



Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

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Secretary

Inquiry into the provisions of the OHS and SRC Legislation Amendment Bill 2005

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Introduction

The Federal Government is actively encouraging large private sector employers, to leave State workplace safety and compensation schemes and transfer to their scheme, Comcare.

Recently, fifteen thousand workers have been removed from the state and territory systems by businesses applying to self-insure under Comcare. This figure will continue to rise as more and more multi-state employers successfully apply to self-insure under Comcare.

To attract them the Commonwealth proposes to extend the operation of their own health and safety laws and compliance regime to cover employers that move.

In the case of Victoria, under this proposal employers who swap schemes will no longer be covered by Victoria's safety and compensation laws or be subject to WorkCover's compliance regime.

Instead they will be subject to the Commonwealth's own toothless voluntary compliance approach.

This will result in the opening up of a safety gap that threatens the welfare of workers and their families all across Victoria and in every other State of the Commonwealth. This is of major concern to the AWU.

The AWU has a vital interest in workplace health and safety. The AWU has been at the forefront of public education campaigns highlighting the critical importance of these issues to health and safety and workplace productivity.

The AWU urges the Employment Workplace Relations and Education Committee to consider submissions including evidence from public hearings carefully, including submissions by the ACTU, AMWU, CFMU, CPSU, FSU and RTBU opposing the Bill before the Committee reports back to the Senate in early May when the laws are debated.

What is the inquiry looking at?

This submission addresses the Committee's inquiry dealing with the main amendment in this Bill, namely that all employers that obtain a self-insurance license under the *Safety, Rehabilitation and Compensation Act 1988*, including former Commonwealth authorities and those in competition with existing and current Commonwealth authorities, are automatically covered by the *Occupation Health and Safety (Commonwealth Employment) Act 1991*. The OHS obligations for these employers are currently provided by the different state and territory OHS laws.

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What are the existing arrangements?

The case of Victoria

All employers and workers in Victoria - except Commonwealth agencies- are covered by the Victorian WorkCover Authority (VWA) which regulates workplace safety and compensates injured workers.

Like other States, VWA maintains a strong safety inspectorate role with 230 safety inspectors on the ground. They play an integral role in driving down the number of injuries and deaths in Victorian workplaces.

In the past year Victoria not only recorded its lowest workplace death-toll on record, but achieved its lowest ever injury rate and a huge reduction in the number of workers being hospitalised because of a serious injury.

These results are driven by Victoria's constructive compliance approach which involves safety inspectors responding quickly to safety issues and building awareness amongst employers, and only using enforcement as a last resort. When prosecutions occur, they are done to demonstrate to other employers the risks of not maintaining safe workplaces.

The Commonwealth on the other hand does not maintain a force of safety inspectors. Instead they rely on accessing the services of State-based inspectors under a memorandum of understanding between the governments. Under this arrangement VWA can not recommend that an employer be prosecuted; that remains a matter for them.

Despite claims that they retain the services of "over 200 inspectors", the Commonwealth has only used investigators in Victoria less than a dozen times over the past 5 years.

During that time there have been a number of tragic workplace incidents where Victoria has recommended that a Commonwealth employer be prosecuted following investigations that show serious safety failures, only to have nothing done by Comcare.

What is the Bill proposing and why is it of concern?

All employers and workers- except Commonwealth agencies- are generally covered by the State-based schemes which regulate workplace safety and compensate injured workers.

The Commonwealth is actively encouraging large private sector employers, like Linfox, to leave State schemes and transfer to their scheme, Comcare. Comcare is expected to tout for business amongst major paper manufacturers, housing developers and other transport and logistic employers in the coming months.

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To attract them the Commonwealth is proposing to extend the operation of their health and safety laws and compliance regime to cover those employers that swap schemes.

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They claim that these employers will benefit from a “one stop shop”, and no longer be burdened with what they claim are the problems of dealing with a patchwork of laws across the States.

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Under this proposal employers who swap schemes will no longer be covered by Victoria’s safety and compensation laws or be subject to our compliance regime. Instead they will be subject to the Commonwealth’s.

This opens up a “safety gap” that will threaten the welfare of workers and their families all across Victoria.

When it comes to safety laws there is very little difference between the States and the Commonwealth. The States have been working with the Commonwealth to get more uniformity in these laws so that regardless of where they are in Australia, employers and workers have the same rights and obligations to work safely.

The big difference between the State schemes and the Commonwealth is in workplace safety compliance. This is where the safety gap becomes apparent.

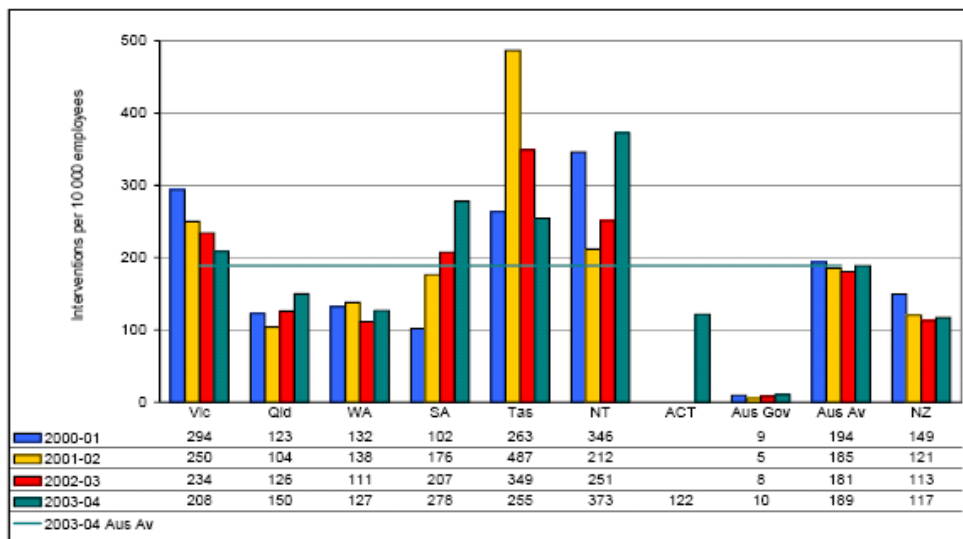
For example, Victoria’s safety watchdog, WorkSafe maintains a strong safety inspectorate role with 230 safety inspectors on the ground. They play an integral role in driving down the number of injuries and deaths in Victorian workplaces.

