The Committee Secretary
Senate Employment and Workplace
Relations Committee
Department of the Senate
PO Box 6100
PARLIAMENT HOUSE ACT 2600

Dear Sir/Madam,

The following is my submission to the committee's meeting dealing with the proposed Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.

It is my opinion, based on lengthy dealings with governments of both Labor and Coalition parties, that both the SRC Act 1988 and amendments to that Act since, and the current Bill before the Senate, were the end result of pressure and lobbying by the combined employer groups around Australia.

The purpose, of course, is to minimise – if not to do away with it altogether – the very existence of workers' compensation.

When the SRC Act 1988 was first introduced by a pretend Labor government, the Coalition parties raised several objections which they regarded as of major importance.

The first, and I quote Senator Vanstone: 'The original bill denied Commonwealth employees access to compensation through common law. The Coalition parties simply could not wear that. It was totally unacceptable to the Coalition parties to deprive Commonwealth employees of that avenue of compensation.' (Senate 2/6/1988, p. 3463): 'There was a second area of concern to the Coalition, and that was that the position of existing beneficiaries needed to be protected.' The Senator went on to rail against a common law cap of $100,000, condemning the Government for 'failing to adequately protect all existing beneficiaries aged under 65.'

Of course, these arguments applied only while the Coalition parties were in Opposition. They made no attempt to correct these issues when they were elected to govern. Indeed, each amendment to the SRC Act has lowered the entitlements.

Typical of the hypocrisy of all political parties at the time is that of the Australian Democrats Senators whose policies were summed up in the statement:

> 'The Australian Democrats believe that governments should

> continue to meet past commitments and that a good compensation system needs to give people the option of common law action. These problems are of concern to all my colleagues, as I have outlined. I refer in particular to those remaining elements of retrospectivity, which are at least to some degree punitive for some people. My colleague, Senator Macklin, has asked me to place on record his opposition to the bill on this basis in particular.'

Criticism was also made of the fact that there was no table of maims for emergency services personnel – e.g. soldiers and police.

Then they voted for the Bill.

Other aspects of the SRC Act follow, particularly in the draconian way it is applied by Comcare.

This submission will also demonstrate how the current Minister for Workplace Relations shirks his responsibilities as Minister, transfers his duties to the Minister for Territories and both have so far ignored conclusive evidence which shows that an Award of the Arbitration and Conciliation Commission was handed down to an unregistered organisation, the ACT Firefighters' Association; then gave an order appointing another organisation, the Federal Firefighters Union (FFU), as the responsible organisation knowing that the FFU had no cover in its rules for the ACT fire brigade industry nor ACT firefighters in its eligibility rules. Not only that, but the decisions handed down in September and December 1976 were known to be outside the law by the Department of the Capital Territory, the Conciliation Commission and the Full Bench of the Arbitration Commission. This has been recorded in documents obtained under Freedom of Information applications and in transcript before the two Commissions.

ACT firefighters were not only not eligible for the above reasons to be parties to an award but were not employees of the Minister at the time as they were still employees of the Board of Fire Commissioners of New South Wales.

The relevance of the above matters to this Committee's hearings is the fact that a former Coalition Minister for the Capital Territory, Mr Michael Hodgman, during a dispute with the FFU in 1981 over the question of rights for those NSW firefighters who transferred to the ACT Fire Brigade in 1976, conceded that the minimum terms of employment were to be those 'that applied to the NSW fire brigades at the time of transfer. These conditions included provisions relating to workers' compensation, superannuation, age for retirement, long service leave and reversionary and other provisions concerning payment to widows.'

As Minister responsible for the ACT Fire Brigade, Mr Hodgman had a letter printed in *The Canberra Times* of 25 June 1981 which included the following paragraph:

> 'I have informed Mr Berry that the Government had confirmed that, from recollection of negotiators, there was an intention

> for the NSW entitlements to apply to staff transferred to the ACT Brigade in 1975.' (Copy of letter attached.)

He continues, confirming that the NSW conditions were to apply. However, like most politicians he set out his ideas of the NSW workers' compensation conditions putting limits on its application. The Minister sent a copy of the letter to every firefighter in the ACT Fire Brigade. But the NSW conditions were never fully implemented and the Minister did nothing.

In May 1986 the Department of Territories, in a written submission to the Committee of Inquiry into the ACT Fire Brigade, stated in Section 4.3.2.1, pp 27-28: 'In determining appropriate Award conditions of service, the customary 'non-reduction' principle was applied to the existing NSW conditions of employment. This is embodied in the ACT Award at Clause 7.' (Copy attached.)

