

Workers Compensation Amendment Bill (Exposure Draft) 2010

Submission by

Construction, Forestry, Mining and Energy Union

ACT Branch

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Contents

Introduction.....	3
Overview of response to Exposure Draft	4
Concerns with proposed reforms	5
Additional issues for further discussion:.....	7
Conclusion	9

Introduction

This submission to the ACT Government is made on behalf of the ACT Branch of the Construction, Forestry, Mining and Energy Union (CFMEU).

The CFMEU was actively involved in the initial development of the ACT workers compensation system, which is the best workers compensation system in Australia. It allows for workers to be appropriately compensated for workplace injuries and rehabilitated back into work.

It is acknowledged that there are areas of the workers compensation system that could be improved. There needs to be less focus on the involvement of the court and increased focus on ensuring workers are provided with appropriate rehabilitation and compensation in a timely fashion. There also needs to be greater monitoring of workplace safety and enforcement of workers compensation policies.

These improvements should not be pushed through at the same time as watering down workers entitlements under the existing system. The CFMEU do not believe that the injured worker should be penalised or incur any loss from these changes.

At the CFMEU ACT Branch Delegate meeting on the 21 October 2010 the following resolution was passed:

The delegates of the CFMEU ACT Branch call on the ACT Labor Government to give an undertaking that during the process of workers compensation reform that no worker or family will be worse off.

This motion goes to the core of the CFMEU position on reforms to the workers compensation system. The CFMEU will resist any reforms that see our members potentially worse off.

Overview of response to Exposure Draft

The CFMEU encourages the ACT Government to examine the workers compensation system from a holistic perspective. We believe the changes to the statutory compensation, enhanced dispute resolution framework and regulation of service providers' costs and advertising will result in an improved system and a decline in common law cases. There is no need to impose an arbitrary 15 percent threshold on workers accessing common law.

In the construction industry injuries below the 15% for physical and 20% for psychological thresholds may mean a worker is unable to return to their job. The construction workforce consists of people with minimum education, poor literacy and numeracy, limited qualifications and often English as a second language. These factors combined with the high risk of potential incidents resulting in physical and psychological injuries makes access to common law a necessity for construction workers to be appropriately compensated.

The CFMEU agree to the following recommendations:

- An enhanced framework for the resolution of disputes
- Enhanced statutory benefits
- Regulation of service providers costs
- Regulation of service providers advertising
- Statutory compensation for permanent injury (a model of whole person impairment (WPI)) – with concerns addressed
- Introduction of a Permanent Impairment Assessment Panel – with concerns addressed

The CFMEU does not support the following recommendation:

- Adoption of a common law threshold

Concerns with proposed reforms

Introduction of a Threshold for accessing Common Law

The CFMEU strongly disagrees with any introduction of a threshold for accessing common law for injured workers. Injured workers need to be appropriately compensated, especially if the employer is at fault.

Evidence indicates that a 15% threshold would eliminate this avenue for redress to the majority of workers. Labourers are in the top five occupations for generating claims and for high percentage of total scheme claims costs. This is because the construction industry is a high risk occupation for workplace deaths and injuries. Employers need to be vigilant regarding safety and if they fail in their duty of care they should be penalised.

As previously stated the CFMEU will not support any changes to workers compensation where workers and their families are worse off. Injured workers are extremely vulnerable and further pressure should not be placed on them regarding whether or not they will qualify for access to common law.

Common law allows for not only compensation for the injury sustained but also the full impact that injury has on their future, including employment, personal life and ongoing economic welfare.

A 20% psychological threshold is also not supported by the CFMEU. The proposed higher threshold discriminates against people with a psychological illness. People with psychological illnesses are often difficult to diagnose and a number of assessments and ongoing monitoring is required. The CFMEU often find it is the psychological illnesses from a workplace incident that are the hardest to overcome and return to work from.

Statutory compensation for permanent injury (a model of whole person impairment (WPI))

The cap on compensation for permanent impairment is too small. There is no explanation provided on why this amount was selected, which is below the cap in NSW, Western Australia and Victoria. The CFMEU would strongly encourage the ACT Government to reconsider the amount set for permanent impairment and to allow for annual indexation.

