The Senate

Employment, Workplace Relations and Education Legislation Committee

Provisions of the OHS and SRC Legislation Amendment Bill 2005

May 2006

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Majority Report

1.1 On 1 March 2006 the Senate referred to this committee the provisions of the OHS & SRC Bill Legislation Amendment Bill 2005 (Occupational Health and Safety, Rehabilitation and Compensation). The committee received nine submissions to this inquiry. A list of these is to be found at Appendix 1. At its public hearing in Melbourne on 21 April, the committee heard from six of the organisations which had made submissions. The witnesses are recorded in Appendix 2.

Background to the bill

1.2 The OHS and SRC Bill 2005 was introduced in the House of Representatives by the Minister for Workplace Relations, the Hon Kevin Andrews MP, on 7 December 2005. As the Minister stated, the bill implements in part recommendations of the Productivity Commission in its Report No.27, *National Workers' Compensation and Occupational Health and Safety Frameworks* which was released in March 2004. The Productivity Commission recommended extending coverage under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to eligible corporations licensed to be self-insured under the *Safety, Rehabilitation and Compensation Act 1988*.[1]

1.3 The bill before the committee opens the way for an extension of this regime to employees other than those employed by a Commonwealth authority or Government Business Enterprise. There are considerable benefits to employers, especially in administrative savings for firms operating in a number of states. There are significant benefits to both employers and employees to being covered by a single set of workers' compensation and OHS laws as currently applies in the case of Commonwealth employees.

1.4 The main beneficiaries of this amendment will be, in the first instance, former Commonwealth bodies, recently privatised or due to be privatised. Under amendments contained in this bill they will be eligible for coverage under the SRC Act. Other beneficiaries will be corporations who self insure under the Commonwealth's workers compensation scheme.

1.5 The Productivity Commission suggested in its report (No. 27, *National Workers' Compensation and Occupational Health and Safety Frameworks*) that coverage under a Commonwealth OHS regime should be introduced progressively, and initially confined to firms in competition with Commonwealth organisations, followed by firms of sufficient size and stability which would be eligible to self-insure.[2] The Government did not accept this recommendation. However, the

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1 Report, p.104

2 op.cit., p.103

Government did accept the Commission's recommendation that the Australian Government amend the Occupational Health and Safety (Commonwealth Employment) Act 1991, to enable those employers who are licensed to self insure under the Australian Government's workers' compensation scheme to elect to be covered by the Australian Government's occupational health and safety legislation. This legislation would be extended to cover those insuring any future alternative national premium – paying insurance scheme.

1.6 As the Minister for Employment and Workplace Relations has observed when speaking about the difficulties faced by multi-state employers:

> They find it almost impossible to develop a national approach to occupational health and safety and the increased cost of complying with multiple jurisdictions does not lead to improved health and safety outcomes for their employees.[3]

1.7 In summary, the committee majority sees this legislation as consistent with the recommendations of an impartial body which has thoroughly investigated the problem of limiting the human and financial costs of work-related injury. It notes the Commonwealth's approach to injury prevention and management is through continuous improvement nation-wide, and with these improvements being able to be recorded and assessed on the basis of uniformity of standards. While the committee notes that this legislation will have gradual effect because state and territory systems will remain in operation, the long-term benefits will be considerable. Not least of these will be to serve as a catalyst for further reform in state jurisdictions.

1.8 The committee majority now turns its attention to specific matters of argument and concern raised during its consideration of the bill.

The need for national uniformity

1.9 In this section the committee majority expresses some general views on the need for Commonwealth legislative initiatives in areas of policy previously regarded as 'off-limits' to the Commonwealth. In doing so, however, it notes that the amendments contained in this bill cannot be regarded as leading to a 'takeover' of state functions by the Commonwealth. The bill does not interfere with the operation of state and territory legislation. To the extent that Commonwealth laws apply, they will cover only corporations, and only those which successfully apply for a licence to operate under the Commonwealth workers' compensation scheme.