Again, the NSW conditions were never applied.

In 1996 I took the matter up with the then CEO of Comcare who, after having the matter thoroughly investigated and legal opinions obtained, wrote to me on 20 August 1996, stating:

> 'The matter you raise has been examined and I understand that your contention that NSW fire service employees who transferred to the ACT Fire Brigade continued to be entitled to the conditions of employment that existed in NSW at the time of transfer, is correct. These conditions of employment were recorded in the relevant industrial award at that time.'

Comcare comes under the control of the Minister for Workplace Relations.

Earlier, in 1990, I had taken this matter up with Comcare which, in turn, raised the matter with the ACT Fire Brigade, then under the control of the ACT Government's Department of Urban Services. Not willing to pay the NSW workers' compensation conditions, the ACT administration sought an opinion from the ACT Government's Chief Solicitor. In effect, Urban Services gave the Chief Solicitor just enough information to get the legal advice it wanted. I was tipped off about this, wrote a letter to him including relevant documents and spent approximately 45 minutes with him.

As a result, on 15 June 1990 the ACT Fire Brigade wrote to Comcare including the following paragraph:

> The Government Solicitor's office has declined to provide the advice requested, suggesting instead that **YOUR LEGAL ADVISERS BE TASKED WITH INVESTIGATING THE MERITS OF MR BUCHANAN'S CLAIM**. As you have previously indicated your intention to seek a corroborative legal opinion, the Government Solicitor's refusal to provide the advice sought by me should not impede the resolution of that claim.' (Emphasis mine.)

MINISTER FOR WORKPLACE RELATIONS:

I have taken this matter up with Mr K. Andrews and he appears to endorse the legal opinion from Comcare of 20 August 1996. In a letter to me dated 10 August 2005, signed by his Chief of Staff, he states:

> **'The issues you raise regarding workers' compensation fall within the Minister's portfolio of responsibility. I note that you have received advice from Comcare that workers' compensation for ACT firefighters is paid in accordance with the *Safety, Rehabilitation and Compensation Act 1988*. I also note that Comcare has advised you that any additional support would need to be met by their current employer, the ACT Government.'**

Obviously the Minister agrees with the fact that the NSW workers' compensation entitlements which existed at the time of transfer were to continue to be applied to those NSW firefighters who transferred to the ACT Fire Brigade.

The Minister deliberately misquotes the legal advice.

The SRC Act began on 1 December 1988. The CEC Act operated from 1971 to 1 December 1988. On 16 January 1976, the ACT Fire Brigade was formally started. With other Commonwealth employees they were covered by the 1971 Act until 1 December 1988 and the SRC Act after that time. On 11 May 1989 the ACT Fire Brigade was transferred to ACT Government control.

For over thirteen years the ACT Fire Brigade was under Commonwealth Government control, answerable to the Minister for Territories.

The legal opinion misquoted by the Minister for Workplace Relations states:

> **'I have located a couple of old legal files which look as though they may provide the answers to Mr Buchanan's problems. On a quick glance it seems to me that his complaint is valid in that there was an agreement to maintain these guys on their NSW entitlement but CEC/Comcare would pay the entitlement under whatever was the appropriate legislation while the EMPLOYER made good any shortfall that may result therefrom.'** (Emphasis in the original.)

Under Commonwealth employment, applying both the 1971 Act and the 1988 Act, or under ACT Government employment and the 1988 Act, only the employer at the time was responsible for paying the additional support – i.e., the NSW workers' compensation payments.

Neither Government has carried out its lawful requirements as outlined above.

When all the above facts were brought to the attention of the current Minister for Workplace Relations in 2005, all the matters dealing with and affecting his own portfolio – including the probability of a conspiracy to ignore the provisions of the Commonwealth Conciliation and Arbitration Commission in 1974-1976 – were ignored. Certainly there is proof that the Minister for the Capital Territory in 1975 was deliberately misled by officers of his Department.

Instead of acting on the matters raised by me, he referred them to the Minister for Territories - whose Department deliberately misled the Minister in 1975-76.

On 10 August 2005 the Minister's Chief of Staff wrote on his behalf:

> **'The other matters you have raised are the responsibility of the Minister for Territories and the ACT Government. I note that, in addition to bringing these matters to Minister Andrews' attention, you have also written to the Hon. Jim Lloyd, MP, the Minister for Territories, and the Hon. Katy Gallagher, MLA, the ACT Minister for Industrial Relations. I am advised the Minister for Territories is currently reviewing the issues you have raised. Accordingly, I have forwarded your correspondence to him for his reference.'**

In effect, the Minister for Workplace Relations wanted to wash his hands of industrial relations issues which were likely to be embarrassing.

