

CEPU Communications Division Submission on the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002

Purpose

The purpose of this submission is:

- To outline the response of the CEPU Communications Division to the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 and to bring to the attention of Senate Committee members key issues of concern to the union.
- To supplement the ACTU submission entitled, *ACTU and Affiliate Submission on the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002*.
- To recommend that the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 be withdrawn or alternatively be defeated by the non-government parties.
- Alternatively, to recommend that the Senate Committee extend the inquiry on the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2000 until the Productivity Commission report on National Workers' Compensation and Occupational Health and Safety Frameworks is released and the likely impacts of the Government's decision on occupational health and safety can be identified and assessed.

CEPU Communications Division response and key issues

- The CEPU Communications Division supports the ACTU submission entitled, *ACTU and Affiliate Submission on the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002*.
- The CEPU Communications Division believes that the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 should not be supported in its current form.
- In essence we are opposed to the provisions in the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 which restrict or remove the role of unions in occupational health and safety matters.
- Our main objection is that unions play an important role in preventing workplace injury and disease and that it is, therefore, difficult to identify any real benefits of moves to restrict or remove unions from the occupational health and safety process.

- Simultaneously workers need to be involved collectively, through their unions, in jointly determining with employers the health and safety issues in their workplace and how to address them.
- The current Act attempts to modify the imbalance of workplace power between workers and management by prescribing a role for workers to be represented collectively through their unions.
- Under the current arrangements the employer must reach an agreement with the union on occupational health and safety matters. The Amendment Bill effectively replaces a negotiated occupational health agreement between the employer and the union with a management only policy.
- The Amendment Bill requires that an employee must ask to be represented by an employee representative. A bureaucratic and unwieldy process is required to be followed whereby an employee must seek permission from a public official to involve the representative in occupational health and safety matters. An equally bureaucratic and unwieldy process is then to be followed to protect the identity of an employee who has requested an employee representative to represent them.
- In addition there are no restrictions on what constitutes an 'association' under the Amendment Bill so that one or several associations could be formed in a workplace comprised only of pro-management people who then seek to represent employees in occupational health and safety matters alongside the major union.
- The proposal to require a union member to seek permission of a public official prior to a union representative being allowed to take part in consultations or negotiations on OHS matters would be in breach of the ILO Freedom of Association Convention 187 and/or the Collective Bargaining Convention 98.
- For workers to participate in the identification, assessment and control of workplace hazards they need to be able to do so collectively through their unions and without fear of recriminations because they have raised health and safety issues.
- The CEPU Communications Division strongly supports the current process of election of Health and Safety Representatives (HSRs). For workers to trust the process of participation in occupational health and safety matters HSRs must be clearly independent of management and must be prepared to seek change to achieve a safe workplace and to oppose management proposals where they do not adequately deal with the risks in the workplace.
- There is no information available that the proposed amendments to exclude unions from occupational health and safety matters will reduce workplace injury, disease and death. By contrast the research shows that unionised workplaces have reduced workplace injuries relative to those workplaces where the management alone determines health and safety arrangements.

- The following examples taken from the experiences of this union demonstrate the important role unions play in making workplaces safer for those who work in them:
 - Intimidation of HSRs by management representatives of Australia Post and Telstra because HSRs have raised health and safety issues in the workplace, stopped only after the involvement of the union.
 - Perpetuation of the careless worker myth as the cause of workplace injuries from manual sorting work on V-Sort Frames in Australia Post and key board and mouse usage in Telstra call centres, stopped only after the union forced the employer to acknowledge the identified risks and implement risk control measures.
 - Recording of injuries as diary notations and injured workers told to monitor their injury instead of formal incident reports being completed at Telstra Service Centres, in process of being stopped as a result of union involvement.
 - Directing injured workers to Australia Post nominated doctors for the purpose of returning injured workers to work immediately regardless of the advice of the worker's treating doctor in order to avoid lost time injury being recorded, in process of being addressed by the union.
 - Provision of a safer working environment by requiring the employer to supply particular equipment and or modifications to equipment, for eg. pike-pole for Communication Technicians in Telstra and sound proofing material on new machinery used by mail centre workers in Australia Post.
 - Provision of a consistent approach across an organisation to control workplace hazards, for eg. job rotation and task breaks for workers in Australia Post mail centres to prevent manual handling injuries.
- In contemplating the available research and anecdotal evidence which suggests that unionised workplaces are safer workplaces it would seem that the real purpose of the Amendment Bill is not to bring about improved occupational health and safety outcomes but to implement an ideological agenda which seeks to remove workers' collective representation through unions.
- Unions have a long history and intimate knowledge of the industry and workplaces in which their members work; their knowledge and expertise enhances the role of occupational health and safety to workers, employers and the wider public. Access to this information should not be risked by ideologically driven and inadequately informed decision making which is designed to exclude unions from occupational health and safety.
- The function of occupational health and safety regulation is to play a part in reducing workplace injury, disease and death. In the union's view removing or restricting the role of unions will significantly reduce the effectiveness of occupational health and safety regulation at the Commonwealth level.

- It should be noted that the occupational health and safety performance in the Australian government area has generally been above the national average when measured against a range of OHS, workers' compensation and return to work indicators.
- While the Shield of the Crown immunity under the Amendment Bill has been lifted for the individual employees it has not been fully lifted for Commonwealth employers. If the employee is liable why not the employer, to the same extent?
- The Amendment Bill provides that a range of criminal penalties should be replaced with civil penalties. Whilst the union is not opposed to the use of civil penalties as part of an enforcement regime we believe that removing criminal penalties is a risky and inadequately informed decision as such penalties act as a strong deterrent.
- The CEPU Communications Division strongly supports the use of industrial manslaughter and related prosecutions against employers and individual managers when their criminal negligence results in death or injury. To this end the union supports the introduction of legislation along the lines of the ACT Industrial Manslaughter legislation or, in the absence of Commonwealth legislation, taking action to ensure that the relevant State/Territory provisions as they relate to industrial manslaughter will prevail.

Recommendations

- The CEPU Communications Division recommends that the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 be withdrawn or alternatively be defeated by the non-government parties.
- The CEPU Communications Division recommends that the Senate Committee requests an extension of the Occupational Health & Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 inquiry until the Productivity Commission's report on the National Workers' Compensation and Occupational Health and Safety Frameworks is released and the Government's intentions on same are announced because this will affect decisions about what changes should be made in the OH&S Amendment Bill.
- The CEPU Communications Division recommends that in the absence of Commonwealth legislation in relation to industrial manslaughter and related offences changes should be made to the enforcement regime in the Amendment Bill to ensure that the ACT Industrial Manslaughter legislation applies to relevant Commonwealth Departments/Agencies and Government Business Enterprises in the same way as it applies to other employers in the region.