ACTU SUBMISSION

Senate Employment, Workplace Relations and Education Legislation Committee

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

Introduction

1. The Australian Council of Trade Unions (ACTU) welcomes this opportunity to make this submission to the Senate Employment, Workplace Relations and Education Legislation Committee (Committee) regarding the provisions of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 (the bill).

2. The ACTU supports the submissions to this inquiry made by affiliates of the ACTU that serve as an adjunct to this submission.

3. The ACTU believes that this bill should be rejected by the Parliament.

4. Some elements of the bill are of benefit to injured workers, these elements however are disproportionate to the regressive elements of the bill aimed at restricting compensation entitlements for injured workers.

5. We note that workers compensation frameworks and the national consistency of legislation and systems are currently the subject of considerable national debate.

6. We also note the rapid recent expansion of the coverage of Comcare to non-traditional Government employees and the zealous encouragement of the Government for multi-state employers to leave State schemes for the Commonwealth system.

7. It is astounding that in the almost eleven years that this Government has had to *'correct anomalies that adversely affect the efficient operation of the act or are inconsistent with the original policy'* (see Second Reading Speech) this bill is the first time such amendments have been considered by the Parliament.

8. The ACTU sees no accident in the timing of an expansion of the employees subject to the entitlements of the principle Act and the introduction of this bill that seeks to limit claims that can be pursued under the legislation.

9. We submit that rather than seeking to mould the Comcare scheme into a national system that suits the needs of a limited number of private sector employers, the Government should commission the urgently required study into the injury profile a national system should fairly compensate and legislate accordingly for a scheme separate to Comcare.

Comment on Specific Provisions of the Bill

10. We note the *Information about the Inquiry* detailed on the website of the Committee, and in particular the following:

The bill addresses concerns about the cost pressure on the current scheme as a consequence of higher and increased claims. The amendments are intended to tighten the conditions under which claims for compensation may be made, and to broaden the scope of factors determining incapacity benefits.

In pursuit of these policy changes, the principal amendments will:

- amend the definition of ‘disease’ to strengthen the connection between the disease and the employee’s employment;
- amend the definition of ‘injury’ to exclude injuries arising from reasonable administrative action taken in a reasonable manner;
- remove claims for non work-related journeys and recess breaks where the employer has no control over the activities of the employee;
- amend the calculation of retirees’ incapacity benefits to take account of changes in interest rates and superannuation fund contributions;
- update measures for calculating benefits for employees, including the definitions of 'normal weekly earnings' and 'superannuation scheme';
- ensure that all potential earnings from suitable employment can be taken into account when determining incapacity payments;

- enable determining authorities to directly reimburse health care providers for the cost of their services to injured employees; and
- increase the maximum funeral benefits payable.

(source: http://www.aph.gov.au/Senate/committee/eet_ctte/src06/info.htm, accessed 22 December 2006)

We will respond to a number of these claims.

The bill addresses concerns about the cost pressure on the current scheme as a consequence of higher and increased claims

11. We cannot find any evidence to support this claim.

12. The 2006 Comparative Performance Monitoring (CPM), published by the Workplace Relations Ministers' Council, details at Chapter 2 the OHS Performance of all Australian workers compensation jurisdictions from 2000-01 to 2004-05.

13. Details contained in the CPM for the Commonwealth jurisdiction for the lead indicators on claims incidence and frequency reveal that both measures are tracking downwards.

Incidence rates of compensated claims resulting in one or more weeks of compensation

Year	Claims per 1000 employees
2000 –01	11.5
2001-02	11.1
2002-03	11.5
2003-04	11.9
2004-05	10.6

Australian Average	16.6

Frequency rates of compensated claims resulting in one or more weeks of compensation

Year	Claims per million hours worked
2000 –01	6.0
2001-02	5.7
2002-03	6.1
2003-04	6.3
2004-05	5.8
Australian Average	10.0

Incidence rate of compensated claims resulting in 12 weeks or more compensation

Year	Claims per 1000 employees
2000 –01	3.1
2001-02	3.0
2002-03	3.2
2003-04	3.3
2004-05	2.3
Australian Average	3.6

Frequency rate of compensated claims resulting in 12 weeks or more compensation

Year	Claims per million hours worked
2000 –01	1.6
2001-02	1.5

2002-03	1.7
2003-04	1.8
2004-05	1.3
Australian Average	2.2

14. We note the comments of the Chairman of the Safety, Rehabilitation and Compensation Commission contained at page 9 of the Commission's Annual report 2005-06: *'I am delighted to report that the scheme achieved the Commission's target of zero fatalities from workrelated injury in 2005-2006. The scheme also recorded a six per cent reduction in the incidence of work related injury, disease and commuting claims compared to the 2001-2002 base year.'*

Amend the definition of 'disease' to strengthen the connection between the disease and the employee's employment

15. All Australian jurisdictions including Comcare, require that a worker claiming workers compensation demonstrate a contribution of employment to their injury/disease. Each jurisdiction has different criteria to determine contribution of employment to injury.