MINISTER FOR TERRITORIES:

The letter from Minister Andrews was written to me on 10 August 2005. It was in January 2004 that I had written to Territories and was assured the matters would be investigated without delay. No action.

However, after the letter sent from DEWR, a letter was sent to me on 3 January 2006. It appeared that Territories was finally going to address the issues. Included was the paragraph:

> **'Amount of claim**
>
> **1. Details of the total monetary amount you claim you are entitled to;**
>
> **2. A breakdown of your monetary claim into relevant categories (workers' compensation, superannuation, etc.);**
>
> **3. Details of payments actually made to you in respect of the categories for which you claim you were underpaid;**
>
> **4. Particulars of any other amount you are claiming.'**

The letter was signed by the Acting General Manager, Territories Branch of the Department of Transport and Regional Services. A follow-up letter dated just March 2006 but received on 14 March 2006 was written by the Director, Territories and Local Government Business Division, pointing out that I had not answered the earlier one. As the letter was confined only to what was owed to me without any reference to the approximately 100 other NSW firefighters, I set out a reply in great detail, including documentation of proof that officers of the Department deliberately misled the then Minister in 1975/76. My reply, dated 6 April 2006, was delivered by hand to the CEO on 10 April 2006 and I spent approximately 1.5 hours outlining the facts to her.

I was told there would be no 'weasel words', that the facts would be addressed and my submission would be sent directly to the lawyers for an opinion. No reply has yet been received (17/1/07), although I was informed on 15 September 2006 that Territories did receive one opinion which had been returned to the lawyers to work out my entitlements. I was recently told that a final report had been received and a reply should be sent in the next few days.

CHIEF MINISTER'S DEPARTMENT:

These matters have been taken up with the ACT Government. After lengthy correspondence and an interview with the Senior Policy Adviser from the Chief Minister's Department, a letter written on 6 December 2005 but not sent to me until 12 April 2006 sets out that responsibility for the ACT Fire Brigade for superannuation purposes – and presumably workers' compensation – took effect on 11 May 1989. This letter, and attached note, is included.

Also attached are the two letters from Territories Branch of the Department of Transport and Regional Services of 3 January 2006 and March 2006, and correspondence between DEWR and myself dated 10 August 2005 and 6 September 2005.

None of the information and facts set out above is new to the Department of Workplace Relations. On 13 February 2003 the Superannuated Commonwealth Officers' Association (SCOA), in a submission to the Standing Committee on Employment and Workplace Relations, set out some of the many cases in which Comcare clients were treated unjustly. From page 5 to page 8, SCOA details the unjust treatment of former NSW firefighters who transferred to the ACT Fire Brigade in 1976 in relation to NSW conditions of employment that existed at the time of transfer – especially in relation to workers' compensation and superannuation. It was listed as Submission No. 73.

It was ignored and, presumably, the then Minister and his Department were more interested in covering the matter up. What the law determined was of no interest if, in this case, it was contrary to Coalition policy.

This refusal to address the issues has cost ACT firefighters millions of dollars.

'UNCLEAN' – TREATED LIKE LEPERS

Commonwealth Government employees injured at work, in some cases due to the carelessness by Ministers and/or their Departmental officers, are all too often treated as lepers – 'unclean'.

In June 2003, as a result of an inquiry by the House of Representatives Standing Committee on Employment and Workplace Relations, a report titled, **'Back on the Job: Report on the Inquiry into Aspects of Australian Workers' Compensation Schemes'** was set up by the then Minister for Employment and Workplace Relations, Mr Tony Abbott, to deal mainly with 'the incidence and costs of fraudulent claims and fraudulent conduct by employees and employers and any structural factors which may encourage such behaviour.'

In my opinion, the sole intention was to treat workers injured at work as pariahs, as bludgers, and to ostracise them as much as possible through public opinion – more so if they are public servants or other Government employees.

The intention failed miserably and public servants were revealed as honest and reputable, and the Government – in my opinion – as contemptible. In addition, the facts show that corporate Australia ignores workers' compensation Acts in all States with impunity.

First, what does being injured cost an ordinary worker?

CASE 1:

Retired medically unfit in May 1994, this man was accepted as a Comcare client under the provisions of the SRC Act 1988.

He was no longer entitled to pay to or be a member of the Commonwealth Superannuation Scheme (CSS). He was entitled to a compensation payment of 75% of his Normal Weekly Earnings (NWE), currently $1,091.51 – which means compensation of $818 per week.