1.10 Comment is sometimes made about the 'centralising tendencies' of the Government in regard to broad areas of business and industrial relations regulation. It is claimed that some of this legislation is contrary to the spirit of the Constitution, the consequence being a weakening of the federal 'balance'. There would be more substance to this argument if the states gave priority to harmonising their laws and

3 Hon Kevin Andrews MP, *Hansard* (Reps), 7 December 2005, p.6

regulations to ensure that state boundaries were not impediments to the efficient conduct of business across the country. Such an approach is, in theory, well within the scope of joint state initiative, with or without Commonwealth encouragement. In truth, there is no prevailing culture of state collaboration independent of Commonwealth initiative or direction. The committee majority acknowledges that the decision of Optus to use Comcare and take its $1.5 million premium out of the Victorian system did prompt some renewed energy on the part of HWCA to find a federal solution. It remains true that there is no political imperative to drive such collaboration, nor any other influences at work encouraging initiatives for reform at state level.

1.11 The committee majority has already noted the judgement of the Productivity Commission on the incapacity of the states to implement uniform and consistent regulation of occupational health and safety. It may be the case that states have conceded their inability to act in this policy area. No submissions on this bill were received from state governments.

The costs and disadvantages of current arrangements

1.12 The National Council of Self Insurers agued forcefully before the committee that an effective national OHS strategy would only achieve its objectives with speedier progress toward national consistency in regulations. This was not simply a case of saving administrative costs, but to achieve better safety outcomes. The Council gave the committee an instance of where this was jeopardised by different regulations:

> If you look at the security-sensitive ammonium nitrate regulations which have come in state by state, PACIA, the Plastics and Chemical Industries Association, are really concerned about the different degree of regulations across the states. We have a situation where the ammonium nitrate can be classified differently, the amount you can store is different from state to state, the transport of it is such that you can transport a certain amount in Victoria but you cannot take it into South Australia et cetera. Some national guidelines there, some national regulations, would streamline it and make it a lot safer. That is what it is about. The confusion is really dangerous.[4]

1.13 The National Council of Self Insurers predicted that the effect of the legislation would be that companies operating across state borders would seek to (subject to satisfying relevant criteria) move into the Commonwealth jurisdiction, and that this movement would drive a speedier move toward national consistency. This would make it easier for small contractors to comply with regulations because they would be governed by far fewer of them.[5]

1.14 Another consequence of the lack of uniformity across jurisdictions, according to the Productivity Commission, is its effects on the operation of Commonwealth welfare programs. The design of state schemes results in Commonwealth benefits

4 Mr Peter Harris, *Committee Hansard,* 21 April 2006, p.7

5 ibid.

becoming *de facto* workers' compensation payments. Ignorance or confusion about eligibility of coverage – the result of differences among states in the definition of employee – can mean that an injured worker can become the responsibility of Medicare or a welfare agency. The varying statutory benefits across jurisdictions have different effects on Commonwealth programs. For instance, in Victoria, payments for some statutory benefits cease after two years, whereas in Queensland they may operate for five years.[6]

Compliance with OHS regulations

1.15 At its Melbourne hearings on 21 April, the committee heard a great deal from the ACTU and its affiliated unions about the issue of compliance by companies with OHS regulations, and claims from unions that the Commonwealth lacked the human resources necessary to enforce its law. Much was made of the fact that Comcare had not yet recommended the prosecution of any employer with breaches of the OHS Act, and that it refused to act upon recommendations from state inspectors working on its behalf that it launch prosecutions.

1.16 In response to these claims, Comcare advised the committee that until legislative changes were made in September 2004 it was unable to initiate civil or criminal prosecutions. Six or seven prosecutions were currently under active consideration, all of them against businesses which were unable to be prosecuted previously.

1.17 Under current arrangements, Comcare has access to the services of approximately 200 state inspectors. Comcare advised the committee that its current recruitment of investigators would see levels rise to the point where it would have the same ratio of inspectors and investigators to employees as do comparable jurisdictions.[7] As to the allegation that Comcare had failed to use the services of state and territory inspectors, Comcare advised that it had not always found the quality of their reports of investigations satisfactory. The committee majority understands that state inspectors adopt a different approach to their work, as required under state regulations. As Comcare explained to the committee:

