

TRANSPORT WORKERS UNION OF AUSTRALIA
SUBMISSION ON THE EXPOSURE DRAFT OF
THE WORKERS COMPENSATION AMENDMENT BILL 2010

The Transport Workers Union of Australia adopts and supports the submission of Unions ACT with respect to the Exposure Draft of the Workers Compensation Amendment Bill 2010.

About the TWU:

The ACT sub-branch of the Transport Workers Union of Australia is responsible for approximately 3,000 members in the ACT and Southern New South Wales in the following industries:

- Trucking
- Ambulance
- Bus and coach drivers
- Baggage handlers
- Armoured car workers
- Owner drivers
- Sanitation workers.

A large proportion of the union membership will be affected by the proposed amendments to the Workers Compensation Act.

Matters of concern to the TWU

1. The TWU has both sought advice and is cognisant of the introduction of a whole-person impairment regime in the ACT. The TWU opposes the introduction of any whole-person impairment threshold on the basis that it will deprive the vast majority of injured workers of the right to maintain common law proceedings in circumstances where the injured worker has been injured through the negligence of its employer or head contractor.
2. The introduction of a 15% whole-person impairment threshold will, based on our knowledge of the New South Wales system as well as advice we have received, result in the loss of common law rights of some 85% of TWU members who are presently entitled to common law rights arising from negligence workplace injuries in the Australian Capital Territory.

3. The loss of a member's right to bring a common law claim arising from a workplace injury will prevent that member from recovering:
 - (a) General damages;
 - (b) Past and future economic loss based on actual earnings;
 - (c) Past and future domestic assistance.
4. This will mean that a worker who presently has the valuable right to maintain common law proceedings will only be able to rely upon his rights under the Workers Compensation Act which provides a maximum of 65% of a worker's average pre-injury earnings.
5. We understand that the Government proposes to increase the level of entitlement for statutory lump sums pursuant to Section 49, however the increase with respect to those entitlements remains less than those provided for under the New South Wales scheme and it does not provide for any pain and suffering provisions as are allowed under the New South Wales scheme. The entitlement to a statutory lump sum in the context of foregoing the right to bring common law claims is illusory and is of far less financial benefit to an injured worker than the right to bring a common law claim.
6. Traditionally, industries such as truck driving, baggage handling and armoured car operations are high risk industries which often result in severe injuries. The 15% whole-person impairment threshold does not simply remove the rights of workers who receive less significant injuries but also removes the rights of workers who receive serious injury.
7. We enclose for your attention actual examples of members who have maintained common law proceedings who would be prevented from maintaining common law proceedings under the proposed amendments:
 - (a) Member A was a female security guard employed by an armoured truck service. The member was required to participate in an unsafe system of work which involved her raising heavy tins of money into the side of an armoured truck which required her to lift heavy tins above shoulder height. The member, as a result of this unsafe system of work, developed an injury to her right arm and neck which subsequently developed into a chronic pain syndrome. The member's chronic pain syndrome did not respond to

treatment and she continues to experience chronic pain in both arms, her neck as well as suffering the effects of depression. The member's life was severely affected and she was unable to continue her pre-injury leisure activities and relations with her husband and children were also adversely affected. The member was assessed as having a 12% whole-person impairment. The member had successfully brought a common law claim which resulted in a settlement in the member's favour well in excess of what she would have been restricted to under the statutory provisions of the Workers Compensation Act.

- (b) Member B was a baggage handler at the Canberra Airport. The member was engaged in an unsafe system of work which required him to lift heavy baggage which was not tagged. As a result of the unsafe system of work, the member sustained a hernia injury which did not qualify for a 15% whole-person impairment. The member successfully commenced common law proceedings and obtained a settlement well in excess of his statutory entitlements under the workers compensation provisions. The member was in his mid 30s at the time of his injury and has had to undergo 3 hernia surgery repairs and has been unable to return to his employment as a baggage handler. He has continued to suffer chronic pain due to his hernia condition and has been unable to enjoy his pre-injury leisure activities. The member would not have been entitled to bring common law proceedings under the proposed amendments.

8. The Transport Workers Union opposes the introduction of any whole-person impairment threshold due to the disenfranchisement of our members right to recover damages.
9. The TWU does not accept that its members should be deprived of their rights when no evidence has been offered by the Government as to why the Workers Compensation Scheme requires such retrograde reform.

Psychological injury

10. The TWU is very concerned and opposes the introduction of a WPI threshold for psychological injury. The TWU acts for various industries including armoured guards who are sometimes subject to violent armed assaults. These workplace incidents often cause permanent psychological injury often in circumstances which arise from an unsafe system of work. The proposed imposition of a 20% whole-

person impairment would prevent in excess of 90% of members psychologically affected from maintaining their common law rights. We are aware of actual situations where members have brought claims with respect to psychological injury incurred in such circumstances and common law proceedings have been successfully brought and maintained. Those members would be precluded from bringing such a claim under the proposed legislation.

Summary

11. The TWU welcomes the Government's proposal to increase death benefits for dependants as well as funeral and testamentary expenses. The TWU is of the view that these are the only actual benefits proposed in the amendments to the Workers Compensation Act which substantially consists of an attack on workers in the ACT.
12. The TWU supports and adopts the recommendations made by Unions ACT however cannot support an attack by the ACT Government upon its members.

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Transport Workers Union of Australia