16. We are not aware of any evidence that establishes that the current approach used by Comcare is overly complicated or is adversely affecting the financial position of the scheme.

17. It is our experience that amendment to such legislative provisions is primarily promoted to deny some workers of compensation entitlements.

18. These matters were debated and discussed by the Productivity Commission in 2004 during its inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks. The effect of seeking to 'strengthen ' the contribution to employment test was discussed between Rhonda Pashen Risk and Safety Manager for Northern Zone of Woolworths and Professor Woods of the Productivity Commission and can found at page 553 of the Transcript of Proceedings:

'PROF WOODS: . . . You talk in terms of defining injury as being the major significant factor as your preferred definition. The word "the" is that deliberate or a feature of drafting? I mean, are you talking about "a" major significant factor or do you deliberately mean "the" major significant factor?

MS PASHEN: That was deliberate. That was a definition that was in existence in Queensland till about three years ago. I guess the difference in acceptance rate of injuries at that point varied by about 2 per cent. So having that definition seemed to take out about 2 per cent of the players than you would have under "a" significant factor. . . .

PROF WOODS: We have quite a diversity of definitions, a significant contributing factor, a contributing factor et cetera. Interestingly you say that – and this is in broad terms - the difference between using the major contributing factor and a major contributing factor is about 2 per cent of the claims, although

I take it from that you're suggesting that the value of claims might be more than 2 per cent.

MS PASHEN: Not necessarily, no. They're not necessarily large claims.

19. The Productivity Commission advice on how best to deal with these complex issues, and detailed in its Inquiry Report, was for 'the development of a uniform test of work-relatedness applying to both disease and injury across all jurisdictions.

20. This proposed amendment is aimed squarely at denying entitlements to injured workers.

21. The ACTU rejects this provision.

Amend the definition of 'injury' to exclude injuries arising from reasonable administrative action taken in a reasonable manner

22. The Australian Safety and Compensation Council recently released a report on Australian Workers' Compensation Law And Its Application specifically focused on Psychological Injury Claims.

23. This report was written by Professor Dennis Pearce and Madhu Dubey. It is detailed in the report that Prof Pearce is an authority on the interpretation of legislation and one of the leading authorities on Commonwealth administrative law and has worked in Government in legislative drafting.

24. Conclusions made in the report are that:

Overall, Australian jurisdictions apply similar statutory provisions for assessing eligibility for compensation of psychological injuries suffered by employees.

There are some exceptions, but generally one employee in one jurisdiction can expect a similar outcome on eligibility for compensation to a different employee working in another jurisdiction.

Overall, our assessment is that most cases are dealt with based on their unique circumstances, and by and large any difference in relevant legislation in each jurisdiction, is unlikely to impact on the outcome of a case. Accordingly, no compelling case can be made for extensive legislative change in this area, although some fine tuning could be justified.

The solution to increasing psychological injury claims is unlikely to be found in the amendment of legislation. As stated above, the approach of each jurisdiction in Australia is generally consistent. The law in each jurisdiction is also generally applied consistently by relevant courts and tribunals.'

25. We agree, the solution to increasing psychological injury claims is not to place legislative barriers on the claims to be accepted.

26. The Government should take a lead role in the development of occupational health and safety solutions to the causes of psychological injury rather than seeking to deny compensation entitlements to workers.

27. The ACTU rejects this provision.

Remove claims for non work-related journeys and recess breaks where the employer has no control over the activities of the employee

28. We view this proposal as the Government simply seeking to shift costs of claims on to the States

29. The Government and Employers continually claim that as occupational health and safety legislation is primarily focused on establishing the obligations of employers towards their employees, situations outside the control of employers resulting in injury or illness should not be subject to claims for workers compensation. In the Second Reading Speech to the bill, the Minister for Workplace Relations stated: 'Employers cannot control circumstances associated with journeys to and from work or recess breaks away from employer premises and it is not appropriate for injuries sustained at these times to be covered by workers compensation.'

30. What the Government and Employers conveniently forget to recognise is that all workers compensation systems in Australia are built on a fundamental basis of a no fault system.

31. Workers only travel to and from work, or only have recess breaks because of a direct connection with their work and as such these situations should be adequately covered by workers compensation legislation.

32. The ACTU rejects this provision