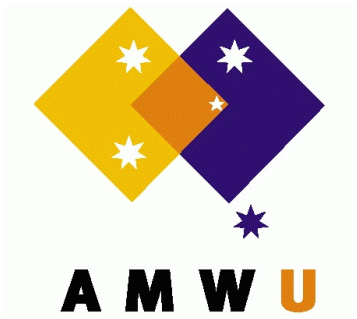
AUSTRALIAN MANUFACTURING WORKERS' UNION



Submission to the Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

Senate Employment, Workplace Relations and Education Committee

January 2007

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission to the Inquiry of the Senate Employment, Workplace Relations and Education Committee (the Committee) into the "Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 ("the Bill).

2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU has a membership of more than 130,000 members who work in every State and Territory of Australia. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations.

3. The AMWU supports the submission of the Australian Council of Trade Unions (ACTU) to this Inquiry. Further to those submissions, we wish to address in particular the principal amendments proposed, dealing with the definition of '*disease* and '*injury* and the matter of removing "recess claims and for non work-related "journey claims .

4. The AMWU notes that the Productivity Commission *Inquiry Report into National Workers Compensation and Occupational Health and Safety (OH&S) Frameworks* of March 2004 developed a strategy to advance the Commonwealth Government's new OH&S standard. The Commission's Report stated that:

> "…*the Commission has no evidence of support by the States and Territories for a single uniform national workers compensation scheme. Many of the stakeholders at the individual jurisdiction level have suggested that concessions won in hard fought negotiations would not be willingly surrendered for the sake of national uniformity."*[1]

5. Clearly, the AMWU is unable to support a national standard of OH&S which provides a standard reduced from that currently available, rather than legislation which provided workers from each of the different State or Territory jurisdictions with the "best standard . Uniformity of approach should not be attempted merely for the sake of uniformity. The purpose of various amendments proposed in this Bill not only approach a lowest common denominator, but often go beyond that, to an even lesser standard than that currently found across Australian jurisdictions.

[1] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks* (Report No. 27), Inquiry Report, Jun-04, at p.146.

6. This Bill reduces standards by taking note of differences, anomalies and inequities between the jurisdictions, but then proposing amendments which comply with the wishes of larger employers, consequently reducing benefits to injured workers.

7. It remains the view of the AMWU that fundamental objectives of any workers compensation system must be an equitable, fair and just system of income protection; must include access to medical treatment for workers with work related injuries or illnesses; and must provide a mechanism to aid injured workers back to work. It is these objectives which the AMWU has pursued, in lobbying Governments across Australia, of all political persuasions, in the interests of the rights of our members, and of the rights of all workers generally.

8. We note than in the Government's own terms of reference for the inquiry of the Productivity Commission, mentioned above, stated:

> *"7. A key goal of any new model would be to facilitate improved workplace safety and provide adequate compensation to injured employees while offering a more effective continuum of early intervention, rehabilitation and return to work assistance for those injured in the workplace.*
>
> *8. Ideally, a national framework for workers compensation and OHS would encompass a cooperative approach between the Commonwealth and State governments while still leaving primary responsibility for these systems with the States. Moreover, any national frameworks would provide the States with adequate flexibility to address local conditions, encourage competition and facilitate competitive neutrality."*[2]

9. These amendments frustrate even the stated ambitions of the Government itself. They frustrate workplace safety, rather than encouraging improvements, diminish the adequacy of compensation, and go no way to achieving goals of early intervention, rehabilitation or return to work. Instead, rather than co-operating with States and State systems, these amendments forsake such goals by denying workers compensation, reducing the responsibility of employers and give primacy to cost-cutting over an improved and effective OH&S system. We submit that the proposed amendments should be rejected.

[2] Ibid, *Terms Of Reference*, at p.VIII.

Definition of "*disease* and definition of "*injury*",

10. With respect to these amendments, the stated initention is to reduce the incidence of 'stress based'" and psychological injury claims upon the employer. To this end, it is proposed to amend the definition of "*disease"'* to strengthen the connection between the disease and the employee's employment, and to amend the definition of "*injury* to exclude injuries arising from reasonable administrative action taken in a reasonable manner.[3]

11. Amongst a myriad of relevant studies relevant to work-based stress and identifying the characteristics of the work environment and conditions which cause stress, the AMWU notes the position of the Australian Safety and Compensation Council:

> "*The major causative mechanism of work-related mental disorders recorded in the National Data Set is mental stress. Mental stress itself is coded as caused by work pressure, harassment, workplace or occupational violence, exposure to a traumatic event, suicide or attempted suicide and other mental stress factors. For the three-year period from 2001-2003, the highest number of mental stress claims were due to Exposure to a traumatic event and Work pressure. There has been a significant increase in the incidence of mental stress claims due to work pressure from 2002 to 2003 and it has become the most common mechanism for mental stress in 2003."*[4]

12. We submit that the direct consequence of narrowing the definitions of injury and disease is to engender a culture of "blaming the victim , to relieve employers of their responsibility, to lessen employers'"costs, and to minimise employers'"duty of care –"these proposed amendments degrade the capacity of the *Safety, Rehabilitation and Compensation Act 1988* ("the Act) to apportion liability for *the* major cause of work-related mental disorders.

