



5 September, 2002

The Secretary
Standing Committee on Employment
And Workplace Relations
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Sir,

RE: INQUIRY INTO ASPECTS OF AUSTRALIAN WORKERS COMPENSATION

The Labor Council welcomes the opportunity to make submission to the Inquiry and would also like to thank you for allowing this organisation an extension of time in which to make a submission.

The Labor Council is responding to the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into aspects of Australian Workers Compensation schemes. Please find attached our submission and also a number of other relevant reports and submissions, which are referred to in the body of our submission.

The Labor Council of NSW and its affiliates are very concerned about the reason behind this Inquiry, and that it could result in a move for all of the States to adopt the lowest possible Occupational Health and Safety standards in Australia.

The inadequacy of access to data, the inadequacy of available data and the fact data is collected differently in different jurisdictions means that the Labor Council and its affiliates are not in a position to provide a comprehensive response to the terms of reference. However, in the past few years state governments have undertaken a number of reviews. These reviews will provide a useful background for the Committee and it is not the intention the Council's to summarise those findings in this submission. All reviews – including those in New South Wales, Victoria and Queensland – support the Council's position that while employee fraud is minimal, employer fraud is considerable and rarely prosecuted.

The quality of the data that is currently available and, on which an assessment will be made, is nowhere near adequate and therefore the Council is unable to provide the analysis the inquiry is seeking in reference to the reasons behind differing safety profiles between different industries. However, it is evident that differing safety profiles are inevitable given the differing levels of risk between industry sectors.

The Labor Council and its affiliates are of the view that the recent changes to the NSW Occupational Health and Safety Act 2000 and OHS Regulation 2001, have resulted in delivering the highest occupational health and safety standards, not only in the Country, but arguably in the world. At a recent Safety Summit, held by the NSW Government in Bathurst in July 2002, international guests who were keynote speakers from Canada and the UK, complimented NSW on the strength of the NSW legislation. The Labor Council and NSW unions would certainly oppose any move to weaken NSW Legislation. The unions however, would not oppose any move to improve the collection of occupational health and safety and workers compensation data in Australia.

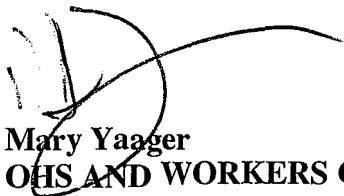
Furthermore, the New South Wales Government recently introduced major reforms to the workers compensation scheme in NSW and while the unions opposed a number of those reforms, we recognise that the NSW system still has greater benefits than any other schemes around Australia. The Labor Council and its affiliates would oppose any move to lower benefits, access or coverage as a result of this Inquiry.

The Labor Council notes that whilst employee fraud in New South Wales is negligible, a fact recognised by the New South Wales Government in redrafting the Workers Compensation legislation to make payments automatic for the first twelve weeks to injured workers, employer fraud – either underinsurance or effecting no policy – is a continuing problem which must be addressed.

The Labor Council and its affiliates welcome the opportunity to make further submissions during the Inquiry.

If you require any additional information or clarification, please do not hesitate to contact me on (02) 9264 1691 or 0425 231 817 or by email at m.yaager@labor.org.au.

Yours sincerely



Mary Yaager
OHS AND WORKERS COMPENSATION COORDINATOR

SUBMISSION

To the
**HOUSE of REPRESENTATIVES
STANDING COMMITTEE
On EMPLOYMENT and
WORKPLACE RELATIONS**

**INQUIRY
Into ASPECTS of
AUSTRALIAN
WORKERS COMPENSATION**

[August 2002]

The Labor Council of NSW represents approximately 750,000 members in NSW.

The breadth of the Terms of Reference and the extremely limited time frames severely limits the detail of the Labor Council of NSW is capable of submitting. However, 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.

The Labor Council is not attempting to provide a comprehensive report on all the topics before the Standing Committee. This submission merely wishes to highlight, with examples, the problem areas commonly encountered by our injured members.

A further restriction is the inadequacy of data collection and the fact that data collection methodology varies between the jurisdictions.

