INTRODUCTION AND OVERVIEW

1. The State Public Services Federation Group, of the Community and Public Sector Union (CPSU-SPSF Group) principally represents the industrial interests of employees of state governments and agencies as well as non-academic staff in Australian universities (excluding police, hospital workers and teachers).

2. We wish to comment on several of the proposed changes to the Safety, Rehabilitation and Compensation and other Legislation Amendment Bill 2006 (notwithstanding that no immediate area where we represent employees is effected).

3. Our interest is based on our observation that there is potential for corporations employing persons who the CPSU-SPSF Group, or our state associated bodies represents, to obtain a license to operate as self insurers in Comcare.

4. We are also aware of the ongoing "discussions" at a national level between the states and commonwealth, and in other forums in which we are participating through the ACTU, over the perceived national need to bring about greater "harmony' between the different jurisdictions covering workers' compensation and occupational health and safety.

5. Comcare has been opened up to large national corporations and looks likely to attract an increasing number of corporate self insurers and we see a danger for existing benefit levels and access to workers' compensation, for the viability of the state based workers' compensation schemes, and potential for erosion of occupational health and safety standards.

6. We support the national consultative processes dealing with 'harmonisation' at the highest possible standards of workers' compensation and occupational safety.

7. Alterations to Comcare that reduce access to compensation in the event of incapacity for work, or the level of benefits to employees, undermine the potential and scope for agreement at a national level.

8. The issues of prevention of work related injuries resulting in incapacity for work, and proper, adequate and speedy compensation and rehabilitation have been, and remain, a central concern to the governing body of the CPSU SPSF Group and the state registered unions we encompass in each of the six states.

9. There are no industrial matters more important to our members, and we submit employees generally, than that they have the highest expectation that they return safely home at the end of a work period and that they continue to do so for a working life – but that where, through some misadventure, they are injured and incapacitated for work, especially for serious and long term incapacity, they and their dependants and children, are not reduced to poverty.

10. Statutory comprehensive no fault workers' compensation schemes have a long history in the states from early in the last century and were introduced as reforming social legislation to provide a safety net for employees where an action did not arise in common law based on "fault".

11. The principal problem with common law action for negligence was that a considerable number of incapacitated employees could not establish the required degree of negligence (fault) on the part of another person or body (generally the employer) and these employees and their families faced great hardship in cases of serious injury.

12. We stress this point – the no fault statutory schemes were introduced and operate for the benefit of workers and their dependant families – people who pay rent or mortgages, people who need food, shelter, education and all the other needs and requirements of a decent life in our modern community.

13. Any narrowing of entitlement, or reduction of entitlement to workers' compensation in any scheme comes straight from the economic foundations of the family in circumstances where the "breadwinner" is incapacitated – in simple terms, what is a financial "cost of operation" to an employer, is personal, intimate, family focused and frightening to the employee faced with injury or disease and associated psychological consequences.

14. The Productivity Commission Inquiry Report at (No. 27 , 6 March 2004) reported of workers' compensation schemes that "the catastrophically injured account for a small proportion of claims but a larger proportion of scheme costs" and that the "majority (61%) of catastrophic injuries result from motor vehicle accidents".

15. It follows that by excluding journey and recess claims, a significant number of catastrophically injured employees and their families, where the injury arises from a motor accident and the employee is "at fault"(nebulous as that can be in traffic accidents) will be likely be reduced to desperate circumstances (other than in Victoria).

16. In the absence of a national scheme that deals humanely and adequately with the plight of the catastrophically injured, irrespective of "fault," it is unwise, harsh and heartless to narrow access to compensation – notwithstanding the fact that employers have little direct control over the mode or circumstances of the journey to and from work.

17. We have had the opportunity to sight the submission made by the CPSU-PSU Group, and express support and endorsement of its content and recommendations in respect to the Comcare scheme :

    (a) That the linkage of employment to disease be maintained as a "material contribution";

    (b) That the scope of "reasonable administrative action" be limited to the specific examples;

    (c) That workers' compensation coverage of travel between the employee's residence and the employee's usual place of work is maintained;

    (d) That workers' compensation coverage of the employee when they are temporarily absent from the employee's place of work be maintained;

    (e) That incapacity payments be maintained at 75% of normal weekly earnings on redundancy or invalidity and not be reduced by a nominal superannuation contribution.

JOURNEY CLAIMS

18. Union policy supports workers' compensation coverage of journeys to and from work with state workers' compensation law covering journey claims to a majority of our members - with those in Victoria subject to the separate transport accident scheme.

