Mr John Carter
Secretary
Standing Committee on
Employment, Workplace Relations and Education
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Carter

Inquiry into the provisions of the
Safety Rehabilitation and Compensation and Other legislation Amendment Bill 2006

Thank you for your invitation to put in a submission in respect of proposed amendments to the *Safety, Rehabilitation and Compensation Act 1988* via the *Safety, Rehabilitation and Compensation and other Legislation Amendment Bill 2006*.

By way of background, Australian air Express Pty Ltd (AaE) is a joint venture Partnership between Qantas Airways Limited and Australia Post. The company was formed on 1 August 1992 through the integration of two businesses - Australia Post Express Courier and Australian Airlines Express (at that time the freight division of Australian Airlines) which was later purchased by Qantas Airways.

AaE employs approximately 1350 professionally trained staff, and retains the services of a similar number of independent sub contractors and agency representatives.

AaE has been self insured under the provisions of the ***Safety Rehabilitation and Compensation Act 1988*** since 1 July 1999 and our current self insurance licence expiry date is 30 Jun 2009.

AaE has given the amendments consideration and supports the amendments to the SRC Act as detailed in the 2006 Bill.

Of particular significance to AaE are the following amendments:

- The definition of 'disease' to strengthen the connection between the disease and employee's employment;

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- The definition of injury to exclude injuries arising from reasonable administrative action;

- The removal of claims for non work related journey's and recess breaks where the employer has no control over the activities of the employee;

- The amended definition of suitable employment for terminated employees, and

- The amendment to section 37 to allow delegated Case Managers to put in place a rehabilitation program without reference to an approved rehabilitation provider.

AaE takes seriously its obligations to provide a safe work environment for its employees and, as a consequence, has developed policies and procedures in accordance with the SRC Act and the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. Whilst AaE has the ability, responsibility and commitment to control and invest in safe working environments and practices; it is prepared to accept responsibility for injuries to employees that come out of that environment. It is however, considered unreasonable that employers are required to accept liability for injuries occurring during non-work related journeys and recesses, for diseases that have little if anything to do with employment, for psychological injuries resulting from reasonable management action and when employees are terminated in circumstances where that termination is in no way related to a compensable injury or disease.

AaE's submission in respect of five key amendments is as follows:

1. **The definition of 'disease' to strengthen the connection between the disease and employee's employment**

   The introduction of the term "to a significant degree" is an appropriate course to be adopted and is supported by AaE.

   From an employers' perspective, it is considered unreasonable to have a test which is a minimal test for the purposes of establishing a liability for diseases under the workers compensation provisions. The mere fact that "material contribution" has been interpreted as meaning a minimal contribution by the employer is a particularly onerous financial burden on employers. Diseases, by their very nature, often have multi contributors and employment is often only one very small contributor and frequently the disease would not have occurred in an employment environment had the other factors not been pre-existing.

   The intention to strengthen the connection between the disease and an employee's employment is therefore supported.

2. **The definition of injury to exclude injuries arising from reasonable administrative action**

   The change to the definition of injury to exclude injuries 'arising from reasonable administrative action' is appropriate and is supported by AaE.

For an employee to have an entitlement to workers compensation as a consequence of reasonable administrative action is both unreasonable and untenable. Supervisors and Managers have a difficult job to do in an ever changing environment and to be held to ransom by employees, who have a contrary view to the employer, makes it very difficult for employers to carry on their business when workers can simply obtain a medical certificate and then lodge a claim for compensation. Whilst there is scope to contest such claims the direct and indirect costs of disputation is an unreasonable financial burden on employers.

The introduction of a new exclusionary provision will go some way to better assist supervisors and managers to better manage their work environment without having the threat of workers compensation lingering in the background.

3. **The removal of claims for non work related journey's and recess breaks where the employer has no control over the activities of the employee**

The removal of non work related journey and recess breaks where the employer has no control over the activities of the employee is strongly supported.

AaE takes its obligations to its employees seriously and, is committed to providing a safe work environment. AaE has no difficulty in accepting liability for injuries that are sustained in an environment where AaE has some control over the environment and activities of an employee. However, non work related journeys and recesses are very much outside the control of employers and there is little, if any, ability to controls risks associated with journey incidents or recesses outside the place of employment. It is therefore considered unreasonable to expect employers to take on the liability of injuries in circumstances where the employer has no control over the situation or the circumstances.

The costs of injuries sustained whilst on non work related journeys or whilst employees are engaged on a frolic of their own are often very high cost claims. Whilst there is some scope under the current provisions to seek recovery the costs of such action is a financial burden on the employer.

Injuries sustained in motor vehicle accidents are funded by the respective state transport accident bodies via premiums paid by the owners of motor vehicles. The provision for workers compensation coverage for non work related journey injuries allows for a cost shifting exercise by the States to Commonwealth workers compensation jurisdiction.

The majority of state workers compensation jurisdictions do not provide workers compensation coverage for non work related journeys for the very reason that it is proposed to remove this entitlement from the Commonwealth workers compensation jurisdiction. That is, the costs of such injuries should be the responsibility of the appropriate body or insurance company set up to cover such injuries.

