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CEPU

COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

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The Committee Secretary,
Senate Employment, Workplace Relations and Education Committee,
Department of the Senate,
PO Box 6100,
Parliament House,
CANBERRA. ACT. 2600.
Email: eet.sen@aph.gov.au

Dear Committee Secretary,

RE: SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

Please find attached the CEPU's submission to the Senate Employment, Workplace Relations and Education Committee relating to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.

CEPU does not oppose circulation of this submission to other parties and we seek the opportunity to address the Committee in public hearings.

Yours faithfully,

Ed Husic,
DIVISIONAL SECRETARY.

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COMMUNICATIONS
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CEPU SUBMISSION

SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

January 2007

CEPU SUBMISSION TO THE SENATE INQUIRY INTO SAFETY REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

Introduction

1. The CEPU Communications Division is the principal union covering staff in Australia Post, Telstra, Optus and Visionstream. These organisations are licensees under the provisions of the *Safety Rehabilitation and Compensation Act 1988*.

2. The CEPU has significant concerns with a number of the amendments proposed in the Bill, which we believe will seriously impact on the right of workers to adequate and appropriate compensation for work related injury.

3. Given the serious nature of the concerns the union believes that substantial amendment would be required before the Bill could be supported. Without major amendments the Bill in our view should be rejected.

Background

4. The workers compensation scheme for Commonwealth Employment is administered through the SRC Act 1988.

5. The scheme is currently fully funded with a low premium rate and stable claim numbers.

6. The 2006 Comparative Performance Monitoring (CPM) report shows that the Commonwealth jurisdiction has one of the best Assets to Liabilities ratio, indicating that the scheme has more than sufficient assets to meet its predicted future liabilities. (Chapter 5 Indicator 18)

7. The standardised average premium rates in the 2006 CPM show that the Commonwealth jurisdiction has the lowest premium rate of any Australian jurisdiction (Chapter 4 Indicator 15).

8. The scheme does not have escalating claims numbers or costs.

9. The 2006 CPM report indicates that the incidence rate and frequency rate of compensated claims in the Commonwealth jurisdiction is decreasing. (Chapter 2 Indicators 4,5,6and 7)

10. The Comcare Annual Report for 2005/2006 shows a gradual increase in the forecast claim frequency and average cost, although the forecast for 2005/2006 is a slight reversal of that trend (Graph 1)

11. An actual analysis of claims costs for the Commonwealth jurisdiction shows little change overall, and certainly no dramatic increase. The SRCC annual reports show scheme claim costs as follows:

    - 2002/2003 $476.9 million
    - 2003/2004 $486.23 million
    - 2004/2005 $341.05 million
    - 2005/2006 $354.79 million

12. The consistent performance of the scheme, in the union's view, is due to a number of factors, including:

    - Good scheme management at a financial and administrative level;
    - Pro-active work done to manage stress claims;
    - Emphasis on return to work strategies and an obligation on the employer to focus on rehabilitation and return to work; and
    - Reduction in the incidence of work related injury and disease

14. The principal areas of concern relate to the definition of injury and disease, the expansion of the management action exclusion for entitlement to compensation, the removal of compensation for journey and recess claims and the definition of suitable employment.

15. The union supports the amendments which relate to:
    - The indexation of normal weekly earnings which cannot otherwise be updated under section 8;
    - Reimbursement of the cost of medical treatment;
    - Increase in funeral benefit; and
    - Consistency and equity in administrative practices.

16. Some proposed amendments require clarification as to their intent and effect:

    - Calculation of compensation where the claimant is in receipt of superannuation; and
    - Provision of rehabilitation programs

Amendment to the definition of Injury and Disease

17. The amendments to the definition of Injury and Disease have the potential to severely restrict an employee's entitlement to compensation and are not required for the financial viability of the scheme.

18. The current test of "material contribution" is not out of place with existing tests in other jurisdictions.

19. The amendment to the definition of disease has the effect of severely restricting the capacity to establish the nexus between the ailment and employment. Substituting significant degree in place of material degree and specifying the matters to be taken into account in determining significant degree tighten the employment contribution test to the point where many work related injuries will be excluded.