19. Getting to and from work is an activity closely connected with employment and it is not correct to say that it is an activity entirely beyond or outside of the employment relationship.

20. Employers choose the location of their business operations and the hours of operation when workers are required to be present as well as the circumstances and manner in which work is performed.

21. Generally, shift arrangements, as to total number of hours worked, span of hours, pattern of shifts and rest breaks and overtime are set to meet the needs of the business not the employee.

22. Drivers who are fatigued, tired, overworked, pressured to "do more", or even voluntarily work additional hours (paid or unpaid) to meet the goals of the employer are at additional risk on the road. Most Australian workers drive to and from work, often because there are no convenient public transport options.

23. Workers and families who live in regional and country areas are often totally reliant on private motor transport because there are simply no public transport options to get to and from work.

24. Similarly, those who live in outlying suburban areas are much more limited in access to public transport; as are shift workers whose work times do not often gel with available transport.

25. Public transport is a safer option than carriage by private motor vehicle and consequently those who live in rural, remote and outlying suburban areas will be unfairly discriminated against by the abolition of journey claims compensation.

26. A minority of employees choose to take other means of transport to work – walking, running or cycling which are activities understood by experts to improve health – and improved health and fitness is a benefit to the individual, the individuals' work performance and consequently the employer.

27. Absence of workers' compensation coverage will not encourage employees to take on additional risk involved in exercising while getting to work and home again.

28. The Productivity Commission recommended against the inclusion of journey claims because the employer had little control over the journey, or CTP may apply or special provision may be made through enterprise bargaining.

29. Since the making of the Report, the Commonwealth Government has introduced a radical and regressive IR scheme that applies to corporations and that effectively gives primacy to individual agreements over collective agreements.

30. This breakdown in support of collective representation broadens the inequities already existing and lessens the prospects that most employees will have to achieve insurance coverage necessary to protect them and their dependants against misadventure while traveling to and from work.

31. As to the mode of transport, while employers do not have direct control over how workers get to and from the location of work and home, neither in many circumstances does the employee – but there are means available in compulsory coverage to spread the cost for comprehensive coverage while traveling to and from work.

32. As noted in the Productivity Commission Report, a high proportion of catastrophic injuries occur in motor vehicle accidents - consequently where workers' compensation laws covering journeys to and from work do not apply, or where fault on the part of another person or entity cannot be established, the worker and his/her family is mostly condemned to reliance on an inadequate system of support from government.

33. In many jurisdictions there are fixed degrees of incapacity required to found an action in common law, so that the impact of removal of journey claims where they now operate in NSW and Queensland can be problematic for the wellbeing of employees who are seriously but not catastrophically injured.

34. Additionally, victims of public transport accidents while traveling to and from work, such as rail disasters, who are now covered by workers' compensation and are rapidly compensated with death benefits and ongoing payments for dependants, or income maintenance will have to take common law action to establish negligence, which as noted above can be long and

costly – especially so in situations where complex circumstances lead to official inquiries into disasters.

35. There is no evidence that the Australian government and the corporations entitled to enter Comcare as self insurers lack the resources to provide the comprehensive workers' compensation insurance coverage for employees traveling to and from work.

RECESS CLAIMS

36. In our fast paced society employees struggle to fit in all their responsibilities to their employer, their families, their community and themselves – we are now a nation who puts more time in at work that most other comparative countries.

37. Employees use their breaks from work during the day for a whole host of reasons – shopping for groceries, family presents, medical appointments, exercise and so on.

38. Leaving the workplace and undertaking the type of activities mentioned, entails some additional risk above and beyond staying at the workplace.

39. "Fitting things in", as in the manner described above around work is a seamless feature of everyday employment and should continue to be covered by workers' compensation regulation as it highly desirable from an employees point of view, and generally an advantage to the employer for practical and moral reasons who wishes to avoid calamity or excessive hardship to employees.

40. Particular mention needs to be made of the desirable aspects of employees exercising during a meal break – a brisk walk, or a jog for example – is to be encouraged from all points of view even though entailing additional risk – and removal of insurance is a big disincentive to healthy living.

41. We note four of the six states provide such coverage presently (SA and Tasmania being the exceptions) and the vast majority of Australian employees are entitled to workers' compensation when incapacitated during recess breaks.

PSYCHOLOGICAL INJURY

42. Worldwide in the past two decades there has been an increase in work related mental disorders.

43. This increase is also apparent in Australia where work related mental stress had resulted in psychological injuries such as depression, anxiety disorders, burnout and nervous breakdown.