> Part of the problem that we experience relates to the fact that we approach investigations quite differently. You even see it with the terminology. The states refer to 'inspectors' and we refer to 'investigations' and 'investigation reports'. A lot of the inspectors that do work for us from the states are used to walking into a workplace, spotting hazards—things like cabling, as was mentioned before—writing a notice and leaving, whereas, when we require an investigation report to be done, it is quite a comprehensive forensic examination in response to an incident: what went wrong; who was responsible; what are the elements of the legislation; what

6 Report, p.108

7 Mr Martin Dolan, *Committee Hansard*, op.cit., p.34

> are the elements of an offence; what should have been done; what was reasonably practicable; was it done; and, if not, why not?[8]

1.18 Comcare has found that state inspectors do not always have the background and experience in providing reports to employers that are appropriate for the case. They often lack knowledge of the legislation, in circumstances where Comcare finds it difficult to keep them up to date. There is also difficulty in dealing with state officials who need the writing skills to articulate and prove elements of offences rather than just asserting that and writing notices.[9]

1.19 The committee majority notes the progress made by Comcare to increase the strength of its investigatory arm. It understands the problem of collaborating effectively with state bodies whose employees have their particular administrative culture which is grounded in the requirements of state regulations. This is no reflection on state OHS bodies. However, the Commonwealth has the more immediate task of dealing with large corporate enterprises, committed in all cases to effective OHS management, and having the resources to implement them. Under the amendments proposed in this bill, the SRC Commission must satisfy itself that an applicant for a self-insurance licence can meet the OHS standards set by the Commission. This is a process involving rigorous audits of the safety operations of the licence applicant. The Comcare approach to compliance will necessarily be different from that exercised by state authorities.[10]

Effect of national self-insurance on state OHS schemes

1.20 Submissions to the committee from unions have claimed that the financial pool in state systems will be reduced in the case of firms opting to self insure. This would increase the premiums for remaining businesses in the state schemes and increase pressure on workers' entitlements.[11] This assertion was also made by the ACTU at the committee's hearing.

1.21 The Productivity Commission also addressed this claim in its report. Several state and territory governments considered that there would be adverse effects on their schemes if employers were permitted to self-insure under Comcare. The argument was that allowing firms to exit from state schemes would result in a smaller premium pool and increase the costs for the remaining employers by reducing the chance to exploit economies of scale. The Productivity Commission found that this argument was based on the false premise that the larger states would have the lowest administrative costs.

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8 ibid., p.37

9 ibid.

10 ibid., p.39

11 Australian Manufacturing Workers' Union, *Submission 8*, point 15.

This is not so. The largest scheme, in New South Wales, has higher administrative costs than the scheme in Western Australia.[12]

1.22 Actuarial research available to the Productivity Commission concluded that the estimated reduction in premium revenue ranged from 2.7 per cent, if one in five employers exited, to 13.5 per cent, if all eligible employers exited. As large premium paying employers in current schemes tend to be charged experience-rated premiums, and would not in principle be cross-subsidising other employers, their exit would have a 'relatively neutral' effect on the schemes.[13] The committee majority acknowledges the caveats and reservations that are made by actuaries in regard to these conclusions, based as they are on sometimes incomplete information obtained from the states. Nonetheless, it points to the apparent unwillingness of union critics to address the specifics of these estimates in any evidence tendered to the committee.

1.23 The National Council of Self Insurers, in a supplementary submission to the committee, saw no reason to fear that a move by employers to the Commonwealth system would threaten the viability of state compensation schemes. In the absence of gross cross subsidies within the current premium pool, any such changes of insurers would be cost neutral.[14]

1.24 The committee majority considers that the concerns raised by unions in regard to compliance and prosecutions are grossly overstated, and are based on a misunderstanding of the significance of the legislation. To begin with, it is unlikely that the new provisions will be relevant to most employers currently insured under state and territory systems. Some large multi state corporations like Optus may see advantages in insuring under Comcare, but others, like Qantas and the Commonwealth Bank, have stayed under state systems, as has the Sydney Airports Corporation. Indeed, the Commonwealth Bank moved from the Commonwealth jurisdiction to the state jurisdiction when privatised in the early 1990s. No construction company has yet made an application to self-insure with Comcare. Considering the rigorous OHS licensing standards imposed by Comcare, it is unlikely that risk-prone companies would see any advantage in insuring under a legal regime in which premiums are generally higher and compensation packages more generous. The majority of corporations employ within one state and are likely to see no advantage of moving to Comcare unless the growth of their firm's interstate operations causes them to reconsider.