AaE therefore supports this particular amendment.

4. The amended definition of suitable employment for terminated employees

The amendment of the definition of suitable employment for terminated employees is supported.

This amendment will allow consideration of a terminated employee's capacity to work outside the Commonwealth (or employment by a licensed corporation when calculating employees' weekly incapacity payments under section 19 of the SRC Act.

AaE considers that the existing definition for suitable employment is totally unacceptable in that it places an **unreasonable burden** on an employer to continue to provide suitable employment to an injured employee where they consistently suffer from performance, security or criminal investigations and as consequence can no longer meet the inherent requirements of the job. The following examples demonstrate AaE's concern about the current definition of suitable employment.

Example 1:

An employee who has a serious injury is successfully rehabilitated into the workplace on permanent alternate duties. In circumstances where that employee has ongoing performance issues, knowingly "pushes the envelope" and by their own action deliberately breaches company policy/procedures by way of threatens staff and supervisors and generally abuses the employers code of conduct and is non responsive to reasonable disciplinary action and is then terminated. It is considered totally unreasonable that an employee who is terminated in such circumstances is provided with income protection by the provisions of the SRC Act. Such behaviour by the employee has nothing to with any compensable injury and the employee under no circumstances should be protected by the provisions of the SRC Act.

As it currently stands employers have no option but to continue to employee such employees. This is a destructive provision which allows, despite all of managements good intentions, for injured employees to act/behave and perform badly in the workplace. This behaviour then impacts on other staff with a resultant negative work culture developing.

Example 2:

An inherent requirement of the job for staff of AaE is that they hold and maintain an Aviation Security Identification Card 'ASIC'. An employee who has suffered a serious injury and again is successfully rehabilitated into alternate duties subsequently looses a ASIC due to illegal/criminal behaviour and is then terminated due because the employee has failed to maintain a specific inherent requirement of the job ought not be provided with income protection by the SRC Act, as the termination of employment has nothing whatsoever to do with the compensable injury and the employee was aware of the consequences of such action.

The risk and cost of continuing to employ such employees in the workplace is both a security risk to the employer and the community at large and is unacceptable to fellow responsible employees.

In support of this amendment AaE draws your attention to the matter of ***Lyons v Telstra Corporation***. Mr Lyons injured his back in 1997 during the course of his employment and subsequently underwent treatment and rehabilitation. He had an acrimonious relationship with his Team Leader who had cause to counsel him with respect to unsatisfactory performance and his employment was terminated in or about December 1998. Mr Lyons had been the subject of an extensive disciplinary process and he received a final written warning on 29 October 1998. He then became the subject of a CIB investigation on or about 12 November 1998 and on 10 November 1998 an interview was conducted whereby Mr Lyons was confronted with evidence regarding his attendance at a murdered bikie gang member's funeral at a time when he had attested to undertaking paid employment with Telstra.

Telstra attempted to argue that s4(1)(a) did not apply given that Mr Lyons was dismissed from his position due to continued breaches of the relevant Code of Conduct. Telstra further argued that the dismissal was inevitable and solely a consequence of Nr Lyon's behaviour.

The Tribunal (and by the Federal Court on Appeal) disagreed with Telstra's argument and found that Mr Lyons had an entitlement to incapacity payments on the basis that Telstra had failed to provide suitable employment.

AaE submits that the circumstances as outlined in the Lyons case and the two other examples place an unacceptable and unreasonable burden on employers to pay income maintenance in circumstances where employees knowingly and continually breach company policy and procedures.

AaE therefore strongly supports this particular amendment.

In supporting this amendment, AaE wishes to draw the Inquiry's attention to the uncertainty of what date this provision will apply. Will it apply for new injuries as at the date of effect of the amendment or, will it apply to all injuries irrespective of the date of injury. AaE contends that the provisions should apply for all persons whose services are terminated after the date of the amendment irrespective of when the injury occurred.

5. **The amendment to section 37 to allow delegated Case Managers to put in place a rehabilitation program without reference to an approved rehabilitation provider**

AaE supports the amendment to allow a rehabilitation return to work plan to be implemented by a delegated case manager without referral to an approved Comcare rehabilitation provider.

The present circumstances provide an unnecessary administrative and financial burden on employers to engage an approved rehabilitation provider when such

an appointment is not required. This is particularly so in respect of minor injuries where a simple graduated return to work program managed by a delegated Case Manager is all that is required to ensure a successful return to work is achieved.

It is submitted that a Company Case Manager ought to have discretion as whether to engage a Comcare approved rehabilitation provider.

Conclusion

AaE considers the amendments in the 2006 Bill are appropriate and will assist licensees to more efficiently manage their workforce and their future workers compensation liabilities; and, it is for this reason that the Safety Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 is supported..

If you have any queries or wish to discuss this submission any further please free to contact me (03) 8633 3107.

Yours sincerely

Dominic Andreacchio
General Manager
Human Resources

22 January 2007