deborah Vallance, National OHS Coordinator on 03 9230 5888.

Yours sincerely

DOUG CAMERON
NATIONAL SECRETARY

AMWU

SUBMISSION

to the HOUSE of REPRESENTATIVES STANDING COMMITTEE on EMPLOYMENT and WORKPLACE RELATIONS
INQUIRY into ASPECTS of AUSTRALIAN WORKER'S COMPENSATION

[August 2002]

[Australian Manufacturing Workers Union]

Executive Summary

The AMWU represents approximately 150,000 members in the manufacturing industry covering production, trade, technical and supervisory employees in the Metals and Engineering, Automotive, Printing and Food and Confectionery processing industries, as well as technical, supervisory and administrative sectors of manufacturing, engineering and science.

There are nine Australian workers compensation schemes, AMWU members are covered by eight of the nine schemes. Therefore the breadth of the Terms of Reference and the extremely limited time frame severely limits the detail that the Australian Manufacturing Workers Union (AMWU) is capable of submitting. There is a wealth of information and reviews that have been recently conducted by numbers of State jurisdictions to which the Standing Committee is referred. Some of these are listed in Chapter 2 of our submission.

The AMWU has not attempted to provide a comprehensive report on all the topics before the Standing Committee. This submission merely wishes to highlight, with examples, some problem areas commonly encountered by our injured members.

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Any discussion of health and safety performance of the manufacturing sector would require considerably more time and an indication of the focus the Standing Committee wishes to undertake. This topic is only addressed in a very perfunctory manner in this submission.

The AMWU is willing to discuss any part or all of this submission with the Standing Committee.

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Chapter 1: Setting the Scene

The AMWU represents approximately 150,000 members in the manufacturing industry covering production, trade, technical and supervisory employees in the Metals and Engineering, Automotive, Printing and Food and Confectionery processing industries, as well as technical, supervisory and administrative sectors of manufacturing, engineering and science.

Our coverage is diverse and hence our members are exposed to a broad range of occupational health and safety hazards. For example: laboratory assistants chronically exposed to multiple chemicals or a maintenance fitter exposed to asbestos fibre gaskets or a production worker exposed to forceful repetitive manual handling tasks. Unfortunately, our members or retired members are the trades people with high rates of mesothelioma (asbestos related cancer) eg. shipyard and power industry workers. Industrial deafness is most common in occupational groupings who are represented by the AMWU eg. metal workers and vehicle builders.

There are nine Australian workers compensation schemes. AMWU members are covered by eight of the nine schemes. Although an unreliable estimate of the actual level of injury and disease[1], workers compensation statistics [2] show that manufacturing sector workers have an incidence of compensated injuries, requiring five or more days off work, of 26.5 injuries per 1000 employees (or 14 injuries per million hours worked). This is the sixth highest of all industry groups.[3] The Australian Bureau of Statistics reported that only half of all work related injuries progressed to a workers compensation claim.[4] Over one half of those who did not apply for workers compensation had received no financial help for the injury.[5]

The AMWU is therefore well placed to comment on the extent of workplace related ill health and injury and represents groups within the workforce who are more adversely affected by their work than most other sectors of the economy.

[1]Workplace Relations Ministers' Council, Comparative Performance Monitoring, Third Report, August 2001, page 89 and Stocktake of Australian Data Sources of Occupational Disease, Report to the Commonwealth Department of Health and Aged Care, Department of Epidemiology and Preventative Medicine, Monash University, March 2000

[2]Workplace Relations Ministers' Council, Comparative Performance Monitoring, Third report, August 2001. Figures are for compensated injuries of 5 or more days off work

[3] ibid, page 10, there are 18 industry groups

[4] ABS 2000, Work Related Injuries, September 2001. Cat. No. 6324.0 ABS, Canberra. Pages 4 and 5

[5] ibid, page 5

Chapter 2: Structural factors that encourage the non payment of workers entitlements (employer fraud)