He took a redundancy payment, received on 21 May 1994, of $141,132.56 gross, less income tax of approximately $22,000- reducing the payment to $119,000.

Under the provisions of the SRC Act, this was deemed to be earning 10% interest – on the gross amount including the more than $21,000 tax he had never received.

In fact, he was 'deemed' to be earning $14,114 per year, or $271 per week (including an average of more than $40 per week on money he has paid to the Australian Taxation Office).

To 'deem' the lump sum payment at all is wrong. But workers have to be taught not to claim compensation in the first place.

Five percent of his NWE is deducted from the 75% he is entitled to be paid. So the deduction based on his full NWE reduces his entitlements to 70% because governments do not want the unclean to be 'double dipping' because that is the amount of superannuation he would be paying if still at work.

No one has been able to explain how an employee who has just lost 25% of his income can be 'double dipping' in such circumstances.

WHAT MORE CAN THEY DO?

With a young family, this injured worker is entitled to family allowances of $190 per week. Because her husband is severely ill, is on workers' compensation and therefore 'unclean', his wife's family allowance is reduced to $40 per week. Yes, she loses $150 per week because he is injured at work.

Under the proposed changes to the SRC Act, her husband's entitlements will increase by $120.51 per week. Because of this, the family allowances will be cancelled completely. So the whole family is treated as lepers.

The following table shows what the SRC Act 1988 pretends are the facts, and the real total loss to the family.

COMPARISON TABLE:

	Current legislation	SRCOLA Bill 2006
Normal weekly earnings (NWE)	$1,091.51	$1,091.51
Family income - NWE + family allowances ($190 per week)	$1,281.51	$1,281.85
Amount of compensation (75% of NWE)	$818.63	$818.63
Lump sum amount (includes $22,000 tax; actual $119,000)	$141,132.56	$141,132.56
Interest rate 'deemed' to apply	10%	5.56%
'Deemed' amount deducted weekly	$271.41	$150.90
Superannuation contributions deducted	$52.38	$52.38
Reduction from compensation payments	$323.79	$203.28
Family allowances reduced by $150 from Centrelink	$40.00	$00.00
Comcare payment	$494.84	$615.35
Percent of NWE	45.35%	56.37%
Percent of family income ($615.35 - $40)	41.735%	44.896%

Had the deeming rate continued at the current rate of 10%, by the time he had reached the normal retiring age the Comcare victim would have had deducted from his compensation entitlements a total amount of $282,264 – or twice the amount of his superannuation payment first made in 1994. Included in that figure would be an additional $44,000 income tax due to the fact that the deeming rate was based on the gross amount. In fact, he would be paying $66,000 for a $22,000 tax assessment.

As it is, though the deeming rate is going to be dropped this year to approximately 5.56%, he has already been deducted a total of $175,000. Now it is not going to be stopped, but only lowered to 5.56%.

CASE 2

When the Northern Territory self-government legislation was passed, it included legislation to the effect that Commonwealth Government employees transferring to the employment of the Northern Territory Government did so with the provision, written into the legislation, that they would retain their conditions of employment which existed at the time of transfer.

The transfer took place in 1978, before the SRC Act came into effect on 1 December 1988. All who transferred did so under the provisions of the *Compensation (Commonwealth Government employees) Act 1971*.

A former Commonwealth police officer applied to Comcare to apply the provisions of the 1971 Act to his case. He did so on the basis of re Andrade and Department of Health and Community Services (NT), AAT, 16 January 1990, No. D88/10.

The decision was not appealed and has stood since that time until challenged by the police officer referred to above.

The decision makes it clear that the SRC Act 1988 does not apply in the NT due to the provisions of the Acts Interpretation Act 1901, S.8, which refers to an 'accrued right' and, among several other reasons given, states:

> 'Thus, the 1971 Act continues to apply in respect of an NT employee. Sections 7A and 7B of that Act as preserved by S.112 of the SS and VA (MA) Act apply to such a situation. **The 1988 Act does not and cannot apply to NT employees**: see the definition of "employee" in S.5 and "Commonwealth" and "Commonwealth Authority" in S.4.' (Emphasis supplied.)

Despite the law being set and apparently accepted – as long as it was kept quiet – the decision has been ignored by Comcare and governments.

The police officer is John Russell Williams, who was retired medically unfit on 31 August 1983.

When his case was taken up by the Superannuated Commonwealth Officers' Association (SCOA) on 25 February 2003 by way of a letter to the then CEO of

Comcare, a reconsideration dated 23 June 2003 ignored completely the only legal decision made at that time (the Andrade case set out above), and stated that Mr Williams was covered by the 1988 Act.

