



CPSU (PSU Group)
Tasmania

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

Dear Mr Selth,

I refer to your letter of 2 July 2002 inviting submissions from our union to the Committee's inquiry into aspects of Australian Workers Compensation.

The contact person in CPSU for this submission is Tasmanian Regional Secretary Simon Cocker who can be contacted at our Hobart Office on 03 62208000.

Yours sincerely,


Doug Lilly
Assistant National Secretary

4th Floor, T & G Building

Cnr. Collins & Murray Streets

Hobart. Tas. 7000

GPO Box 978

Hobart. Tas. 7001

Telephone: 03 6220 8000

Facsimile: 03 6220 8006

Regional Secretary: Simon Cocker

House of Representatives

Standing Committee on Employment and Workplace Relations

Inquiry Into Aspects of Australian Workers Compensation

Submission from the Community and Public Sector Union (PSU Group)

August 2002

**The Minister for Employment and Workplace Relations has asked the
Committee :**

**'To inquire and report on the matters that are incidental to
Australian workers compensation schemes in respect of:**

- **The incidence and costs of fraudulent claims and fraudulent conduct by employees and employers, and structural factors that may encourage such behaviour;**
- **The methods used and costs incurred by workers compensation schemes to detect and eliminate:
 - (a) **fraudulent claims; and**
 - (b) **the failure of employers to pay the required workers compensation premiums or otherwise fail to comply with their obligations; and****
- **Factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.'**

The CPSU notes that the time frame for response is one month and the range of topics very substantial. Accordingly the comments are offered in limited form and do not attempt to cover the whole extent of the inquiry.

CPSU would welcome the opportunity to expand on the issues raised if it would benefit the committees deliberations.

Introduction

1. The CPSU is Australia's largest union in the area of Government employment and while it has membership in the private sector comments in this submission are restricted to the areas under the Workers compensation coverage of the Safety Rehabilitation and Compensation Act 1988.
2. CPSU notes that the Comcare Annual Report¹ for 2000-2001 reports potential savings of eight million dollars from fraud control initiatives. CPSU believes that most of this amount is projected forward savings arising from administrative action, some disputed. CPSU submits that ongoing and adequate resourcing of Comcare is sufficient for the purpose of protecting revenue.
3. CPSU notes that WorkCover NSW Review of Employers Compliance² into compliance with payment of premiums found significant but unquantifiable revenue loss but does not believe this is an issue in Commonwealth employment.
4. CPSU notes that a variety of spying techniques are used to observe workers suspected of workers compensation fraud. CPSU submits that intrusive techniques such as video surveillance should only be allowed under the most stringent of controls.
5. CPSU notes that premiums for Workers Compensation are significantly lower in Commonwealth employment than in other jurisdictions dropping from 1.6% of salary in 1996-97 to 1% in 2000-01³. CPSU submits that there are three key factors in achieving this low level of premium;
 - The relationship between performance and premium where a good health and safety record leads to lower premiums
 - The active and ongoing involvement of CPSU and other unions in Health and Safety programs in government agencies and
 - The interpretative removal of many stress related injuries from eligibility for workers compensation and the inherent discrimination against mental injuries
6. CPSU also submits that the commitment to rehabilitation and return to work is an essential part of the system. Ongoing emphasis on return to work provides both justice to workers and long term savings to the system.

¹ Past , present and Future Comcare 2000-2001 Annual Report Comcare Australia Page 54

² Review of Employer Compliance with Workers Compensation Premiums and Pay Roll tax in NSW Penny Le Couteur and Neil Warren March 2002 Executive Summary Page viii

³ Past , present and Future Comcare 2000-2001 Annual Report Comcare Australia Page 13

5.1 Premium and Performance

1. The aim of the Safety Rehabilitation and Compensation Commission is to set a premium rate that will be sufficient to cover the cost of claims in the year of coverage whenever a claim may arise⁴. The SRCC is aided in this process by the inability of scheme participants to avoid making their contribution.
2. Based on actuarial advice the premium for each agency is based on the number and costs of claims from each agency⁵. This clearly provides an incentive for the agency to minimise its premium costs and while there are isolated instances of undue pressure on staff to not lodge claims for workers compensation this is not widespread and generally the influence is positive.
3. Centrelink has introduced an early intervention program that aims to identify staff at risk of injury, particularly stress type injuries at an early point. Through use of such things as time off and/or professional counselling the staff member can deal with their issues at the time instead of the problem compounding with time. Similarly a number of agencies provide staff counselling facilities.
4. The financial incentive is also an encouragement to agencies to have in place effective and active Health and Safety Committees. The Commonwealth employment area has a strong network of Health and Safety Committees in place involving elected staff representatives, management representatives and unions. This strong consultative network plays a very important role in OH&S performance.

