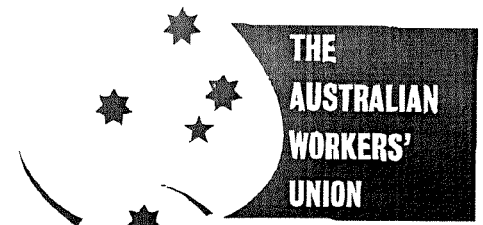
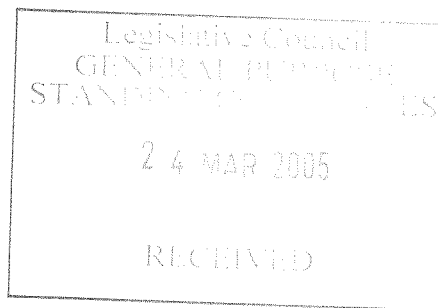


INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

Organisation: The Australian Workers' Union
Name: Mr Russ Collison
Position: State Secretary
Telephone: 9897 3644
Date Received: 24/03/2005

Subject:

Summary



23rd March, 2005

Director
General Purpose Standing Committee No.1
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Attention: Stephen Frappell, Committee Officer

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RUSS COLLISON
State Secretary
Branch Secretary

Dear Sir,

RE: INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

The Australian Workers' Union, Greater New South Wales Branch thanks the Committee for its indulgence in receiving this submission subsequent to the notified closing date of Friday, March 11, 2005.

This organisation does not wish to make any submissions with respect to items 1 to 4 in the Terms of Reference as these matters are beyond the knowledge of the Organisation but does wish to, within the ambit of item 5, make submissions with respect to the questions of benefits available under existing legislation to injured workers and other injured people pursuant to legislation covering persons injured in motor accidents, transport accidents, accidents in the workplace, at public events, in public places and in commercial premises.

It is submitted that the legislation to which we have referred creates different classes of injured people depending upon the circumstances in which injuries were sustained and that benefits available to people injured in motor accidents, transport accidents, at public events, in public places and in commercial premises.

It is clear that workers injured in the workplace can only access damages in circumstances where the injuries sustained were as a consequence of the negligence of the employer and where that worker can demonstrate 15% whole person impairment as determined by the American Medical Association Guidelines. It is submitted that this threshold is far higher than the threshold imposed on other classes of injured people and indeed no where near as generous as the threshold as determined by the Civil Liability Act (NSW).

It is submitted that it is desirable that there be one test for qualification for injured people to qualify for damages in circumstances where they are the victim of another parties' negligence and that test should be the test provided for under the Civil Liability Act (NSW) rather than any test which might be considered the lowest common denominator.

Further concern is the use of a system of Approved Medical Specialist in the workers compensation area and in the motor accident area for the purpose of determining degrees of impairment rather than allowing such matters to be determined by Judges or legally qualified Arbitrators who can demonstrate an expertise resulting from practice in the now defunct Compensation Court of New South Wales, the District Court of New South Wales and the Supreme Court of New South Wales.

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The practice of having impairments determined by medical practitioners whose findings are binding and of having benefits determined by Arbitrators who either lack legal qualifications or who cannot demonstrate an expertise in workers compensation cases or motor accident cases is not as satisfactory as the process provided by the Civil Liability Act (NSW) and should be replaced by the process by the Civil Liability Act (NSW).

It is the experience of this Union that its members are receiving benefits grossly inferior to those benefits previously available to them prior to the amendments to the Workers Compensation Act in 2001 as a consequence of the removal of the benefits flowing from the then Table of Maims and substitution for the use of the American Medical Association Tables as applied by Approved Medical Specialist and the imposition of a most unjust threshold as a gateway to the entry into damages as determined by an appropriate Court, despite the assurance that no worker would be worse off as a consequence of these amendments. In short this Union would support any proposal and submits that this Committee give due consideration to recommending that seriously injured workers and victims of motor vehicle accidents and of injuries sustained elsewhere as previously described have access to benefits similar to those provided for by the Civil Liability Act (NSW) and that the awarding of such benefits be placed in the hands of Judges and suitably qualified Arbitrators with the necessary expertise and proven experience.

It is further submitted that those charged by the Workers Compensation Commission with the responsibility of determining the entitlements of workers to workers compensation benefits in areas where there is no allegation of negligence against the employer also be required to demonstrate the level of expertise and qualifications which we submit be applied to Judges and Arbitrators appointed to determine entitlements to damages.

If it would be of assistance to the Committee the Union would be able to provide case studies of members disadvantaged in the manner previously submitted but it is confident that case studies have already been presented by other interested parties who have lodged prior submissions.

Yours Sincerely,



Russ Collison
STATE SECRETARY