The Commonwealth say they’re in the business of promoting voluntary compliance. That means their approach to enforcing safety laws is a toothless tiger from industry’s perspective.

The following figures taken from VWA’s and Comcare’s recent annual reports paint a stark picture about voluntary compliance.

2004/05	Comcare	VWA
Number of safety inspectors/investigators	20	230
Workplace visits	203	42,000
Safety prohibition and improvement notices	32	14425
Prosecutions	1	188
Number of employees	286,000	2, 103, 800
Number of workplaces	N/A	300,000

Figure 19 Workplace interventions per 10 000 employees



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Does the Committee have details about the Comcare's use of local safety inspectors to investigate safety breaches in Commonwealth workplaces?

Consequences

The consequences of the changes to Australia's OHS and workers' compensation systems will compound over time. As outlined by the ACTU in its submission to the inquiry, in summary:

- The financial pool in the state systems will reduce, increasing premiums for remaining businesses in the state schemes and increasing pressure on workers' entitlements.
- More workers will be exposed to Comcare's low cap on pain and suffering damages; low lump sums available for permanent impairment; reduced percentage assessments for the most common injuries; and poor dispute resolution procedure.
- The stripped back Commonwealth OHS Act will isolate workers by restricting their access to information and representation.
- The existing compliance obligations under the Commonwealth OHS Act are very poor compared to other state and territory Acts, allowing businesses to drop standards without fear of consequences.
- The capacity of Comcare to inspect workplaces and enforce laws will reduce further as more businesses gain coverage.
- It is entirely plausible that the current Australian OHS and workers' compensation systems, made up of a dynamic mix of state, territory and commonwealth schemes will, over time, be reduced to monolithic system with all the problems outlined in this document.

The International Labor Organisation (ILO) estimates that in Australia there are over 6700 work-related deaths per year from injury and disease. According to the

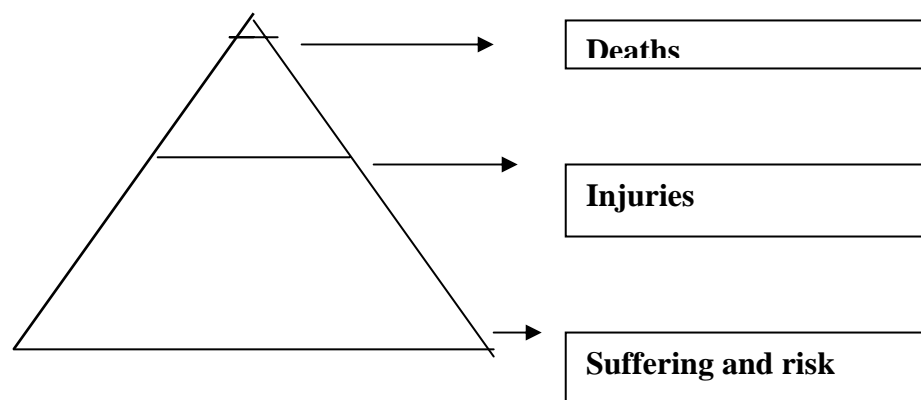
Australian Bureau of Statistics, almost half a million (477,800) people experience a work-related injury or illness each year.

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And there are other aspects of compliance

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Effective - on the ground and visible - compliance is not only measured by reductions in deaths and injuries, but in greater measure by suffering and risk. Refer to the pyramid below:



The greater effect is at the base of the triangle and that - not the other - is the daily experience of workers. The Commonwealth's proposals are more likely to increase suffering and risk because of deficiencies in compliance monitoring.

Are there other options?

On 10 February 2006, the Council of Australian Governments (COAG) agreed to the Workplace Relations Ministerial Council reporting back to COAG by end 2006 on recommended strategies for implementing the reforms to improve the development and uptake of national OHS standards, with particular emphasis on the following:-

- (i) reducing the time taken to develop national OHS standards,
- (ii) undertaking State/Territory consultation with local stakeholders in parallel with national consultation to inform the development of the national standard and ensure agreement to nationally-consistent arrangements, and
- (iii) agreeing specific time frames for implementation so that each jurisdiction will implement the standard or code within an agreed time frame;

(iv) that the Workplace Relations Ministerial Council identify priority areas in principal OHS Acts in each State and Territory that should be harmonised on the above matters and thereafter provide six-monthly progress reports to COAG.

Importantly, COAG also agreed that there be no reduction or compromise in standards for legitimate safety concerns in current OHS standards.

It is therefore critical that further harmonisation between jurisdictions be the subject of on-going considered and measured consultation by responsible Ministers and authorities and that the Commonwealth not move to pre-empt these considerations through hasty passage of this Bill which serves neither the interests of workers nor their employers.

AWU opposes this Bill.

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