Conclusion

1.25 In considering the evidence to this inquiry, the committee majority concludes that the Government's increased involvement in the national regulation of

12 Report, p.125

13 ibid., p.127

14 National Council of Self Insurers, *Submission* 5a, 28 April 2006

occupational health and safety is an important policy development, and that it will produce better OHS outcomes over time. The consequence of its bringing corporations within the ambit of Comcare, and providing competition for state OHS and compensation regimes, will be to introduce more rigorous application of OHS principles and practices and over time to reduce the incidence of workplace accidents and illnesses. Government party senators believe that an over-emphasis on workers compensation benefits, which has been a characteristic of state-level debate on OHS, has distracted both employers, and employees and their representatives, from more fundamental issues of work safety. The result has been an unhelpful dispute over costs at the expense of agreement over safety.

Recommendation

The committee majority recommends that the Senate pass this bill.

Senator Judith Troeth
Chair

Opposition Senators' Report

2.1 The Opposition does not support the changes proposed in the OHS and SRC Legislation Amendment Bill 2005. In its view the bill represents another attempt by the Government to spread its control of workplace related matters as far as possible into the private sector by broadening the application of the Occupational Health and Safety (OHS) Act beyond its current boundaries. Over fifteen thousand workers have already been removed from the state and territory OHS systems by businesses applying to self-insure under Comcare, a figure which is set to rise.

2.2 The Opposition acknowledges that one of the stated objectives of the bill is to implement the Government's response to the Productivity Commission's report into national workers' compensation and occupational health and safety frameworks.[1] Yet it is significant that the Productivity Commission's recommendation with respect to workers compensation, which were designed to encourage self-insurance applications under Comcare, faced overwhelming opposition from state governments.[2]

2.3 The most controversial provisions of the bill are those which intend to bring commercial corporations, including Commonwealth entities which have been privatised and private entities which compete with the Commonwealth, within the jurisdiction of the Commonwealth OHS Act. In this report, Opposition senators examine three issues arising from their examination of the bill:

- enforcement and compliance arrangements under the proposed changes;
- union involvement in occupational health and safety, especially in the light of other OHS amending legislation currently before the parliament; and
- whether any evidence exists to support the view that current state OHS laws create confusion for business and increase compliance costs, and that time and resources which would otherwise go to improving workers' the health and safety are currently being wasted.

Enforcement, self-regulation and voluntary compliance

2.4 Opposition senators are concerned by evidence from unions that the proposed changes will result in a diminution of standards under the current Commonwealth OHS system. There is no requirement in the legislation for companies to work towards higher health and safety standards. As noted by the ACTU submission, the existing compliance obligations under the Commonwealth OHS Act are very poor compared with state and territory acts. As a consequence, business is encouraged to lower health and safety standards without fear of prosecution.[3] Opposition senators are concerned

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1 Department of Employment and Workplace Relations, *Submission 2*, p.2

2 Transport Workers' Union of Australia, Submission 9, p.3

3 Australian Council of Trade Unions, *Submission 4*, p.2

that a system which encourages self-regulation and voluntary compliance will create more confusion and result in less compliance in the workplace. This inevitably will translate into more injuries and deaths. It also runs counter to the objectives of the Australian Safety and Compensation Council's National OHS Strategy to reduce occupational injury by 40 per cent and fatalities by 20 per cent by 2012.[4]

2.5 This is particularly relevant to the building and construction industry. Construction workers have a significantly higher chance of being killed at work than workers in other industries, and the incidence of serious injury among construction workers is about 50 per cent higher than the average for all industries. Opposition senators are only too aware of the industry's poor OHS record which accounted for 13 per cent of all fatalities and 9.2 per cent of all injuries over the six year period from June 2002.[5] According to the CFMEU submission, the proposed legislation will compound these alarming figures because it is likely that many larger national contractors will take advantage of the opportunity to leave the state systems and enter a more lax Commonwealth regime.[6]