20. The test for "significant degree" would be made extraordinarily difficult and would have the potential to
    - Exclude employees with pre-existing genetic dispositions;
    - Exclude employees with any underlying disease;
    - Increase the cost and time required to deal with disease claims; and
    - Deny claimants proper compensation because of the complexity of the entitlement test

21. The expansion of the "management action" exclusion is wrong in principle. Entitlement to workers compensation is related to an injury or disease, which arises out of or in the course of employment. If management action is a contributing factor to the injury / disease then the issue to be dealt with is the proper education and training of managers and how both they and the system deal with staff.

22. The union strongly believes that the existing definition of injury / disease should remain unchanged or even be relaxed.

Removal of compensation for journey and recess claims

23. The removal of compensation for journey claims is unwarranted and unnecessary in terms of the financial viability of the scheme.

24. Workers Compensation is beneficial legislation with an underlying premise of "no fault". Arguments to exclude compensation on the basis that the employer has no control or fully complies introduces concepts which if extended would exclude many compensable claims and undermine the whole social framework of workers compensation legislation.

25. Removal of journey claims is an exercise in cost shifting to the state motor accident schemes, private insurance or the individual.

26. The removal of compensation for journey claims when travelling for purposes associated with the Act (eg. receiving medical treatment, undergoing rehabilitation, undergoing a medical or rehabilitation assessment) is particularly onerous and unfair.

27. The removal of compensation for recess claims is unwarranted, unnecessary in terms of the financial viability of the scheme and out of step with other Australian jurisdictions.

28. The majority of Australian jurisdictions provide coverage for recess breaks, both on and off worksite. Only South Australia and Tasmania limit coverage to on worksite.

29. Removal of recess claims is an exercise in cost shifting to the employee, ignores the beneficial context of workers compensation legislation and harks back to a master/servant relationship – compensation is only available when the employee is under the "control" of the employer.

30. The union strongly believes that access to compensation for journey and recess claims should be maintained.

Amendment to definition of "suitable employment"

31. This amendment enables an employee who has been terminated from Commonwealth employment by management action to have their compensation reduced where potential suitable employment outside the commonwealth area exists. If the concern for the scheme is to encourage such employees to seek alternative employment then there are examples in other jurisdictions of schemes to encourage re-employment with other employer, which is a more effective option than simply moving to reduce compensation when the employee is unemployed.

32. The union strongly believes that the definition of suitable employment should not be changed.

Calculation of compensation when the claimant is in receipt of superannuation

33. The CEPU acknowledges that this is a complex area and appreciates that the proposed amendments are some improvement on the existing legislative framework.

34. However, as a matter of principal claimants who are in receipt of superannuation should not be disadvantaged in comparison to other claimants or the general public. The proposed amendments do not in our view go far enough.

35. Deemed interest remains an issue, it should reflect actual interest rate expectations or the deeming rate used for other legislative payments (pensions, veterans affairs) and should not be manipulated to intentionally decrease benefits or give a better return to the scheme to the detriment of individuals.

36. There is no legitimate reason to reduce the NWE of retired claimants by 5% to 70% rather than the 75% entitlement of other claimants. No actual superannuation contribution is made so there is no return to the claimant, unlike the situation with ordinary claimants whose personal contribution to superannuation is returned to them (with interest); nor is there generally any notional employee contribution in most superannuation funds. The individual is not increasing their superannuation but is drawing down to supplement their drop in income.

37. The reduction to 70% would seem to be an additional penalty on a specific group of claimants, which may benefit the scheme financially but imposes a detriment on one group out of all proportion to their numbers within the scheme.

38. The CEPU believes that additional amendments to set the same deeming rate as that used for the aged pension or veteran's service pensions would be preferable.

39. The CEPU believes that the 5% reduction in NWE (notional superannuation contribution) in the calculation of entitlements is not good policy and should be removed.

Provision of rehabilitation programs

40. It is appropriate in some instances for a rehabilitation program to be provided internally, however, the internal provider should be required to meet the same criteria as an otherwise "approved" provider

Consultation

41. The explanatory memorandum suggests that consultation on the proposed amendments took place through the Safety Rehabilitation and Compensation Commission. The CEPU is of the belief that no such consultation took place. The proposed amendments were the subject of a commission paper, which outlined the Government and Comcare's views with a union response to each proposal. There was no discussion or consultation on the proposed amendments, either before or after that paper was presented to the Commission.

Conclusion

42. The CEPU cannot support the main amendments to the Safety Rehabilitation and Compensation Act 1988. It is recognised that a number of amendments are positive in nature, but the detrimental amendments remain significant.