



ACT Branch Liquor Hospitality and Miscellaneous Union

Exposure Draft Workers Compensation Amendment Bill

The first part of the submission responds directly to the Explanatory Statement accompanying the Exposure Draft of the Workers Compensation Amendment Bill 2010 and to information provided in the briefing conducted by Departmental officials.

The second part of this submission deals with changes that are not anticipated by this Amendment Bill, but are regarded by affiliates as important measures to enhance compliance with current provisions of the Workers Compensation Act.

PART ONE

The Bill as proposed does not meet the aims set out in the Explanatory Statement. It does not balance the Affordability of the Scheme with Workers Rights. It does however remove or restrict workers rights in two important areas. These are –

1. Common law rights
2. A right to rely on the evidence of their own treating doctor when determining the degree of their work place illness or injury.

There are no guarantees the removal of these rights will result in a reduction in the cost to business or cost to the community.

Affordability – No evidence has been provided by the Government to support the proposition that the current ACT Workers Compensation Scheme is unaffordable or unsustainable. The ACT private sector economy is booming and unemployment rates in the Territory are consistently below that of the other states and territories. Workers compensation premiums have reduced over recent years and there has been no evidence presented that demonstrates businesses are relocating to NSW in order to take advantage of lower premiums.

Statutory Compensation for Permanent Injury – We do not oppose this change.

Creation of a Permanent Impairment Assessment Panel – The current system, which allows workers to rely on the evidence of a treating doctor of their own choice, is extremely important and should not be replaced by “a single, independent assessment, of a worker’s possible permanent impairment.” The Bill proposes the establishment of a Medical Panel where the decision made by the Panel is final, except for matters of procedural fairness, and cannot be challenged. This method of determining incapacity has produced considerable perceived, and actual unfairness, in other states where Panel Systems of Medical Assessment operate.

Where, under current law, there is a dispute between the physical or psychological assessment of the worker provided by the worker's own doctor, and the doctor engaged by the insurer, the determination of the matter is public and transparent. This is a very important principle in the process of medical assessments. The impact of the assessment to the welfare of the worker concerned is so great that it should be open to the testing of evidence and the public scrutiny that the Court system provides.

It has been asserted, but not supported by any documentation, that assessments are processed more quickly when the assessment is conducted by a Medical Panel. When assessing lump sum payments however it is most often the case that the injury or illness must be stable before any assessment can be made, in some cases this takes years. Whether the assessment is conducted by a Panel or under the current legislation it will make no difference to this timeframe.

The establishment of the Medical Panel itself is not without costs which if not borne by industry, can only be paid for by the reduction of workers rights and entitlement to fair compensation.

An Enhanced Framework for the Resolution of Disputes – We do not oppose this change.

Threshold and Caps for Common Law Claims – Despite laws requiring employers to provide a safe working environment for their employees, workers in the ACT are often exposed to unacceptably high safety risks. The injuries sustained by workers in some of the top industries for claims are those types of injuries which can be difficult to diagnose and treat but often have long term consequences for the worker.

Where these injuries occur because of employer negligence the worker currently has a right to make a claim for compensation at common law irrespective of the assessed level of impairment. ACT workers should retain this right. No matter how minor the injury may be regarded by others the worker must retain the option of pursuing the matter at Common Law in circumstances of negligence. For some industries it is often only the possibility of the employer facing common law claims that motivates them to comply with their safety obligations – or to pay fair compensation when they are clearly at fault.

The question of the amount of compensation awarded should be left to the judgement of the Magistrate considering all the circumstances of the case, rather than set by Legislation. There should be no cap to the amounts that a Magistrate is free to award.

One of the reasons put forward for the introduction of thresholds is to bring the Workers Compensation Legislation in line with thresholds proposed in the *Road Transport (Third Party Insurance) Amendment Bill 2010*. Leaving aside the question of whether thresholds should apply to Third Party Insurance there is no logical reason for there to be “harmony across the two no-fault schemes.”

Regulation of Service Providers – costs - We have no objection to this proposal.

Regulation of Service Providers – advertising – We support the proposed change.

PART TWO

There are a number of measures not proposed in this amendment but would improve the efficiency of the Scheme and safety at work that should be further explored. These measures do not require the restriction or removal of workers rights but serve to enhance them.

Workers Compensation

1. The ACT scheme should implement a strategy for prompt collection of injury management data.
2. Reduce the number of rehabilitation providers and develop a preferred provider panel with clear performance criteria for achieving better return to work outcomes.
3. Those employers who are currently avoiding the payment of workers compensation premiums should be pursued more vigorously. Avoidance is often achieved by the establishment of sham contracting arrangements and under insurance. Workers should have the right to know that they are covered by the workers compensation insurance policy entered into by the employer. This is not the case under the current system. Unions should also be able to ensure that workers compensation policies are in place to cover all workers whether paid under PAYG or ABN arrangements.
4. Employers who have recorded low injury rates over the life of the scheme should be surveyed to identify their best practice tools.

Occupational Health and Safety

1. Stronger OH&S compliance regulation would reduce injury rates and therefore reduce premium rates.
2. Consideration should be given to expanding the general inspectorate function of ACT Work cover, through the accreditation of private providers and a review of cost recovery models for this activity based on an abuser pays model.
3. Unionised work places are demonstrably safer than those workplaces with no or few union members. The ACT Government should make use of every opportunity open to it to encourage union participation and membership.

Government Procurement

The ACT Government has already commenced work in this area. It is vital that the Government use its purchasing power to encourage collective bargaining, better jobs and safer work places.

Case Study – Workers Compensation

In 2008 Sally Scanlain, a community service worker, received compensation for an injury caused by her employer – she also received a formal apology for the harm the employer had caused her.

Sally's problems started when her employer decided that her role as voluntary executive member of her union was a conflict of interest with her employment as an advocate for people with psychological disabilities and other vulnerable people needing support.

When Sally refused to resign from her voluntary position with her union her manager isolated and victimised her at work to such an extent that Sally became ill.

Sally and her union tried everything possible to resolve the situation but it was only when Sally, with the assistance of Slater and Gordon brought a claim at common law that a resolution proved possible.

“As a community service worker and union member I have always stood up for the rights of others. I want the members of the Legislative Assembly to do the same. There may only be a small number of workers who find themselves in the situation that I was in – and no one should have been subjected to the treatment I suffered – but however small the number of workers choosing to pursue common law claims, we need to retain these rights.” said Sally.

The right to sue at common law is something that the ACT Government determined to restrict to such an extent that people like Sally would no longer be able to receive compensation in situations of extreme employer negligence.

Sally's ability to make a claim for common law damages made a significant difference to her employer's willingness to properly deal with the issues surrounding her injury. Her claim also produced lasting workplace change by her employer signing an agreement stating existing employees and future employees would have their union organising rights respected.