13. We note the cost-shifting of other elements of this Bill, onto Medicare and to the Government's private health insurance rebate.[5] This principle is equally applicable to the amendments to the definitions of "*disease* and of *injury* . This cost-shifting will occur despite linkages between psychological injury and the work environment and employers'" responsibility. The breathtaking width of the "*reasonable administrative action* exception[6] will break the nexus between employers'"behaviour and

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[3] Proposed ss.5A, s.5B.
[4] Australian Safety and Compensation Council, "Executive Summary of each disease category , August 2006 at http://www.ascc.gov.au/ascc/HealthSafety/DiseaseInjuryIssues/MentalDisorders/
[5] *Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 - Explanatory Memorandum - Regulation Impact Statement, 30 November 2006,* at p.vii.
[6] Proposed s.5A(2)

the consequences of their action. Instead of a liability accruing for administrative action which causes psychological injury, the employer side-steps their responsibility and taxpayers –"and the employee –"pick up the tab.

14. This strategy is flawed, for rather than dealing with the problem of how the injury or disease came to pass, the employer is being rewarded for poor management practices. This Bill does not impose upon employers the need to develop stress prevention strategies. The Bill does not require employers to conduct an audit of the causes of stress in their organisation or business, even those organisations where there have been repeated or excessive claims.

15. This Bill does not provide employers with rewards where they identify causes of stress and seek to redress them. Within the cloak of "reasonable administrative action , behaviour leading to workplace stress continues to fester. These amendments are again contrary to an OH&S system which seeks to minimise behaviour which causes workplace injury. Workplace safety is not improved, there is no "*effective continuum of early intervention, rehabilitation and return to work.*"'

Removal of non work-related "journey and "recess claims

16. The AMWU unequivocally supports the retention of journey claims and recess claims, and rejects the stated intention of these amendments to remove claims for non work-related journeys and recess breaks where the employer has no control over the activities of the employee.

Journey claims

17. We do not believe that the rationale for the original English legislation of the early twentieth century has diminished over time. There is risk to employees in travelling to and from work –"such travel being a requirement of nothing else but an employee's contract of employment.

18. A number of implication of removing journey claims from the scope of the Act is to externalise the cost of motor vehicle accidents away from an employer's responsibility when a comprehensive national no-fault rehabilitation scheme does not yet exist. It also externalises such liability for transport that is not by private motor vehicle –"for public transport, for walking and for cycling, where no rehabilitation scheme whatever exists. Again, costs are shifted to the public health system and the taxpayer-subsidised private health system –"and thus to the employee.

19. This is in a context of deregulation and variation of working hours under the Commonwealth Government's recent amendments to the *Workplace Relations Act 1996*. As award-based hours of work are undermined

through the increased pervasiveness of individual contracts and the averaging of work-hours permitted under the so-called "*Australian Fair Pay and Conditions Standard* [7], employer control over the time and manner of employees'" journeys to and from work *increases* rather than decreases. So should employers'"responsibility.

20. The AMWU again draws the Committee's attention to the Productivity Commission *Inquiry Report into the National Workers Compensation and Occupational Health and Safety (OH&S) Frameworks* which states that

> "…*the majority (61%) of catastrophic injuries result from motor vehicle accidents, with workplace accidents contributing a further 13 percent. The cost of caring for catastrophically injured persons varies considerably and depends on injuries sustained. Invariably it is large...* [8]

and further, that

> "…*the Commission considers that a national approach could ensure an appropriate standard of care is provided to the catastrophically injured, irrespective of cause of accident, and support a review to this end"*.[9]

Unquestionably, the Productivity Commission recognised that moving motor vehicle claims from the employer to motor vehicle insurance, is to transfer responsibility, not to reduce the incidence of catastrophic injury. These amendments simply facilitate this problem, they do not alleviate it.

21. Statistical data about fatal motor vehicle accidents are collected by each of the state and territory governments and the Australian Transport Safety Bureau. There is no evidence of this evidence being examined to determine its relationship to workers compensation journey (or recess) claims.

