

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

Organisation: Construction Forestry Mining and Energy Union (CFMEU)
Construction and General Division
NSW Divisional Branch

Name: Ms Rita Mallia

Position: Senior Legal Officer

Telephone: 9749 0480

Date Received: 18/03/2005

Subject:

Summary



Construction Forestry Mining & Energy Union

Construction & General Division

New South Wales Divisional Branch

12 Railway Street Lidcombe NSW 2141
Phone 02 9749 0480 • Fax 02 9749 3680 • Email: rmallia@nsw.cfmeu.asn.au
Locked Bag 1 Lidcombe NSW 1825

18 March 2005

The Reverend The Honourable Gordon Moyes MLC
Committee Chair
General Purpose Standing Committee No 1
Legislative Council

By facsimile: (02) 9230 3416

Attention: Mr Stephen Frappell

Dear Sir,

Re: Inquiry into Personal Injury and Compensation Legislation

I refer to the above and enclose the CFMEU's submission.

Yours faithfully,

Rita Mallia
Senior Legal Officer



CONSTRUCTION FORESTRY MINING AND ENERGY UNION (NSW BRANCH)
CONSTRUCTION AND GENERAL DIVISIONS SUBMISSION TO THE
GENERAL PURPOSE STANDING COMMITTEE

RE: INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION.

The CFMEU is concerned about the current approach to injured workers in NSW. It is a tragedy that seriously injured workers in this State, are not receiving proper and adequate compensation and have been substantially disadvantaged by the retrospective amendments made to the Workers Compensation Act in 2001. In the construction industry, the CFMEU has had to deal with overwhelming numbers of its members who, as a result of the 2001 workers compensation amendments have been:

- denied access to any proper lump sum compensation for loss of wages and earning capacity as result of their injuries;
- been denied any sort of dignified exit from the workers compensation system or chance to bring closure on what is a life altering event in the case of serious injury;
- subjected to absurd and arbitrary outcomes as under the "American Medical Association Guidelines" (as amended by WorkCover) now being used as a binding yardstick to determine compensation rights and in the case of seriously injured worker effectively their whole future.

The CFMEU and its members (who form a large and diverse cross section of the community) believe the current legislation fails to adequately take into account the reality of what happens to a person who has suffered a serious injury at work and the effect it has on his or her family. A serious injury to one of our union members often means a nett wage loss of at least \$500.00 to \$1,000.00 net per week for the remainder of their working life and often that union member is the sole bread winner in the household. The loss of self esteem; the emotional and financial devastation an injured worker and his or her family experiences when forced by serious injury to rely on workers compensation as a long term future is totally ignored by the present

process. The present system simply fails to provide adequate compensation for loss of wages and earning capacity in cases of serious injury serious injury and fails effectively fails to provide a seriously hurt worker a real chance to restore his or her sense of standing within their family, friends and the wider community.

NSW workers now have to overcome the highest and most arbitrary threshold (15% whole person impairment as per the AMA 5th edition Workcover Amended Guidelines or more commonly known as the "15% WPI threshold") compared to any other system of compensation in this state. The current threshold is so high that it has effectively abolished the rights of workers to bring a common law claim for loss of earning capacity and wages. The CFMEU questions why injured workers should be treated any differently from someone injured in a car accident or who may suffer an injury that is not work related or for that matter, why workers have less rights than high profile persons who are allegedly defamed. Currently, workers who suffer serious injuries, no matter how gross the negligence by his or her employer, are simply denied the same rights as a person who is hurt in a non work situation. There is no justification for this. The CFMEU strongly recommends the following reforms:

- The 15% WPI threshold presently used by Workcover is way too high and should be lowered so that at least a worker is no worse off than say a person who may have been injured in a non work situation.
- Workers be given the same rights as person hurt in non work situations that is, entitlement to have a Judge or a legally trained and experienced Arbitrator determine on the basis of evidence before them if a worker's injury is sufficiently serious enough to allow them to claim their real wage loss as a result of the injury.
- Seriously hurt workers, who will obviously be disabled for the remainder of their working life, should be given a real choice to "exit" the workers compensation system once it is clear no further medical treatment or rehabilitation is likely to improve their situation, so as to bring some closure to this episode in their life and be allowed to move on without the psychological stigma or label of being on payments of weekly compensation. The present system only promotes insurers (who at the expense of WorkCover and ultimately employers) continue on with unnecessary and expensive,

medical consultations, "job log systems" and so called "rehabilitation" which are all unlikely to have any real success. The insurer can further under section 52A of the Workers Compensation Act stop payment altogether of any weekly compensation after two years on the basis a seriously injured worker cannot get work due to the "state of the labour market." The seriously injured worker has little or no control over his or her future or life.

- Seriously injured workers who have clearly established long term disabilities should be entitled to a right to receive their payments of weekly compensation on a weekly basis, directly into their bank account as per their pre-injury situation before being injured. At present, the Union receives an inordinate number of complaints from injured workers who fail to receive their payments of weekly compensation on time with insurers cheques often being received many weeks late and in arrears for a number of weeks. Often workers find themselves under threat of mortgage default or eviction by the time insurers send a cheque out. The method of the payment system is totally inadequate and varies widely from insurer to insurer.
- The system should provide for proper legal representation of ordinary workers who, for a host of reasons, (often due to educational or their background), are disadvantaged and not in a position to enforce their supposed rights in the Workers Compensation Commission. Entitlements and legal rights are meaningless to workers without access to proper legal advice.

NSW workers who have been seriously hurt on the job deserve far better than the third rate justice and social security system currently meted out to them by the present WorkCover system.

Enclosed herewith are just a few of many real life cases this Union comes across every day. Hopefully, these examples will make clear to the Standing Committee the unfairness and some of the absurdities in the present system and how it effects and average worker and his family. The surnames in the following examples have been deleted to maintain their privacy however we would be pleased to arrange a meeting between the Standing Committee and any number of these workers and provide further documents such as medical reports that would assist the Committee.

The CFMEU looks forward to meeting with the Standing Committee in person and providing the Committee with an opportunity to hear first hand the experiences of the many ordinary people who have been affected by the 2001 workers compensation amendments.

Andrew Ferguson
State Secretary
CFMEU (Construction & General Division)