2.6 The committee heard compelling evidence from the ACTU that the Government's enforcement agency, the Safety, Rehabilitation and Compensation Commission, is dysfunctional in terms of policing the Commonwealth OHS Act. Comcare lacks appropriate dispute resolution procedures, which could have an adverse effect on private sector workers who may fall under the umbrella of the OHS and Comcare systems, many of whom, have less beneficial leave arrangements than their public sector counterparts.[7] The changes being proposed will further weaken Comcare's ability to ensure compliance with the law. The AMWU submission argued that extending coverage of the Commonwealth OHS Act to multi-state employers which self-insure under Comcare, will open up a 'safety gap' that will threaten the welfare of workers and their families. The submission correctly pointed out that the Commonwealth does not maintain a force of safety inspectors, relying instead on the services of state inspectors under a memorandum of understanding. Penalties on employers are substandard and rarely enforced.[8]

2.7 Opposition senators agree with the argument put forward by unions that the standards enforced by Comacre are not as stringent as those which operate under state jurisdictions. The National Council of Self Insurers told the committee that self insurance provides an extra layer scrutiny on top of inspectorate activity because companies voluntarily become involved in safety audits which are reported to the relevant state regulator.[9] Yet Opposition senators are not convinced by this argument.

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4 ibid.

5 *Committee Hansard*, 21 April 2006, p.23

6 CFMEU, *Submission 1*, para. 4

7 Transport Workers' Union of Australia, *Submission 9*, para. 2

8 Australian Manufacturing Workers' Union, *Submission 8*, para. 10

9 Mr Peter Harris, *National Council of Self Insurers*, Committee Hansard, 21 April 2006, p.6

The system of audit and compliance is not as effective as having inspectors on the ground. The proposals in this bill will do nothing to increase the level of workplace inspections and financial penalties which have already had a strong and positive influence on OHS practice and compliance.

2.8 Opposition senators draw attention to the final report of the Royal Commission into the Building and Construction Industry, which concluded in part:

> There is persuasive support for the view that the extent of compliance with occupational and health and safety obligations is strongly influenced by a reasonable expectation of the likelihood of being inspected, prosecuted and convicted and having a meaningful penalty imposed. The presence of occupational health and safety inspectors is important.[10]

2.9 It is in this context that that the Opposition notes the Commonwealth's extremely limited OHS enforcement capacity which, according to a recent comparative performance monitoring report for 2003-04, amounted to a paltry 16 inspectors and investigators and no prosecutions for a workforce of approximately 286,000 employees.[11] This is in stark contrast to the 301 and 236 active field inspectors operating in New South Wales and Victoria, respectively. While the Opposition is aware that Comcare currently has access to 268 investigators, the evidence from Victoria shows that Comcare has used that state's inspectorate on only a dozen occasions over the past five years.[12]

2.10 The following table from the monitoring report paints a stark picture of voluntary compliance under Comcare compared with Victoria's WorkSafe system.

Table 1: Voluntary compliance[13]

2003-04	Comcare	Victoria's WorkSafe
Number of safety inspectors/investigators	**16**	**236**
Workplace interventions	**245**	**43,719**
Safety prohibition and improvement notices	**17**	**12,492**
Prosecutions	**0**	**110**
Number of employees	**286,000**	**2,103,800**
Number of workplaces	**N/A**	**300,000 (approx)**

10 Australian Council of Trade Unions, *Submission 4*, p.5

11 Finance Sector Union of Australia, *Submission 6*, p.3

12 Mr Steve Mullins, Australian Council of Trade Unions, *Committee Hansard*, 21 April 2006, p.14

13 Reproduced from Australian Council of Trade Unions, *Submission 4*, p.3

2.11 The Opposition notes the strong concerns expressed by the Transport Workers' Union about the likely effect of the bill on enforcement in the transport industry:

> It is difficult to see how, in the event that there is a significant shift from the State jurisdictions to the Federal jurisdiction, the Government has the resources currently to properly protect workers in this environment. Self-insured workplaces may (or may not) have an incentive to improve their workplace safety. But self-insurance is not enough. There must be some meaningful inspectorate services to ensure workplace safety.[14]

2.12 At the committee's public hearing, DEWR officerschallenged the evidence presented by unions on a range of issues. They told the committee that before amendments were made to the Commonwealth OHS Act in 2004, only government business enterprises could be prosecuted for a breach of the act, and criminal prosecutions were the only sanction available. According to DEWR, this explains the small number of prosecutions under the act, which has since been rectified. Comcare can now bring civil proceedings against the Commonwealth and its authorities where there has been a breach of the act. DEWR argued that the enforcement regime under the OHS Act is now more robust than it used to be.[15]

2.13 When asked at a public hearing to provide evidence to support this position, neither DEWR nor Comcare could do so. Opposition senators find it unacceptable that DEWR made the claim that a lack of prosecutions does not reflect Comcare's unwillingness to prosecute, yet failed to provide any figures to support the assertion.