22. This Bill gives no consideration to the consequences for the families of workers who suffer either a catastrophic or a fatal journey accident. These families will be left without income until a coronial process has been concluded, which usually take years to complete. The payment by Comcare of journey claims have provided relief to families and their household burden. Legislative schemes already prevent any question of "double dipping .

[7] *Workplace Relations Act 1996*, s.226.
[8] Productivity Commission, note 1 above, at p.xxxix.
[9] id.

23. The AMWU submits that it is plain that the existing Commonwealth, State and Territory based 'no fault'"workers compensation journey claims system provides a much more effective compensation for catastrophically and fatally injured workers than the current motor vehicle accident system.

24. The removal of journey claims from workers compensation does nothing to assist in the management of catastrophically or fatally injured workers. It does nothing to address the implications of tired workers and journey claims. The particular considerations of shift workers, overtime workers and regular evening workers have not been addressed. The incentive to prevent workers travelling at unsafe times, or times when they will be tired, will be removed.

25. We argue that workers have a right to return home from work as healthy as when they left home that day. To achieve this in the absence of a no-fault workers compensation journey injury claims system, the AMWU will need to seek that each employer provide shift workers and evening workers with transport home at the end of work. This claim is particularly important for workers who travel long distances, or workers where there is no public transport, and where workers driving skills may be impaired as a result of long and irregular working hours. Greater costs may be imposed on all employers. This proposed amendment again undermines a workers compensation system designed to improve workers'"safety, or even one designed to decrease costs for employers. In addition to rehabilitation costs remaining –"and borne by public health funding and employees –" transport costs will increase for employers. This proposed amendment, in our submission, must be rejected.

Recess claims

26. It is the firm view of the AMWU that there has been insufficient study of claims relating to recess breaks to allow the Senate to make an informed decision about the removal of such recess claims from the scope of the Act. Research by the AMWU to source Australian reports on such claims has proved fruitless.

27. Only 1.5% of all claims costs are related to recess breaks[10] –"yet no evidence has been presented which would compare claim costs to incidences of injury. Such analysis, we submit, would demonstrate that such claims are generally minor, and that fatal and/or catastrophic claims are both extraordinary and infrequent. There is also a failure to analyse whether such claims arise from employer-sponsored or unsponsored recess incidents.

[10] *Explanatory Memorandum, Regulation Impact Statement* at p.xiii.

28. The proposed changes, to introduce a nexus between attendance at the workplace and eligibility for workers compensation will have the consequence of demands by members and unions for improved employee facilities at work: better cafeterias, lunch rooms, recreation rooms, gymnasiums and other recess facilities and services on work sites and within workplaces. Again, the cost of compensating these injuries shifts to the taxpayer, through Medicare,[11] and to the employee, but the employer is also left with the additional cost of upgrading staff facilities. Such increased costs are almost certainly to be disproportional to any saving that the employee will make from any offset of 1.5% of costs from their workers compensation scheme. Further consequences –" perhaps unintended - will include the increased attempts to organise of all social club and sporting events, or individual activities, under the sponsorship of the employer. Alternatively, such social and exercise-related activity –" ultimately to the benefit of productivity and a healthy work-environment –" will cease.

Conclusion

29. This Bill will have an enormous adverse impact on our members, and their access to fair and just workers compensation especially when this legislation is coupled to the granting of licences to private employers under s.100(c) of the *Safety, Rehabilitation and Compensation Act 1988*.

30. It is undeniable that the driving motivation of these proposed amendments is to diminish costs for employers covered by the Act. This is regardless of the implications of this cost-cutting for a coherent OH&S scheme which aims to limit workplace injury, or for the simple shifting of costs from employers to the taxpayer and to the individual employee, regardless of an employers'"responsibility. Reduced cost factors are to make the national scheme more attractive to employers such as John Holland and Optus, who have moved from State OH&S systems to Comcare. The rights of employees are undermined, costs are shifted from the private to the public sector, in order that employers save money and States lose control over OH&S. The costs of playing this game are the loss of an OH&S system which aims to reduce workplace accidents, the debilitation of workers and the devastation of the lives of workers who suffer workplace injury.

31. That cost is the sole motivation is evdienced by proposals to abolish claims for recess injuries –" proposals which are not based on any evidence. The AMWU submits that there has been insufficient study of recess claims to allow the Senate to make an informed decision about the removal of such claims. Ironically, however, the limitation of recess claims and journey claims should see costs to employers increase, as employees attempt to offset the increase risk they face by placing greater demands of their employers for security and improved facilities.

[11] id.

32. The AMWU submits these amendments are one part of a grab for jurisdiction by the Commonwealth from the States. Such cynical motives inform the cost-cutting which this Bill represents. The AMWU submits that the Bill should be rejected, by this Committee, and by the Senate.

AMWU
24 January 2007