2.1 Considerable structural change has occurred in the Australian labour market over the last 20 years. The manufacturing sector has a high level of use of both casuals and labour hire employees.[6] The Australian Workplace Industrial Relations Survey data showed an increase from 14% to 23% of manufacturing enterprises using labour hire between 1990 to 1995 (the survey was limited to enterprises of 20 employees or more).
There is a general recognition of the less favourable position of casual employees. In an Australian Industry Group paper entitled "A Critical Assessment of Progress in Enterprise Bargaining", Mr. Roger Boland states:

> *"Casual employment in Australia has risen from 700,000 in 1982 to 1,800,000 in 1997 - that is, from 13 per cent to 22 per cent of employed persons. Outsourcing now provides 25 per cent of the workforce compared to 5 per cent in 1993. The majority of non-permanent employees are not casually employed by choice, have lower earnings than those in permanent jobs and are less likely to receive other employment benefits such as annual leave, sick leave and superannuation. This shift in the composition of the workforce has generated enormous insecurity and has very worrying social consequences."*

2.2 There is also evidence that the structural changes are having an impact on the recording of workplace health and safety hazards and on the availability of workers compensation to particular groups in the workforce. Employees in non standard employment arrangements are less likely to claim workers compensation for work related injuries.

2.3 The ABS Employment Arrangements and Superannuation Report notes that casuals are

- are less likely to be covered by workers compensation insurance
- are less likely to have received training, particularly formal training. [7]

In recognition of these difficulties, State health and safety agencies have sought national work on such issues as call centres, labour hire and contracting out.[8] Many State jurisdictions have their own projects on Labour Hire in recognition of the particular health and safety and workers compensation claims history problems that beset this form of working arrangements. [9]

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[6] Buchanan J "*Casuals and the Growing threat to retirement incomes*", ASX perspective, second quarter 2000 (stats sourced from unpublished ABS product 6310.0.40.001

[7] ABS Employment Arrangement and Superannuation Report March 2001 No. 6361.0

[8] coordination of State activities is occurring through State agencies meeting under the umbrella of the National Occupational Health and Safety Commission.

[9] for example, joint project between Labour Hire Industry and WorkCover Corporation in South Australian and Queensland Guide to Workplace Health and Safety Assessments in the Labour Hire Industry, Victorian Labour Hire Industry Stakeholders Forum

2.4 Particular manufacturing industry examples:

2.4.1. Metal Industry

The level of use of casual labour and the linkages between labour hire and casuals in the metal industry are complex. Many casuals are employed by labour hire companies. It has been estimated that the growth of labour hire engagement, probably represents 15% of casual labour in the metal industry.[10]
The Commonwealth government estimates an 11% casual density of total (blue and white collar) in the metal industry.

2.4.2. Printing Industry

Unpublished ABS Statistics for the Printing Industry show casual employment in the printing industry broadly reflect the trends found in the wider economy.

For example the figures show:

- 14.35% of workers in the printing industry are self-identified casuals
- 72.4% of casuals had not had training in the last 12 months compared to 56.38% of permanents who had had training in the last twelve months
- 64.86% of casuals report to be covered by workers compensation insurance compared to 95.27% of permanent workers.[11]
- 23 % had not been informed about workplace health and safety regulations.

2.5 AMWU Survey of Health and Safety Representatives

In the first national union health and safety representative survey in 2001, at least one quarter of AMWU workplaces had labour hire and/or contractors and one in four workplaces employed casual employees[12].

There is ample evidence that non standard employment arrangements are increasing in the manufacturing industry and that these groups of workers are less likely to access their entitlements.

2.6 State government reviews

As noted in the introduction, the breadth of the Terms of Reference and the extremely limited time frames severely limits the detail the AMWU is capable of submitting. However there is a wealth of information

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10 AMWU Application to Vary the Metals Engineering and Allied Industries Award for casuals and part time employees
C No. 22704 of 1999, paragraph 520

11 AMWU Application to Vary Graphics Arts-General Award and Country Printing Award. C Nos 2001/1662 and 2001/1665

12 AMWU National Health and Safety Representatives Survey 2001

and reviews that have been recently conducted by numbers of State jurisdictions. The Committee would be well advised to review the information in these before "re inventing the wheel".

