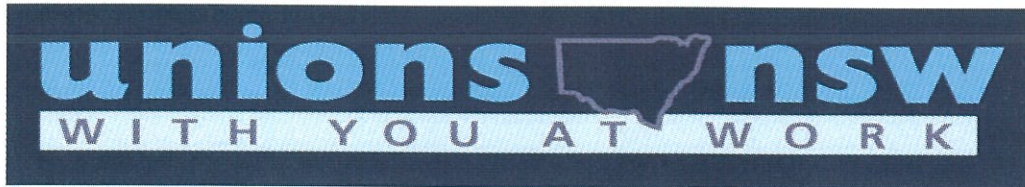


S106/75
CSISS



UNIONS NSW

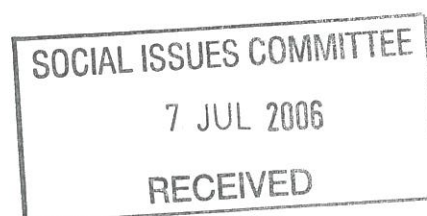
Supplementary Submission to the Legislative Council Standing Committee on Social Issues

Responding To Questions On Notice

INQUIRY INTO THE IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

5 July 2006

Prepared by
Alison Peters
Deputy Assistant Secretary
Unions NSW
Phone: 9264 1691
Fax: 9261 3505
Email: a.peters@unionsnsw.org.au



Unions NSW, represented by Ms. Alison Peters, appeared to give evidence to the Standing Committee on Social Issues at its public hearing on the 19th June, 2006. During proceedings Ms Peters undertook to provide answers to several questions on notice. This supplementary submission is intended to address these matters.

Occupational health and safety (hereafter "OHS") legislation in NSW implements a "risk assessment" approach to ensure safe workplaces. This means that employers and workers in each workplace consider hazards and risks that could lead to workplace injuries and illness and take steps to minimise and/or eliminate these risks. The focus is on the specific practices, procedures and circumstances of each workplace.

WorkCover NSW (hereafter "WorkCover") uses research, education and, in particular, a tripartite approach to assess specific risks and appropriate responses required to minimise and/or eliminate those risks. WorkCover is able to provide guidance to employers, workers and their unions through a variety of mechanisms¹ such as:-

- Statutory law
- Codes of practice
- Standards
- Policies

WorkCover also has the ability to carry out investigations and commence prosecutions for breaches of OH&S laws.

Unions NSW has generally supported the risk assessment approach taken in OHS legislation. Such an approach allows identification of new or emerging hazards and risks to be dealt with immediately in a way appropriate to each workplace circumstance. Similarly, improved knowledge and understanding of existing hazards as well as "best practice" ways of minimising associated risks can also be implemented using the broad risk assessment approach.

In some circumstances particular hazards or risks require a more prescriptive approach. This may be because the particular hazard carries a significant risk of injury or illness or because there has been a widespread failure to address the risk resulting in increased numbers, or severity of, injuries or illness. In such circumstances Unions NSW supports the tripartite process utilised by WorkCover to ensure that standards adopted, whether by statute or code of practice, reduce the impact of the particular hazard or risk. It is our view that broad agreement on such standards results in higher compliance with them and thus improved OHS outcomes.

¹ For an explanation of how such mechanisms operate and the issues covered by each refer to the WorkCover website at www.workcover.nsw.gov.au

Given the framework outlined above, Unions NSW has been involved with its affiliated unions, employers and WorkCover in developing particular standards or guidelines where it is felt that the particular hazard may not be adequately addressed utilising the general risk assessment framework.² WorkCover has assisted the industry parties through research, education and facilitation of tripartite discussions about the particular issues.

By supporting this proactive co-operative approach, Unions NSW does not resile from the fact that there must also be strong enforcement measures in place, given that the consequences of poor OHS performance could result in loss of life, serious injury or illness and the associated costs to society as well as the individuals involved. This function must be adequately resourced by Government to maintain its ongoing effectiveness. Unions NSW has in the past, and will continue to raise with WorkCover and the Government, matters where we feel that urgent attention is required or where we believe the enforcement process (through investigation and prosecution) has been found wanting.

The WorkChoices legislation does not significantly affect NSW OHS legislation. This means that WorkCover's role in promulgating standards and guidelines on OHS matters will continue and that workplaces in NSW will continue to have such standards and guidelines apply to them. Unions NSW supports the ongoing role of WorkCover in setting, as outlined above, appropriate workplace standards and guidelines to ensure workplaces are safe.

There are, however, a number of factors that may change the practical impact of WorkCover standards and guidelines. These are:-

- The opening up of the Federal Government's Comcare scheme to businesses that operate across state borders which may effectively remove them from the state OHS system.
- The use of COAG to ensure conformity between OHS systems which may lead to "a lowest common denominator" approach on some issues.
- Increased conflict between employers and workers/unions which may make achieving consensus on some OHS issues harder and therefore more politically controversial.

² see the WorkCover website at www.workcover.nsw.gov.au for details of specific Regulations, Codes of Practice and Standards applying in NSW.

Some issues which have OHS implications but that have traditionally been addressed in awards, such as working hours and patterns of working hours, could be the subject of future OHS standards and guidelines. This would result from the reduced effect of award provisions generally which have, in the past, limited hours worked or unsafe working patterns through “penalty payments” for such work. It is our assessment that the introduction of WorkChoices will accelerate the increase in total hours worked in a number of industries and occupations and that this is likely to have OHS consequences. It is the view of Unions NSW that it is entirely appropriate in such circumstances for WorkCover to develop standards and guidelines regarding hours of work and/or pattern of working hours to eliminate or minimise risk of injury or illness in workplaces.

While working hours have steadily grown in recent times, particularly for some industries and occupations, there has not been much regulation of working hours through OHS regimes. One of the few examples occurs in NSW, which has recently introduced the Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005, which took effect on the 1st March 2006. This regulation does not prescribe particular hours but takes a risk assessment approach requiring the industry and users (consignees and consignors) of the industry to minimise the impact of fatigue. As this is a fairly new regulation it is not practical to assess its impact and, in particular, WorkCover’s oversight of its implementation.

Unions NSW believes that there is an ongoing role for WorkCover in monitoring OHS outcomes and developing appropriate standards and guidelines to ensure workplaces are safe. This role is especially important where there is significant change in general workplace regulation to ensure there are no adverse consequences for OHS outcomes. Unions NSW would support WorkCover taking whatever steps are necessary to address emerging issues that are posing an increased risk to workplace safety.