⁴ Past , present and Future Comcare 2000-2001 Annual Report Comcare Australia Page 22

⁵ Past , present and Future Comcare 2000-2001 Annual Report Comcare Australia Page P22

5.2 Union Involvement in Occupational Health and Safety

1. The ongoing, low workers compensation insurance premium in the Commonwealth employment area is based on low claim and injury cost numbers. In turn these figures are kept low in large part by good Health and Safety programs.
2. Research has consistently shown that workplaces that have the involvement of a union have better health and safety outcomes. Workers that can rely on expertise, training, support and representation from their union are safer workers.
3. The Occupational Health and Safety (Commonwealth Employment) Act 1991 provides an outstanding framework for continuing involvement of workers and their unions in health and safety. Under this framework employing agencies are required to have in place an agreement with relevant unions providing for consultation and appropriate structures in the agency.
4. The Act provides for unions to conduct elections for Health and Safety Representatives in designated workgroups. This ensures that positions are filled by employees with both a genuine desire to represent their co-workers on health and safety matters and with the backup of expertise and support that only their union can provide. Another important feature of the Act is that these representatives must be trained.
5. From CPSUs experience, the current Government's term in office has been notable for its persistent attacks on both occupational health and safety and workers compensation.
6. Firstly, in the Government's first year in office it cut the operational budget of the national occupational health and safety authority, Worksafe, to an extent that 44% of its staff were retrenched. This resulted in a serious downgrading of the Commonwealth's expertise and research capacity in occupational health and safety.
7. Secondly, the Government introduced the *Workplace Relations Act 1996* which included a long list of industrial matters which were to be outlawed in all awards. Occupational health and safety was included in the list of matters which were deemed 'not allowable' for inclusion in awards. The *Australian Public Service Award 1998* was subsequently stripped of its one and only safety provision covering air conditioned workplaces and the related risk of legionnaire's disease.
8. Thirdly, the then Minister for Workplace Relations and Small Business Mr. Reith tabled legislation in 1997 amending the Commonwealth's workers compensation Act. The bill sought to introduce a nebulous concept of 'reasonable management action taken in a reasonable manner' which would have overturned the longstanding principle of no-fault compensation. The bill also sought to introduce a test of 'significant contribution' which would have been the toughest contribution test of any jurisdiction Australia. The bill was subsequently withdrawn.

9. Fourthly, the Minister demanded that that Worksafe's headquarters would be moved from Sydney to Canberra, thereby losing a number of highly qualified staff who chose not to transfer to Canberra.
10. Fifthly, the increasing incidence of occupational stress in the 1990s lead the CPSU to write to the Minister in 1996 asking him to exercise his powers under the Commonwealth OHS Act to introduce a code of practice on occupational stress. The Minister declined to exercise his powers and to this day there is still no code of practice on stress in Commonwealth employment.
11. Sixthly the Minister has continued to attempt ideological purging of the Act by attempting to legislatively remove the important provisions providing for union involvement in occupational health and safety
12. The CPSU conducted a wide survey of Commonwealth Health and Safety Representatives in 1997 in response to a Comcare Commission review of the OHS Act. The Reps were asked what they thought of the consultative aspects of the OHS Act. Below are some extracts from the survey results.

"We need to know how the current Act operates effectively or ineffectively in relation to the consultative provisions and what you think of the role of unions under the Act. Please take the time to provide CPSU with your views and personal experiences.