As examples:

- *In 1999, the Queensland government produced a report considering aspects of the definition of worker and the inequitable balance of some employers paying high premiums whilst others did not pay their share.*
- *In February 2001, the Victorian Government reviews and actions to decrease the compliance costs for business for payroll and workers compensation premiums.*
- *New South Wales Green Paper Report on Compliance that noted the movement from employer- employee to employer-contractor workplace relationships ..... and the straight out evasion of workers compensation premiums by employers through phoenix companies and simple non compliance.*[13]

All these reviews indicate that there are significant compliance problems with the payment of workers compensation premiums, which adversely affects other employers and denies employees their rights.

2.7 Labour Hire industry

It is often the experience of the AMWU, that the growth in labour hire and contracting arrangements has allowed for evasion of payment of workers compensation premiums and strong disincentives are applied to employees not to access their legal entitlements. The following are a snap shot of the types of "fraud' the AMWU discovers:

(i). incorrect classification of employees work so that a lower workers compensation premium is paid:

- labour hire company doing heavy engineering work, but insured as fishmongers;
- labour hire company conducting engineering work on the waterfront, insured as maritime importers.

(ii). incorrect number of employees insured for:

- labour hire company understated the number of employees by a factor of ten, hence trying to save upwards of $175,000 in premiums

(iii). interstate companies not paying insurance premiums to the relevant jurisdiction:

- Queensland companies working and employing in northern New South Wales, without paying the relevant premiums in NSW

(iv). employees pressured to take other types of leave instead of making workers compensation claim:

- when asked why an employee had not been taking his Rostered Days Off (RDOs, an employment entitlement) the employer replied " I've been helping the guy out, he has been injured and has used the RDOs to recover".
- employee with ankle injury was paid, including shift penalties, to attend but not to work for weekend work, rather than a Lost Time Injury be recorded.

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[13] Compliance Review Interim Report, 22 March 2002 , NSW WorkCover

2.8 Standard employment arrangements

It would be misleading to suggest that these practices are only confined to the labour hire industry. Employer non compliance occurs in standard employment arrangements. Many times that non compliance is related to the size of the employer, however large employers with self insured status use particular strategies to limit workers access to their entitlements.

2.8.1 Employee Income Protection Insurance

As part of the recent wage negotiations, many AMWU members have *forgone a wage rise in lieu* of an income protection insurance scheme for ill health and injury. Employees are paying insurance which is designed to cover circumstances when the workers compensation system does not apply eg. non work related injuries.
Some employers are using the income protection schemes for work related injuries, which allows them to lower their workers compensation premiums due to the falsely low number of claimants. One of our major income protection insurers estimates that between 7 and 10% of the claims they initially receive should have gone through the workers compensation scheme[14].

This is particularly pronounced in South Australia and Queensland and industries such as the food industry. The South Australian workers compensation system has a very high level of self insurers.

The food industry has a high level of seasonal casuals. Workers in this industry are frequently not hired again if they have a history of workers compensation claims. In parts of construction the higher use of income protection is related to the number contractors in the sector eg. electrical contractors.

2.8.2.Small employers

There is a section of small employers who do not comply with workers compensation legislation by:

- are not paying levies at all; and/or
- not submitting employees prescribed medical certificates and claims to their workers compensation insurer; and/or
- not advising employees of the need to fill out a Worker Report Form.

In South Australia, AMWU has been advised by the WorkCover Corporation's fraud unit that avoidance of levies is rife but hard to police. Some employers don't register at all; others pay employees cash in hand and whose employees don't appear on the employers books; others pay the wages and medical costs themselves and don't lodge the claims. Whilst acknowledging that employer fraud is large, the S.A. WorkCover corporation refuse to supply workers with the name of their employers insurer, until the worker has made the claim. The WorkCover Corporation refuse to divulge this information to the injured worker, on the grounds of commercial confidentiality. The effect of this is that the injured workers

[14] personal communication with relevant insurers

compensation claim takes longer to be processed, which can result in the injured worker being financially disadvantaged.