Introduction of a Permanent Impairment Assessment Panel

The CFMEU support in principle the establishment of an assessment panel on the proviso it gives adequate weighting to evidence from the treating doctor and appropriate appeal mechanisms.

Injured workers should be able to rely on evidence from their own treating doctor. The person's own treating doctors has the best understanding of the injury sustained and the impact that injury has had on the person.

Also any decision made by the panel should be able to be challenged openly and in accordance with just procedures, not just for administrative issues.

The appointment of persons to the panel would need to be an open and transparent process. Both employer and employee representative bodies should support the appointment of persons to the panel.

Additional issues for further discussion:

The CFMEU believe that in addition to the agreed recommendations above we have additional concerns with the current system of workers compensation that should also be considered, these are:

1. Delays in court processes and lack of a centralised knowledge body
2. Employers underinsuring workers
3. Insurance companies allowing employers/companies to underinsure
4. Variance in quality of service by rehabilitation providers

Delays in court processes and lack of a centralised knowledge body

The CFMEU believes there is a need for an introduction of an Industrial magistrate to hear matters regarding workers compensation, Occupation Health & Safety (OH&S), and Industrial Relations. This body should also include an industrial register that would include the mediation and arbitration components of the workers compensation system.

This body would be able to develop a good understanding of the issues and the crossover between OH&S and Industrial Relations issues with workers compensation. Hopefully this improved knowledge will result in more appropriate penalties being imposed on employers who fail in their OH&S duty of care.

Employers underinsuring workers

The CFMEU are regularly aware of cases where employers are underinsured or do not take out any workers compensation insurance. This places the risk and cost for potential workplace injuries to the default insurer. It also removes revenue from the insurance sector through loss of payment of workers compensation policies.

The only way to address this issue is for more WorkSafe inspectors to conduct audits of employer's workers compensation policies. At the moment a minimal number of workers compensation policy are audited. The result of this is that many employers are willing to take the risk of being caught. The CFMEU strongly supports the enforcement of penalties already in place and urges the Government to take action against employers found guilty of breaches.

The CFMEU Secretary, Dean Hall, along with other members of the default insurance fund board have recommended the Government pass legislation that would allow funding from the default insurance fund to be used to fund more WorkSafe inspectors to check workers compensation compliance and supply relevant training to employers. It is believed this greater monitoring will result in an increase in the number of policies resulting in further revenue for the sector.

Insurance companies allowing employers/companies to underinsure

Insurance companies should have a responsibility in relation to issuing workers compensation policies that fall well short of the ACT acceptable level. The CFMEU recently found a situation where an insurance company insured a policy for \$1 a worker. This is not acceptable and the insurance company needs to take responsibility for issuing such an inappropriate policy. Insurers found doing

this should be penalised. Insurers should also have to undertake due diligence before issuing policies.

Variance in quality of service by rehabilitation providers

The quality of rehabilitation received by injured workers varies greatly and this impacts significantly on the person's ability to return to work.

The CFMEU strongly believes a select panel of rehabilitation providers should be established. The panel would allow for monitoring of the standard of service and removal from panel of service providers who failure to meet standards.

Recommendations:

1. No introduction of threshold for access to common law
2. Introduction of an Industrial Magistrate
3. Greater monitoring of employer compliance with workers compensation legislation
4. Greater responsibility of insurance companies to ensure they issue policies compliant with legislation.
5. Establishment of select panel of rehabilitation providers

Conclusion

The CFMEU opposes any reforms to workers compensation that will see a worker being worse off. The introduction of a threshold for accessing common law will be strongly resisted by the CFMEU and its members as it will leave some workers worse off.

It is wrong to rely on an argument that reform is required because of a small number of workers are rorting the system. The injured worker is the victim and should be treated justly.

It would be more appropriate to focus changes on employers who are abusing the system by not having appropriate workers compensation insurance and the insurance companies who issue workers compensation policies that well are below industry standards.

The CFMEU believes reforms to the workers compensation system should be a staged approach. The proposed reforms to statutory compensation, regulation of service providers, enhanced framework for dispute resolution and the introduction of the permanent impairment panel should initially be introduced. An assessment of the impact of these changes should occur prior to any further reforms.

The CFMEU welcomes further opportunity to discuss the reforms and the timeframe for implementation. However, our position on the threshold is not negotiable.