"I simply want to say as a health and safety rep for the past five years, and having on several occasions referred to the Commonwealth OH&S Act 1991, and enforced it upon managers, I would not like to see it changed in any way." HSR, Adelaide

"I think that iif there is no union committee the conditions as regards to OH&S would be much degraded." HSR, Canberra

"Electing the OH&S rep should be less formal than the electoral commission, through an independent organisation on base." HSR, Canberra

"A local survey of employees showed there is unanimous support for employer/union OHS committees." HSR, Canberra

"As an information provider, the CPSU is a key OHS supporter and raiser of awareness." Deputy HSR, Melbourne

"The union is the strong arm of the OHS rep - offering the experience and expertise which the rep may not have acquired. Sometime the Rep lacks the confidence to act or deal with an arrogant supervisor, and the union rep or delegate can offer invaluable support. The union meets regularly with the reps

and management to address and resolve small and major problems at the consultative level." HSR, Melbourne

"I strongly believe that it is essential to be strongly supported in opposing work related hazards and hazardous work. I believe that the only organisation that is able to support employees is the union movement. I make these comments from my observations and my personal experience ... Again the importance of a well organised union to support workers is clearly an essential component of an effective safety program." HSR and OH&S Coordinator, Melbourne

"Union provides independent support for workers who may and can be intimidated by management and Comcare." Tax employee, Melbourne

'Consultation with unions on workplace safety matters is vital." Centrelink employee, Ipswich

"The CRS OH&S representatives met on 4.12.97 and at this time, listed the reasons that we believe it is important to have a union backed representative performing the yearly safety audits. 1. We understand employees' needs, as we are one of them and an employee ourselves. 2. Safety should be a consultative process. As union representatives we can draw on resources, and advice from the union, ie. we tap into a larger intellectual base of support. 3. We can maintain impartiality. 4. We will not be intimidated by a manager, who may not want to spend money on corrective measures. 5. We are well trained." HSR, Bega NSW

"Departments, agencies and statutory authorities have been dealing with unions and their democratically elected H&S Reps in an open, cooperative and consultative forum for the past six years. An excellent case in point being the recent signing of the Centrelink/CPSU 1997 OH&S Agreement. A prime example of a win/win negotiated agreement." HSR, Adelaide

"I find it strange that Mr. Reith and his Government are trying to dismantle certain provisions. The one issue on which employers and unions have been totally in agreement is OH&S. Why is Mr. Reith deliberately provoking a conflict on this issue?" HSR, St. Lucia Queensland

13. These comments remain equally valid in 2002 as at the time of the survey and represent a challenge to the government to put the welfare of workers ahead of ideological pursuits

5.3 Inherent Discrimination Against Mental Injury

1. CPSU submits that the scheme design and current interpretation understates the level of workplace injury reported in workers compensation due to the rejection of a significant proportion of workplace mental injuries.
2. The Safety, Rehabilitation and Compensation Act 1988 (SRC Act) aims to provide no fault cover for work injuries. The exceptions to this are found in Section 4, Interpretation, where the definition of injury contains some specific exclusions. These are any injury arising from failure to obtain promotion, transfer or benefit and any injury resulting from reasonable disciplinary action taken against the employee.
3. It can be reasonably assumed that these exemptions are designed to exclude mental injuries arising from stress under the circumstances of failure to be promoted etc or stress created by being the target of disciplinary action.
4. In 1991 the Administrative Appeals Tribunal Federal Court was required to consider the meaning of the term reasonable disciplinary action.. The bench mark case for the assessment of claims by Comcare became Rizkallah⁶ whereby it was determined that any action by a manager with the aim of creating order may be seen as disciplinary action. This has subsequently been expanded to include counselling⁷ and formal structured interviews⁸ to consider performance.
5. It is a common pattern for workers being affected by increasing stress in their work situation whether that is caused by long hours, increased complexity, poor I.T., an abusive client or simply work overload to have performance issues. Even though the cause of stress may be more deep rooted often the trigger to injury becomes the action of a manager in dealing with those performance issues. In these circumstances Comcare will reject claims for compensation.
6. This has effectively reversed the onus of proof so that a worker now has to demonstrate either that the employer has acted unreasonably or demonstrate that the injury has not been caused by any action of the manager to succeed in a claim. As a result many people simply elect to use sick leave and bear the costs as the process of lodging and fighting a claim often ends up exacerbating the original injury.
7. As a result many mental injuries never become claims and the incidence and costs of workplace mental injury remains hidden.

⁶ Rizkallah and Australian Postal Corporation AAT July 1991

⁷ Tan v Comcare AAT 1997

⁸ Sainsbury v Comcare AAT January 1998