2.9.Employer failure to pass on workers compensation claim form to the insurer

This is not uncommon, both with large and small employers.

For example, an AMWU member suffered a torn cartilage in his left knee at work on 8th March 2002. He immediately reported the injury to the company's First Aider which was then recorded in the company's Safety Log Book the same day. The man lodged the relevant documentation with the employer on 13th March 2002. The insurer did not receive the claim form until 17th April 2002. The failure of the employer to forward the claim within the required period has led to the deferral of surgery to repair the injured mans knee.

2.10 Employer buy-outs of self insurer status

In many jurisdictions, the arguments used by employers and the relevant authorities is that good performers are able to become self insurers. Recent experience suggests that this is a matter of commercial operation rather than anything to do with good health and safety performance. In one jurisdiction it appears to be possible for a company , when taking over another, simply to buy the self insurer status as a commercial transaction. There is apparently no need for the new company to have its health and safety or management practices for workers compensation scrutinised.

2.11 Employer incentives to employees, aimed at discouraging workers compensation claims

As indicated in section 3, the number of workers compensation claims is not an indicator of health and safety performance. Incentive programs aimed at decreasing the Lost Time Frequency rates are good illustrators of this point:

(i) a large company runs an incentive program of awarding shopping vouchers when the Lost Time Injury is kept low. An employee with an amputation of his left index finger, didn't lodge a claim, because he did not want to be the one who caused the lost time injury. The employee had attended hospital and returned to work because the employer had said a claim was not necessary and that they would look after him and pay the medical bills.

(ii) the employer offered and paid for the medical treatment and full wages for six months. The employer said they did not want to upset the no LTFR for the last 12 months. The injured employee was cooking sausages at the company sponsored barbecue to celebrate the good record. Unfortunately, when it came time for the employee to receive medical treatment for his back injury, the employer refused to pay. The process of making a workers compensation claim then had to be started.

(iii) the employer said there was no need to put in a workers compensation claim as alternative work was available for a female employee with upper limb injuries. When the alternative work caused an aggravation of the injury the employer refused to pay for further medical treatment or provide other duties. The employee was eventually compensated for a permanent impairment.

(iv) AMWU officers have been able to get Queensland WorkCover to closely review the premiums of companies that have incentive schemes in place to prevent the incurring of lost time injuries. Two workplaces are used to illustrate the point:

- with considerable education and support of our members, eligible workers have to be encouraged to lodge workers compensation claims. One useful way has been the lodgement of claims by telephone, which has circumvented the employer's ability to pressure the employee into not starting the claims process.
- employees were surveyed and all dates and details of injuries were collected and forwarded to WorkCover for their investigation. This information has been used to review the appropriateness of the current premium level.

(v) An other option that is used is that employer fills out the compensation form for the worker, has it signed and then has the worker bring all the bills to the employers office. The worker receives money, the bills are paid, so the worker is financially looked after in the short term, but if there are any complications or other rights such as permanent impairment payments, the worker is unable to claim these as there was never a workers compensation claim processed.

2.12. Disincentives to claiming workers compensation from various parties:

(i) Employees are often encouraged not to make claims by the medical practice that the employer has engaged on the grounds that the claim will be rejected by WorkCover. The medical practice will state that there really is no work related problem (eg. stress related conditions) or that there is a degenerative component and therefore the claim will not be substantiated (which can be incorrect under law).

2.13 Employee fraud:

The evidence of employee fraud can be found in the numerous annual reports of each jurisdiction. This is easier to identify and has been the subject of considerable activity by the regulators. As noted above (see 2.) there is considerable evidence that far from making fraudulent claims many *employees* fail to make claims when appropriate.

(i) In Queensland we have evidence that the system is so efficient that it catches people who simply make mistakes in completing forms. One of our members was charged with fraud for conducting a bike rental business to give a few disabled boys something to do on the weekends. The member was investigated by private detectives because he indicated on the claim form that the job in which he was injured was his only form of income. This was the case which was substantiated, but over zealous prosecutors had wasted time, money and caused considerable inconvenience to a citizen doing good work.