The inquiry intends to report on certain matters that are relevant and incidental to Australian workers compensation schemes, and as follows:

The incident and costs of fraudulent claims and fraudulent conduct by employees and employers, and any structural factors that may encourage such behaviour.

The unions in NSW have made a number of submissions to the Government in relation to fraudulent conduct by employers, in respect of not having workers compensation policies, and providing false information to insurance companies, in relation to wage declarations, number of employees and manipulation of premium industry classifications.

The Unions are of the view that the incidence of fraud by employees is very low, largely because it is easily detectable. An employee can only perpetrate fraud by making a claim. The evidence substantiating the claim is then available and can be tested. The same is not true of employer performance.

The NSW Government recently commissioned a report by WorkCover of NSW and the Office of State Revenue titled "*Review of Employers Compliance with Workers Compensation Premiums and Payroll Tax in NSW*". The interim report has now been released for employer and employee groups to comment on the recommendations prior to the report being finalised. A copy of this report is attached for your reference.

The Labor Council has prepared a response to the report and attaches for your reference a copy of the Labor Council's response. Please note however, this is the Labor Council's preliminary response and we have reserved our right to provide further comment. This response is preliminary and is in no way the Labor Council's final position in relation to the areas of compliance.

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**

The above comments also relate to these recommendations, one important factor to note, however, is that the percentage of employee fraud is miniscule compared to fraud and complete lack of compliance by employers.

It is our view that expenditure on fraud must concentrate on employer fraud i.e. premium avoidance and investigation of employer fraud.

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 union movement in NSW is very critical of the data collected in relation to workplace risks. One of the major problems with the data collected is that it does not reveal the true risks associated with workplace accidents. For example, the workers compensation data for the Rural Industry is completely inaccurate. The National Occupational Health and Safety Commission produced a report that established that there are two deaths per week on Australian farm properties. Also a recent report by NSW health and safety organisation, FarmSafe confirmed this. FarmSafe, collected compensation and accident data, they also collected data from other sources. It is our understanding that they collected data from hospitals, health services etc.

The workers compensation and OHS data significantly understates the number of fatalities and serious injuries in all jurisdictions. The Transport Industry is another perfect example. There is no correlation between the road fatalities data and the OHS workers compensation data. This data is on the basis that motor accident data is not included in the OHS statistics. The union movement would certainly support a complete review of the current methodology for data collection related to the risks in industries. The States should be encouraged to enhance their data collection to collect data from Hospitals, the Coroner, motor accidents, homicide, suicide etc.

The NSW Government has recognised the fundamental flaws in the data collected through workers compensation and is currently trying to address this situation.

In relation to the adequacy, appropriateness and practicability of rehabilitation programs and their benefits, the unions are of the view that there is very little if any adequate research on this topic. The NSW Government through its regulatory authority, WorkCover, commissioned research on the health, social and economic outcomes associated with different compensation pathways. The research is in its preliminary stage and the next stage, which is quantitative research, which will be undertaken through a comprehensive cross sectional survey and will be completed and a report will be available early next year.

Research in Australia and overseas indicates that one of the major reasons that workers compensation schemes deteriorate is due to the fact that employers, rather than trying to accommodate injured workers, in essence terminate their employment. An injured worker, who has been terminated because of a compensable injury, finds it very difficult to obtain suitable alternative employment. The experience in NSW, and I assume it would be similar in the other states, is that it is quite simple for an employer to terminate a person who is unable to return to their pre-injury employment and there is no real penalty in the workers compensation, industrial relations or in the insurance arrangements, which provides an appropriate disincentive for taking this action.

The Labor Council makes the following recommendations

- 1. The Inquiry needs to look at strengthening the state and federal industrial relations legislation in relation to the termination of injured employees;**
- 2. The Inquiry needs to look at enforcement options, i.e. severe penalties for employers who fail to genuinely attempt to rehabilitate injured workers;**
- 3. The inquiry needs to look at providing financial incentives to employers who employ a worker with a compensable injury.**