

CFMEU

CONSTRUCTION

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Ms HAYWARD: The issue is it has to be legislative change. The regulation that was released will not fix the problems, and no matter what regulation you come up with it needs to be legislative change, and whether or not anybody is willing to write concise legislation in this area seems to be the issue here. I know that Tania Sourdin raised that as an issue with us at the workshop, the will for legislative change.

Mr DAVID SHOEBRIDGE: If you have a form of words that you would recommend please provide it on notice.

During the PIAWE workshop the participants were provided with a number of examples of pre-injury warnings provisions. We compared the provisions from a number of jurisdictions. The participants agreed that the old s 40 was a simple and workable way to calculate an injured workers pre-injury average weekly earnings. The CFMEU agreed with that approach.

The CFMEU has consistently called for a simplified definition that does not require the insurer to make a decision about which elements of a workers pay are included in the calculation and which elements are excluded. We propose that the definition simply be *“the average of an employee’s pre-injury earnings during the 52 week period prior to injury or where an employee has not been employed for 52 weeks, the period of continuous service prior to injury.”*

We propose that this amount be based on the gross wages of the injured worker inclusive of allowances and overtime. The presumption should be that everything is included unless specifically excluded. Although, we submit that there should not be any exclusions.