(ii) This case illustrates the experience of our Queensland branch where 5% of the claims referred to the AMWU for assistance are because the claim was rejected on unsubstantiated employer evidence. We are able to assert the allegations are unsubstantiated because once the evidence is challenged the claims are accepted. In the meantime, an injured employee is disadvantaged.

(iii) In New South Wales a recent amendment has been the introduction of provisional liability, whereby the insurance company must accept claims within 7 days unless they have good evidence that the claim is fraudulent. This change was supported by all parties in the knowledge that the incidence of employee fraudulent claims is so small that such a provision will not endanger the financial viability of the scheme. (This contrasts to NSW WorkCover activity over non compliance with payment of premiums).

(iv) There is a tendency to charge that injured employees are fraudulent when the employer or insurer asserts that the employees injury is not genuine. There is often incredible pressure applied to the treating doctors to make sure that the employee is rapidly returned to work. A female employee with carpel tunnel syndrome returned to work after an operation to repair the injury. Despite continual pain the employee continued to work in duties provided by the employer. She was concerned for her continued employment, and wished to be helpful to her employer. Eventually after nine months a further medical investigation was performed and she required a second carpel tunnel release operation. The employees willingness to cooperate had been to her health's detriment. She will not receive extra compensation for her stoicism or helpfulness.

3. Factors relating to different safety records and claims profiles

To respond adequately to this particular term of reference would be to write a definitive thesis on the origins of occupationally related ill health and injury. Therefore it is very difficult to inform the Standing Committee with any degree of relevance or focus.

Different safety records and claims profiles are not indicators of identical phenomenon. Safety records relate to the *recording* of injuries, not illnesses, at the workplace. Safety, does not encompass the incidence of occupationally related illness and disease. This is particularly so for illnesses with an undiagnosed occupational component eg. occupational dermatitis or asthma or diseases with delayed onset eg. cancer.

Claims profiles are the result of a legal process for compensable workplace injuries . The profile reflects the claims management and relevant legal rights (which are not uniform across the jurisdictions). These are not a reflection of health and safety performance. Industry variation in safety performance is related to the type of production and hence the type of work performed, in addition to work organisation and economic pressures on the undertaking.

In the AMWU Health and Safety Representative survey of 2001, the fourteen most common hazards listed were: (percentages listed relate to the percentage of workplaces listing this hazard)

Noise	90%	Awkward Postures	65%
Heat/cold	64%	Forklifts	77%
Heavy Lifting	73%	Fumes	60%
Computers	66%	Dust/fibres	55%
Moving machinery	67%	Cleaning fluids	51%
Solvents	66%	Paints or inks	51%
Repetitive Work	65%	Power Tools	50%

There is now considerable evidence that the type of employment arrangements affect health and safety performance, irrespective of the type of work performed eg. higher injury rates in clothing outworkers compared to their factory employed counterparts. In the metal industry it is often the hazardous work that is contracted out to smaller enterprises or to labour hire companies eg. contracting out maintenance work or spray painting. There is no intention to discuss these issues further. Comment is best left to the International Labour Organisation:

> *the health and well being of workers is an issue of social justice and the ILO stands above all for the ideal of promoting social justice in the world. Ultimately solutions are social as much as technical. It is not merely the lack of know-how that perpetuates the toll of death, disability and disease in the working population, it is the lack of social means and the social will to do something about it.*[15]

[15] ILO Encyclopedia of Occupational Health and Safety, fourth edition, 1998. Preface page v

4. Rehabilitation Programs

Those people who are unfortunate enough to be injured at work are often failed badly by the workers compensation system and their employers. Employers and the relevant authorities view the early return to work of injured employees as a hallmark of an efficient system. Obviously, good rehabilitation is in the interests of everyone, injured employee and employer. Less serious injuries mean a quicker return to work. However, it is our bitter experience that many injured workers, especially those with musculoskeletal disorders or psychological injury are discriminated against during the return to work or retraining process.

