Committee Secretary
Centre of Education and Employment Committees
PO Box 6100, Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

RE: *SAFETY, REHABILITATION AND COMPENSATION LEGISLATION AMENDMENT BILL 2014*

The CFMEU Mining and Energy Division welcome the opportunity to comment on *the Safety, Rehabilitation and Compensation Legislative Amendment Bill 2014.* Members of your Committee will be broadly aware that the jobs of our members in the mining and energy sector are generally amongst the most dangerous jobs in the country.

We support the ACTU submission to this Inquiry, and wish to highlight our industry specific concerns on behalf of our members.

We are deeply concerned by the proposal to open up the Comcare scheme to new licensees. Comcare is known widely among workers to be a third rate compensation scheme with less cover for injured workers and it is incapable of monitoring and regulating work place health and safety outside Canberra. We are aware that Comcare has the cheapest employers' premiums, but this comes at the expense of those injured workers who under Comcare receive less support compared to other schemes.

The Bill also proposes to takes away important rights and protection for injured workers but appears mainly designed to 'open up' the Comcare scheme to private employers who wish to self-insure. The limited capacity and regulatory resources of the relatively small Comcare inspectorate mean there are significant risks for workers arising from lack of health and safety monitoring, lack of monitoring to ensure employers meet 'return to work' obligations and no time frames on employer obligations to make medical and other compensation payments when they are injured.

There are many reasons why the CFMEU Mining and Energy Division oppose any further expansion of Comcare and oppose the passage of this Bill. Our reasons include, but are not limited to:

Work health and safety

1. Comcare as a regulator lacks the resources to adequately ensure compliance and enforcement of its Work Health and Safety jurisdiction. Comcare has only 44 field inspectors[1] nationally. More than 70% of Comcare's staff are located in Canberra[2].

[1] Comparative Performance Monitoring Report 14th Edition
[2] SRCC and Comcare Annual Report 2011-12

2. The Bill proposes to extend the coverage of the Work Health and Safety Act 2011 (Cth) (Comcare Health and Safety regulations) to all companies that obtain a license under Comcare. This would abolish the jurisdiction of state health and safety regulators in relation to new licensees under Comcare, effectively in our industries, removing the availability of oversight by a regulator.

3. The bulk of our membership currently has the specialist Coal Mining Acts as the applicable OHS laws applying in their workplaces and the Model Act. The applicable instrument in the case of Comcare insurers is completely inadequate to manage the OHS risks associated with the mining sector, Coal Mining in particular.

4. The Union worked very hard to ensure that miner's lives are not paced at risk by the recklessness of some employer organisations in their desire to have the minimalist "Model Act" provisions usurping the meticulously developed and internationally recognised "best practice" mining OHS statutes in Queensland and New South Wales. This Bill would allow the downgrading of miners OHS protections through the back door process of Comcare expansion of the availability of self-insurance licences.

5. In the Queensland and NSW coal OH&S jurisdictions, District Inspectors are elected by and from the workforce and work in conjunction with State Government Inspectors looking after the health and safety of employees in the coal mining industry in both States. Employees report and engage with these personnel who work to prevent accidents and risks occurring in the first place. The Government might say this is "red-tape" but it saves workers from work place injuries and work-related illness and disease. Proactive prevention would be lost under a shift to the Comcare jurisdiction.

6. For example, through the efforts of testing, monitoring and assessing dust levels in coal mines in both Queensland and NSW, we have seen the complete eradication of pneumoconiosis (black lung). This is despite an increase in this terrible disease in other coal mining countries in the World most notably the USA.

   The testing and monitoring of dust and diesel particulates in the coal industry in both States is strictly set out and enforced in State Legislation. This would also be lost if employers are able to obtain self-insurance licenses under Comcare.

Loss of benefits and protection for injured workers' when an employer licenses under Comcare

7. The Comcare scheme removes meaningful Common Law access available to injured workers under the respective state schemes. The nature of injuries and diseases in our industry can virtually destroy the lives of injured workers and the dignity that the common law provides to them as breadwinners and their families can mean the difference between saving or losing a home.

