

## **PAPER ON PERSONAL INJURY AND RELATED ISSUES**

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- The CFMEU believes the focus for any tort reform should not be on the cost in dollars but proper consideration must be given to the human costs.
- CFMEU officers in giving evidence to the Upper House Inquiry into Personal Injury provided many examples as to how the 2001 changes have detrimentally affected seriously injured workers.
- It is trite to say that Unions opposed the raft of changes made to the workers compensation system in 2001.
- The CFMEU has serious concerns about the current approach to injured workers in New South Wales. It is a tragedy that seriously injured workers in New South Wales are not receiving proper and adequate compensation. In the construction industry we have many examples where workers under the new scheme have ended up with less money than they would have before the changes.
- The CFMEU and other Unions are concerned that seriously injured workers 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 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 net 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 and 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 Union 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.
- We want to see some reform in this area including;
  - ⇒ An abolition, or at the very least, a lowering of the 15% WPI threshold. 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. We would like to see a more fairer system in place to determine workers common law rights. The CFMEU is opposed to the use of binding medical determinations in this area.
  - ⇒ 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) to 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.
- ⇒ 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 representation.

### **The Workers Compensation Process**

- There have been some improvements, with the introduction of the provisional liability provisions in the Act which are working to ensure that payments are commenced more quickly.
- The Union does not object to the provision of meaningful rehabilitation services. The Union wants to see employers take on injured workers and give them suitable work.
- The system however lets down those who are long term unemployed and places them in a terrible position. We are talking about someone who realistically will not return to work because of the extent of their injury.
- But, the current system does not allow seriously injured people who are incapacitated for work long term an out from the drip-feed of weekly benefits. A single person who has been off work for more than 6 months receives the statutory sum of \$334.10 gross. Most people cannot live on this kind of money in Sydney.
- Many of members suffer extreme financial hardship, they get injured, lose their jobs and it is common for marriages fail and homes are lost under the stress.
- Insurance company claims officers can be ruthless; by not reimbursing expenses promptly, refusing to deposit funds by EFT and the latest is withholding workers money because injured workers have not filled in a "job-seeking log". The Union has assisted members who have found themselves in this position. It is also not uncommon to ring up an insurer to chase up a payment and to have a claims person say that they have been on leave so the payments have not been processed.
- It is often unrealistic to expect a worker who comes from a non-English speaking background, or who has worked on the tools all his or her life to be able to find a new job that is suitable.
- Workers should be able to receive a lump sum, a commutation, to get off the system in the long term. It would help them to organise themselves financially and get on with living their lives.
- We have also got examples of where the Workers Compensation Commission is deficient in its processes and we are concerned about the impact of this on injured workers.
- 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. As stated above 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.

### **Conclusion**

- In any reform debate there needs to be taken into account the very human cost associated with being the victim of personal injury. There are real people behind claims who deserve just compensation.