4.1 AMWU Survey of Health and Safety Representatives

Forty three percent of our Health and Safety Representatives reported that they felt that sick or injured employees in your workplace *are pressured by management to return to work before they are ready.*

4.2 Lack of Provision of suitable duties

Most jurisdictions provide require employers to provide suitable duties, for a restricted period, to employees partially incapacitated as a result of a compensable injury. There are numerous case studies of employers being only willing to provide duties for the statutory period even if jobs are available and the employee is very willing to work. For example

(i) An employee injured in March 2000 had quickly returned to some restricted full time duties until the injury was exacerbated which necessitated some changes to her duties. In February 2001 the employer terminated the rehabilitation services being provided. By March her condition had deteriorated and her duties required further restrictions. The company had not engaged an independent provider to conduct a job assessment. The legislation allows for the employer to determine what rehabilitation services are provided. In late March 2001 the employee was told there were no further suitable duties available. The statutory period on the employer to provide suitable duties of 12 months has expired. The company refuses to offer her alternative work and has said she must undertake vocational retraining. The vocational retraining has been inappropriate for her skills and injury. In January 2002, an independent medical panel determined she was fit for work, but still the employer has refused to offer employment. This is an example of employers who will only take responsibility for injuries caused at their establishments, within their strict legislative responsibilities.

(ii) Employers are often able to get out of their legal obligations, within the prescribed period, by claiming that that none of their current jobs are suitable. This is not limited to small employers with limited job range but has become increasingly common with very large employers. eg. automotive company has displaced injured workers from suitable duties as group work is introduced which rotates lighter and heavier work. The partially incapacitated worker is only allowed to join group if can perform whole range of duties, light and heavy.

(iii) While absent from the workplace due to a compensable disability the employee received a letter from her employer dated 11th May 2000 advising:

> "Since the 29th April 2000, you have not reported for work, nor have we been contacted by either yourself or your husband to provide any reason, justifiable or otherwise for your non-attendance at work.. Accordingly, we has taken the view that you have withdrawn your labour and therefore severed your contract of employment with effect on 29th April 2000"

At all times the employer knew that the employee was absent due to an illness for which she is claiming workers compensation as the relevant forms had all been forwarded to the employer. The employer was refusing to provide suitable employment, and unfortunately despite breaching its legal obligations this employer has not been prosecuted by the relevant authority.

The prosecution of employers to failing to meet their legal obligations regarding suitable duties is as "rare as hen's teeth". As far as we are aware in one jurisdiction it has *never* happened despite provision of suitable duties being a legal obligation on employers for 15 years.

4.3 The provision of inappropriate vocational retraining

Employers are not providing appropriate vocational retraining services. Sometimes this is related to their refusal to use good quality rehabilitation providers, or limit the costs of the rehabilitation services provided which ensures only limited vocational assessment is possible.

(i) A female production worker who sustained bilateral carpel tunnel injuries from repetitive assembly work. The insurer is providing her with a word processing course as her vocational retraining. Keyboard work is a significant risk factor for the type of injury she has already sustained!!

(ii) Some of the problems with rehabilitation services is their lack of independence from the insurance agents. In one case, the particular insurer consistently refers 60% of injured employees to a rehabilitation provider that does not have a better record for durable return to works and charges on average, $200 more per case. There have been concerns raised about the monetary relationship between the provider and the insurer.

The AMWU is not opposed to good quality training and supports the re-training of injured workers. This only when the training undertaken is meaningful, within the workers restrictions and interest and offers them long term potential to re-enter the employment market.

4.4 Dismissal of injured employees

When an employer claims there are no suitable duties or the legislative period for access to workers compensation benefits has terminate for partially incapacitated workers it is not uncommon for employees to be terminated.