44. Psychological injuries tend to be expensive because of time off from work for recovery – but it should be noted that some occupations have higher than average claims – the paper titled 'Work Related Mental Disorders in Australia' reports that

> "*occupational groups with the highest claims were professional, and intermediate clerical, sales and service workers…a further breakdown of occupational groups reveal that police officers, prison officers and social welfare professionals and school teachers had extremely high incidences for mental stress claims".*

45. The CPSU SPSF represents prison officers and social welfare workers in the states (e.g. child protection workers, probation and parole officers).

46. The intensity of work, and work related stress, are, we believe from feedback from members and delegates, directly related to difficulty in recruiting and holding staff in these critical occupations for our social welfare.

47. We are aware of the huge pressures on staff to perform difficult jobs, with finite resources in very trying circumstances of families in crisis - and we have advocated and campaigned on behalf of these groups for better resources and training.

48. We have opposed the alteration to various state workers' compensation laws that prescribe a tighter definition of work related injury in connection with psychological injuries than those relating to physical injury.

49. It is wrong in principle to distinguish between physical and psychological injury and indirectly discriminates against those professions and occupations that are of key importance to the community's safety and welfare – in both active and proactive intervention in individual lives and families.

50. We note the work done by Professor Dennis Pearce and Madhu Dubey who were commissioned by the ASCC to investigate and report on the apparent differences between jurisdictions in the definition of psychological injury.

51. The report titled 'Australian Workers' Compensation Law and Its Application to Psychological Injury Claims' states that there was across the 9 jurisdictions

> "*a range of choice as to the level of contribution* [work makes] *between 'material' and 'major. However, a review of the cases does not reveal that this has had a marked effect on outcomes. This is largely for the reason set out above relating to the choice that these indeterminate expressions leave to the decision maker".*

52. Where there is a discretion left to the decision maker that decision will be made for very human reasons and that *"No words will constrain sympathy in a hard luck case or lack of it where the claimant is exaggerating his or her symptoms"*

53. The study concludes that a *"compelling case for extensive legislative change is difficult to justify. Instead**, the primary focus of tackling the problem of accelerating psychological injury claims in the workplace may lie in greater resource allocation focused on prevention and rehabilitation*** (our emphasis).

54. In our submission this study, and its expert conclusions produced after the 2005 Productivity Commission Report, substantially undermines any logical basis for limiting access to workers' compensation benefits by the amendments concerning "significant degree" and exclusion of claims involving "reasonable administrative action".

55. It is important to understand that in no fault workers' compensation arrangements a key principle is that we take people as we find them in employment and that discriminatory distinctions between human injuries, or causation where it introduces qualifications, is bad social policy (further stigmatizing psychological disorders) and bad in practical terms as it will only increase the pressure on employees and their families.

56. Limitations on access to workers' compensation will also undermine the facilitation of early return to work and rehabilitation – individuals will likely either abandon employment or face termination after exhausting available leave – whichever way it

goes it will shift the financial cost onto social security and likely exacerbate and extend the period of illness.

CONCLUSION

57. There is no compelling economic argument for amendments to the Safety, Rehabilitation and Compensation Act that limit access to workers' compensation as proposed in the Bill because neither the Commonwealth Government nor corporations eligible for a license as self insurers are subject to unacceptable cost pressures.

58. Economic growth and increased productivity have also been accompanied by work intensification and pressures of longer hours, altered and more flexible shifts, more demands for quality work in reduced time and higher consumer/client and community expectations which, not coincidentally, has resulted in greater work related stress along with compensation claims.

59. The amendments in the Bill undermine existing standards as to access to workers' compensation benefits – access and benefits that are critical to employees and their dependant families – particularly those in remote, rural and outer suburban areas, those in high pressured "social service' type occupations, those who seek to maintain physical fitness and those who work long and unsociable hours to meet the needs of a modern economy.

60. Narrower access to workers' compensation will impede statutorily prescribed rehabilitation and early return to work and is likely to result in greater hardship to individuals and families and added cost to the social security system.

61. The proposed amendments will deter and limit the scope for national agreement on an acceptable model for a national workers' compensation scheme, but will also create real disadvantage, inequalities, discrimination and tensions between employers and employees when friends and colleagues in the workplace fall through, and outside of the existing safety net provided by the current provisions of the Act.

62. Finally, we observe that the proposed amendments we address in this submission do not reduce inequity – they merely expand and compound the problems for those employees and their families who suffer loss in the future.