He was not.

As a result, Mr Williams lost thousands of dollars and, when he sought to have the matter determined again by the AAT, Comcare, treating him like a leper, demanded that the AAT not hear the case and wanted it referred directly to the High Court. $750,000 is needed to obtain what the law and the AAT state these former Commonwealth employees are entitled to receive.

If Mr Williams is to obtain justice, that is what he must obtain - $750,000.

The provision that Comcare states applied to Mr Williams in the 1988 Act is wrong. As the Andrade decision made clear, when the 1988 Act commenced 'the definitions of Commonwealth' and 'Commonwealth Authority' did not include the 'Northern Territory' and, as the 1971 Act was repealed on the same day (1 December 1988), the rights of NT employees were preserved under the Acts Interpretation Act. Rights accrued under the 1971 Compensation Act.

But it is obvious that the laws of the Commonwealth mean little or nothing when they clash with the policies of the Coalition parties, especially industrial relations laws which impose rights to workers such as workers' compensation.

Any employee who claims such benefits will sooner or later be treated as 'unclean' – a leper.

CASE 3

It is intended by the Coalition parties in Government to amend Clause 6(1)(b) - particularly the section where an employee is injured travelling 'between his or her place of residence and place of work'.

The Government's explanatory memorandum circulated by the Minister for Employment and Workplace Relations, as it applies to 'journey to and from work', is directed at saving money and damning the injured.

The Minister claims that 13.2% of total claims cost $25.9 million for 2004/5. If this is so, what has the Minister done to correct the situation? Nothing.

He seeks to abolish the right and put the financial responsibility back on the injured employee – which, as he fulfils the directions of a corporate Australia in many ways is responsible for the injuries, all these amendments are directed at achieving; and he seeks to abolish workers' compensation entitlements altogether.

Many claims are the result of the incompetence or dishonesty of other employers – manufacturers – and/or politicians.

In an article on 17 January 2007, *The Sydney Morning Herald* dealt with the Granville train disaster in 1977 when 83 people were killed and 213 injured. Many were on their way to work. The cause was given as 'the result of inadequate line maintenance that had caused the train to derail.' An uncaring, ignorant and incompetent Minister - a politician - was ultimately responsible as there had been complaints about lack of maintenance for years. All ignored. As the article reports, 'But one woman only got $2,000 to bury her two children.'

It is my opinion that this is the type of result the Government has in mind for its employees in similar circumstances.

In June 2003 the same journalist, Malcolm Brown, again in the SMH, wrote: 'Tangara dead man's brake faults known for years.' He details case after case over a period of years. Millions of passengers travelling to work are unnecessarily put at risk by incompetent manufacturers (employers) and politicians of Coalition and Labor governments playing the odds with people's lives.

The faults were known from 1988. Fifteen years of callous carelessness.

On 22 October 2004 the SMH headed a front page leading article, 'Road now a workplace as boss blamed for truck driver's fiery death' - a driver who would now be fined if he kicked up a fuss and stopped work had not slept for two days. The driver was an employee and there are many thousands of other employees whose lives are put at risk by drivers pushed to the limit by employers.

The Judge convicting the employer told him that the company **'paid very little, if any, heed to the risk, either to its employed drivers or to anyone else at risk of an accident.'**

During the inquest into the Waterfall train disaster in Sydney in 2003, it was revealed that trains were being placed in operation with up to (from memory) 300 faults.

In *The Canberra Times*, 10 August 1991, the following report appears:

> 'MELBOURNE: Victorian officials stopped 5355 trucks carrying dangerous chemicals on major highways in July – and found 67 per cent were not complying with safety laws.'

Nothing has changed. These problems continue. Several Judges have warned about the dangers to other road users when truck drivers are pushed to their limit. There are many other similar disasters in the making but time limits prevent detailing them.

The real reason for the Government's attack on workers' compensation rights can be found in the House of Representatives Standing Committee on Employment and Industrial Relations' June 2003 report, 'Back on the Job: .....', Chapter 3, page 37 ff, under **Employer Fraud**. It is reported that in every State employers are not (and will not) comply with the laws covering workers' compensation and health and safety laws.

One example: In Western Australia – 22,288 inspections of which 11,966 (more than 50%) had lapsed workers' compensation policies.

Millions of dollars are involved and governments do not diligently prosecute the employers involved.

Easier to change the laws and persecute the ill and injured employees .....

(Ian Buchanan)