

TWU Response to Questions Raised During the Hearing on 16 December 2011 at the Inquiry Into Opportunities to Consolidate Tribunals in New South Wales

Question raised by the Chair highlighted on page 39 of the transcript in relation to the TWU's views on the Workers Compensation Commission:

The first point that should be made is that we do not deal with our members' workers compensation in house as these matters are referred to specialist workers compensation lawyers. As such, no-one employed by the TWU directly deals with the Workers Compensation Commission (**Commission**).

In answering this question, we have consulted with our members and with our outside specialist lawyers in order to provide this Committee with our view on the workings and future of the Commission.

TWU View

We are of the view that the Commission should remain an independent statutory tribunal and that there exists no compelling case to combine this Commission with any other tribunal. We have formed this view for a number of reasons.

Efficiencies and Specialist Nature of the Commission

We are of the understanding that the Commission is an extremely efficient tribunal in that it deals with over 11,000 applications each year, finalising 40% of these within three months, 80% within six months and nearly all within 12 months. Final decisions are made within 21 days of the completion of the hearing which is very efficient compared to most other tribunals and courts.¹

The Commission's corporate services are provided by the Compensation Authorities Staffing Division, a division connected to the WorkCover Authority. This means that some of the efficiencies that combining tribunals may otherwise create already exist due to this agency providing corporate services to the Commission and five other tribunals.²

We also have a concern that if the Commission is merged with other tribunals then the specialist nature and expertise that the Commission provides will be lost. We are of the understanding that prior to the appointment of permanent full-time Arbitrators who were former practitioners one in three decisions were appealed and of these 60% were successful. Since the appointment of experienced former practitioners as Arbitrators, the appeal rate has dramatically dropped. We are concerned that should Arbitrators not experienced in the field

¹ All statistics obtained from Submission No 13 to this inquiry.

² Ibid.

be appointed the rate of appeals may again rise, thus creating an inefficient and costly tribunal.

Lack of Cost Savings

As the Commission is funded by the WorkCover Authority and not through Treasury there would not appear to be any cost savings that could be otherwise achieved by combining the Commission with any other tribunals.

Other Jurisdictions

We are not aware of any other jurisdiction in Australia that has merged its version of the Workers Compensation Commission with other tribunals and we are of the view that there is no compelling case to do so in New South Wales.

The Direct Experience of our Membership

Our members have generally had very positive experiences with the Commission. The vast majority of cases that our members bring before the Commission are dealt with very quickly, which is most important when dealing with people who are suffering an immediate loss of income.

Conclusion

As such we can see no compelling case to alter the current arrangements in relation to the Commission.

Reinstatement of Injured Worker Provisions

Although not strictly related to the Commission, an important function that the NSW Industrial Relation Commission (**IRC**) performs is in relation to protection of injured workers under Part 8 of the *Workers Compensation Act 1987*. Under this part, the IRC has the power to reinstate an injured worker whose employment had been terminated because of injury and who is fit to return to work within two years of the injury. Any changes which are contemplated to the IRC must therefore take into account this important role that the IRC plays in relation to the rehabilitation of injured employees.

Question raised by the Mr David Shoebridge highlighted on pages 36-37 of the transcript in relation to contract determinations:

In answering this question, it is important to distinguish between the different types of contract determinations and contract agreements.

Contract Determinations - Industry

Contract determinations can be broadly divided into two categories: industry contract determinations, which cover either the whole or different parts of the transport industry; or enterprise contract determinations, which cover individual enterprises.

The following are examples of industry contract determinations that cover all owner drivers in NSW:

- *Transport Industry – (GST Protocol) Contract Determination*
- *Transport Industry – Mutual Responsibility for Road Safety (State) Contract Determination*
- *Transport Industry – Redundancy (State) Contract Determination*

The following are examples of industry contract determinations that cover a certain part of the transport industry:

- *Taxi Industry (Contract Drivers) Contract Determination*
- *Transport Industry – Car Carriers (NSW) Contract Determination*
- *Transport Industry – Concrete Haulage Contract Determination*
- *Transport Industry – Courier and Taxi Truck Contract Determination*
- *Transport Industry – Courier and Taxi Truck (Superannuation) Contract Determination*
- *Transport Industry – Excavated Materials Contract Determination*
- *Transport Industry – General Carriers Contract Determination*
- *Transport Industry – Interstate Drivers Contract Determination*
- *Transport Industry – Quarried Materials, &c., Carriers Contract Determination*
- *Transport Industry – Waste Collection and Recycling Contract Determination*

All of the above industry contract determinations set the minimum rates and conditions for the part of the industry that they cover. See [9.2] – [9.4] of our original submissions for a further explanation of contract determinations.

Contract Determinations – Enterprise Specific

There are also several enterprise specific contract determinations which set the rates and conditions for owner drivers at a particular enterprise. There are around five of these currently in operation, though it must be remembered that a contract agreement has largely the same effect as an enterprise contract determination and there are more contract agreements than enterprise contract determinations.

Contract Agreements

In the last few years, there have been 14 contract agreements registered with the NSW Industrial Relations Commission (IRC). See [9.5] – [9.6] of our original submissions for a further explanation of contract agreements.

Importance of the IRC

The importance of the IRC in administering and enforcing contract determinations and contract agreements cannot be understated. We have addressed this importance at Chapters [10] and [11] of our original submissions. There is a clear risk that should the IRC lose the power of setting and enforcing contract determinations and contract agreements there would be no minimum rates and conditions for owner drivers in this state. We would reiterate the point we made at [9.7] of our original submissions should any changes be made in relation to the powers of Chapter 6.

The Transport Industry - Fuel Levy Contract Determination

In 2008 the TWU made an application to the IRC to insert a Fuel Levy into relevant industry contract determinations. The issue was that due to the rapidly rising cost of fuel at the time, owner drivers costs were rising without their levels of remuneration rising at a comparable rate. In essence, the work that owner drivers were performing was becoming unprofitable meaning that they either had to accept less profit or drive longer, potentially more dangerous hours to make the same amount of money.

The IRC approved implementation of the Fuel Levy, which set out a formula so that as the cost of fuel rose owner drivers levels of compensation also rose. Principal contractors were then able to pass this extra cost onto their clients to recover the extra amount they were paying to owner drivers. The Fuel Levy was then inserted into every relevant industry wide contract determination. This is a clear example of the ability of the IRC to efficiently address problems in the transport industry, and without this ability owner drivers simply would have had to absorb the extra costs of fuel.

Authorised by Transport Workers' Union of NSW State Secretary Wayne Forno.

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