Return to Work

8. Despite Comcare promises to improve over the years, Comcare is a consistently poor performer in the critical area for our members – rehabilitation and return to work. It appears not to monitor Comcare employers in this area, and our members who wish to get back to work as soon as they are able, are driven to frustration and anxiety by a system that does not support them.

Unions were opposed to scheme swapping under the Howard Government because workers would lose rights and don't get a say. The situation hasn't changed and the Union remains opposed to the expansion of Comcare and the consequent diminution of vitally important OHS protections

New exclusions from cover in the Bill - Injuries caused by 'willful misconduct'

9. Currently, all Australian workers compensation schemes provide compensation for injuries resulting in death or serious and permanent impairment that are thought to be caused by the serious and willful misconduct of a worker providing the injury was not intentionally self-inflicted. This would make Comcare the only Australian workers compensation scheme that does not have this protection. This change would affect the most vulnerable injured workers and the families of the deceased worker and it is difficult to imagine the meanness of spirit that has proposed this unnecessary change.

10. How for example, can a deceased worker defend themselves against an employer allegation that they injured themselves willfully and intentionally?

11. The Fair Work Commission has recognized safety breaches as valid reasons for dismissal and misconduct. Such breaches may also contravene statutory obligations that are enforceable as an offence, which increases the likelihood that such breaches would be described as serious misconduct at least by employers. In those circumstances, there is some risk these amendments would leave a worker who is unable to defend themselves; both without a job and without any compensation for a mistake they have already paid an enormous price for in the form of a serious injury.

Re-introduction of Exclusion - 'Recess in Employment'

12. The Bill proposes to yet again remove this entitlement.

13. Injuries during recess breaks are covered in most major schemes[3] including NSW and Queensland as access breaks are seen as part and parcel of a worker's employment. There is no grounds for removal of workers compensation cover for our members who must often travel between worksites or work in regional areas and where it is necessary to leave to work site to obtain lunch or a drink.

Extension of Exclusions - Submission to an Abnormal Risk of Injury

14. The Bill proposes to amend section 6(3) of the SRCA, extending the operation of the exclusion that applies during a recess break, to include injuries sustained whilst a worker is undertaking their usual employment duties.

15. The SRCA provides no definition of what is considered an abnormal risk of injury and neither does it define what constitutes "voluntarily" or "unreasonably". The absence of definitions will arguably permit insurers to make decisions about what is an "abnormal risk of injury" and about whether the injured worker "voluntarily and unreasonably" submitted to such an injury.

[3] section 83 of the *Accident Compensation Act 1985* (Vic) and section 11 of the *Workers Compensation Act 1987* (NSW)

16. This poses enormous dilemmas for our members because the nature of their work which often and obviously involves risk of injury, yet these are required by their employers to undertake this work or risk their jobs.

17. There is no protection for workers who are asked or persuaded to undertake dangerous tasks by a representative of their employer. In these cases, although the worker may understand they are submitting themselves to an abnormal risk, they must weigh this risk against disobeying an order.

18. The ACTU has previously said that "Employers wishing to become or remain self-insurers must earn that privilege by bringing to workers' compensation systems a superior performance in all areas of injury prevention, claims management and occupational health and safety standards. Self-insurers should be role models for other employers in terms of workplace safety, claims management and occupational rehabilitation by virtue of their special status".

Cost savings from the proposed amendments are a false economy

19. The current tests under s104 (2) (c) and 104(2A) of the Act have failed to prevent a loss of rights and/or entitlements for workers when the granting of the license removes them from State schemes. It does not matter how poorly Comcare licensed employers have behaved towards injured employees, experience has proved Comcare will not revoke an employer's self-insurance license.

20. The effect of the Bill is mainly to allow de-regulation of work place health and safety, inferior workers' compensation and self-insurance that is cheaper for employers because it provides fewer benefits for workers.

21. A table of savings is attached to the Regulation Impact Statement that comes with the Bill. Given the devastating cost of work places injuries to workers and their families every year, we do not believe that the 'red tape' savings for employers are justified. Small saving for employers, but at what cost to our member's and the Australian workforce?

We believe the Bill should be opposed.

Yours sincerely

Tony Maher
President
CFMEU Mining & Energy