Union involvement and employee representation

2.14 Opposition senators are concerned by the Government's continued ideological assault on the legitimate role of trade unions in representing the interests of employees in the workplace. They believe that an ideological stance on matters related to occupational health and safety is neither a constructive policy development nor a prudent one. They reject the Department's claim that the bill will increase opportunities for employees to be involved in OHS arrangements and preserve the current active role played by unions in enforcing compliance with OHS standards. At the committee's public hearing, the department was unable to demonstrate how the bill will provide for such guarantees. The submission from the RTBU made the valid point that, like the Government's claim regarding the compliance costs associated with state OHS laws, 'the department simply makes it and lets it hang'.[16]

2.15 The Government's intention with this and other amending legislation before the parliament is to remove union involvement from the preventative OHS institutions

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14 Transport Workers' union of Australia, *Submission 9*, para.32

15 Mr John Kovacic, Department of Employment and Workplace Relations, *Committee Hansard*, 21 April 2006, p.33

16 Australian Rail, Tram and Bus Industry Union, *Submission 7*, p.7

which currently exist in the workplace. The Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2005, which was introduced into the parliament in August 2005, will, if passed, remove the right of union representation in the workplace, reinforce managerial prerogative and remove all references to unions from the OHS Act. The bill will also seriously erode the rights and capacity of OHS representatives to represent their members at the workplace. Taken together, both OHS amendment bills seek to curtail the choice of employees in the public sector to be represented by a union in occupational health and safety matters.

2.16 The committee's attention was drawn to evidence from the United Kingdom which shows that unionised workplaces are generally safer than non-unionised workplaces.[17] The submission from the Australian Manufacturing Workers' Union (AMWU) argued that the steady reduction in the number of work-related injuries and deaths in the manufacturing industry is largely due to the role of unions in promoting healthy and safe workplaces and their ability to work cooperatively with employers and state regulatory bodies.[18]

Harmonising state and territory OHS laws

2.17 An argument raised in support of the bill by the National Council of Self-Insurers (NCSI) and DEWR is that self-insurers who operate in more than one state currently face a significant administrative and cost burden because they have to meet different state regulatory and legislative requirements.[19] According to the NCSI, the bill will remove this impediment to business profitability and efficiency, and encourage and stimulate business growth and development. These, however, are familiar claims which could not be substantiated at a public hearing.[20] The Opposition believes that the level of confusion arising from different state laws is overstated, and claims of additional compliance costs to employers who have to comply with conflicting OHS state laws lack any evidentiary basis.

2.18 The Opposition is concerned by evidence from the CFMEU and the RTBU that the proposals in the bill will enable the absurd situation where employees performing the same job in one workplace are subject to two different OHS standards, one covered by Comcare and the other by a state jurisdiction.[21] This has the potential to introduce two systems working alongside each other in one organisation. In these circumstances, large businesses will be able to choose which legal system workers are covered by. Opposition senators believe this is a recipe for confusion, possible

17 Mr Andrew Thomas, RTBU, *Committee Hansard*, 21 April 2006, p.28

18 Australian Manufacturing Workers' Union, *Submission 8*, para. 8

19 Self Insurers of South Australia, *Submission 5*, p.1

20 Department of Employment and Workplace Relations, *Submission 2*, p.3

21 Mr William Bodkin, CFMEU, *Committee Hansard*, 21 April 2006; Mr Andrew Thomas, RTBU, *Committee Hansard*, 21 April 2006, p.30

disputation and ultimately less safe workplaces. Mr Andrew Thomas from the RTBU told the committee:

> …having two systems working side by side has the potential for total and utter confusion. I must say that in the 20 years that I have been in this union I have not heard employers complain about the fact they are covered by different occupational health and safety regimes in different states.[22]