The following is an example:

(i) Employee worked for this company for 32 years as a sheet metal worker engaged in the on-site construction of steel fabricated buildings. Over this time he suffered a number of compensable back injuries (1980; 1995 & 1996). His claims were accepted for medical expenses only in 1995 and in 1996. Following the 1995 injury he worked modified duties, still in on-site construction, until cleared for normal duties (though still with the restrictions: - lifting less than 20 kg and wear a back brace). After the 1996 injury an MRI revealed disc bulge at L5-S1 and partial lumbarisation of S1. He was certified as suffering chronic discogenic lumbar back disabilities caused by work activities and placed on modified duties again. Various rehab programs were tried until the employer agreed in 1997 to place him permanently in a light duty job as a packing assistant. The company employ several people in the packing area and only required him to do the lighter jobs, leaving the heavy packing to the others. So he was performing a job designed to accommodate his injuries. The company then decided to dismiss him even though the company informed the AMWU during Industrial Relations Commission hearing that they still employ 2 people doing the work he was doing prior to his dismissal.

4.5 Transferring of costs to the public purse

As indicated in the Industry Commission Inquiry into Workers Compensation in 1994, the costs of workplace injury are not shared evenly. The Commission estimated that 30% costs were incurred by the employer, 30% by the injured employee and 30% by the community. The transferring of the costs from the employer and relevant insurance bodies to the public purse is not uncommon for long standing injuries, where employees are still capable and willing to work but are denied this opportunity. For example

(i) The employee had sustained a number of compensable injuries to his neck and right shoulder while employed as a machine operator. He has had surgery to his right shoulder and in the opinion of a medical practitioner has sustained 15% permanent impairment. Despite ongoing pain and restrictions the employee has lost very little time from work. He has successfully performed a range of light duties over the last few years. However on 16th May the employer told the employee (and 2 other workers with compensable injuries) that due to downsizing they could no longer provide light duties. He was sent home without pay and told to lodge a claim with the insurer. The insurer have rejected his claim on the basis that he has a demonstrated capacity to perform full time alternative duties. He has therefore been left without any means of support and is living on Centrelink sickness benefits.

4.5 Pressure from employers and rehabilitation providers on treating medical practitioners

The aggressive behaviour towards treating medical practitioners, of some rehabilitation providers or return to work practitioners, if conducted by our members towards management representatives would be regarded as harassment. It is not uncommon for company representatives involved in preparing return to work programs to persuade employees and doctors that they should be able to sit in on treating medical practitioner interviews and examinations.

Two examples to illustrate the point:
(i) employee sustained a shoulder injury from a 700 tonne machine. The injured employee and a company representative were taken to a doctor who said the employee would require one month

off work. The company representative disputed the opinion of the medical practitioner and was so insistent that he was asked to leave the surgery.

(ii) the return to work coordinator informed the injured employee that they were going to accompany the injured employee to the appointment with the specialist. As the referral was made for a workers compensation claim the employee was under the misapprehension that their rights to privacy with a medical practitioner could be waived. This is an example of the RTW coordinator "forcing their way into the doctor patient relationship".

4.6 Workers with Workers Compensation histories being treated differently through redundancy processes.

The modes of discriminatory practices against workers with current or histories of work related injuries are seemingly unlimited. The following examples illustrate many occasions where our injured members are treated differently to other members during redundancy processes.

(i) During an involuntary redundancy process for 15 people employed by a medium sized employer, there was an over representation of people with long term injuries. One third of the redundancies were people with workers histories. The majority had been working a full week with few task restrictions. The employer asserted that their duty of care to their employees meant that the employees needed to be terminated. Because they had long term injuries, the employees did not even question the proposition when some of them were not even paid any redundancy pay.

(ii) In one jurisdiction, during the offering of voluntary redundancy packages (the employer is asking for volunteers) those with workers compensation histories are refused access to the redundancy package. The employer claims "you can't be made redundant whilst you have an active workers compensation claim, asserting that the employee would be double dipping". This is not correct, as in this jurisdiction, the employees workers compensation payments *would be decreased* for a period because of extra income the injured employee would receive from any lump sums received during the redundancy process. Once the redundancy process is finished, the employer waits for the statutory period for the provision of light duties to be completed, then dismisses the employee citing that there are no longer any suitable duties available.

These two examples show that no matter what the circumstances the injured employee is not treated in a similar manner to other employees.