2.19 The unions put forward a convincing argument at the committee's public hearing that the Government should be making an attempt to harmonise the different state and territory OHS laws and seek greater cooperation between the states and the Commonwealth on this issue. The current bill seeks to undermine and further fragment existing state OHS schemes and weaken the protection and enforcement available through state laws. The Opposition agrees with the view put forward by the Community and Public Sector Union that state legislatures are the most appropriate bodies to regulate workers' compensation and OHS because they are responsive to the circumstances and needs of the workers and industries in each state.[23]

Conclusion

2.20 The Opposition believes the Government is attempting to rush this legislation through the parliament without consulting unions, employees or state and territory governments. It is concerned that the Government has failed to examine how the changes will affect OHS standards across the states and territories. Any proposals to amend the OHS Act should aim to improve occupational health and safety standards and reduce injuries, illness and fatalities as a first priority, not seek to reduce compliance obligations on business which is this bill's one and only objective.

2.21 When considered alongside other OHS legislation currently before the parliament, the Opposition is of the view that the Government is attempting to transform the OHS system by stealth and in ways that ultimately will be detrimental to the health and safety of workers. The Government is using this bill to pursue an extreme anti-union view, to the extent that it believes the trade union movement has no role to play in occupational health and safety matters in the workplace, to the clear disadvantage of working people and the community at large.

2.22 Opposition senators believe that the Government is adopting the wrong approach in its push to extend coverage of the Commonwealth OHS system. The Government should be encouraging cooperation between state and federal governments to achieve uniform OHS codes and standards and harmonised OHS laws. The unions raised serious concerns about the likely effect of the proposals on the health and safety of employees, especially workers in the finance sector, the building and construction industry and manufacturing. Voluntary compliance will not work in these industries. The proposals under consideration will have unfortunate

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22 Mr Andrew Thomas, RTBU, *Committee Hansard*, 21 April 2006, p.30

23 CPSU (SPSF Group), *Submission 3*, para. 1.6

consequences for enforcement and compliance and will strip back the rights and legal protections which workers currently enjoy under the Commonwealth OHS Act. Any proposal to change the law should strengthen compliance measures and increase financial and other penalties for breaches of the law, not weaken them as this bill seeks to do.

2.23 Opposition senators agree with the ACTU that any policy proposal which significantly extends coverage of the Commonwealth OHS Act should be referred to the Australian Law Reform Commission before legislation is considered by the parliament.

Recommendation 1

Opposition senators recommend that the bill be referred to the Australian Law Reform Commission to examine the bill's constitutional implications.

Recommendation 2

Opposition senators recommend to the Senate that the bill in its current form be rejected.

Senator Gavin Marshall
Deputy Chair

Appendix 1

List of submissions

Sub No:	From:
1	Construction Forestry Mining and Energy Union Construction and General Division
2	Department of Employment and Workplace Relations
3	Community and Public Sector Union and State Public Services Federation Group
4	Australian Council of Trade Unions
5	Self Insurers of South Australia
5A	Self Insurers of South Australia
6	Finance Sector Union of Australia
7	Australian Rail, Tram and Bus Industry Union
8	Australian Manufacturing Workers' Union
9	Transport Workers' Union of Australia
10	Australian Workers' Union
11	Australian Chamber of Commerce & Industry

Appendix 2

Hearings and witnesses

Melbourne, Friday, 21 April 2006

National Council of Self Insurers
Mr Peter Harris, *Deputy Chair*

Australian Council of Trade Unions
Mr Richard Marles, *Assistant Secretary*
Mr Steve Mullins, *Occupational Health and Safety Officer*

CFMEU
Mr Bill Bodkin, *National Industrial Officer*

Australian Rail, Tram and Bus Industry Union
Mr Andrew Thomas, *Industrial Officer*

Department of Employment and Workplace Relations
Ms Diane Merryfull, *Assistant Secretary, Safety and Compensation Policy Branch, Workplace Relations Policy group*
Mr Henry Li, *Director, Legal Policy Branch, Workplace Relations Legal Group*

Comcare
Mr Martin Dolan, *Deputy CEO*
Ms Janette Davis, *General Manager, OHS Act Policy & Support*