

## **Future of Work**

### **Rehabilitation and Compensation for Injured Workers Policy**

#### **Introduction**

1. Congress reaffirms its primary position that every worker has the right to go to work and come home safely. Yet with extremely high levels of work-related injury, disease and death still a shameful reality in Australia, Congress also reaffirms its position that the rights of injured workers are of fundamental significance.
2. Congress recognises that effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers, their families and the wider community.
3. Accordingly, Congress reaffirms its position that after sustaining a physical or psychological work-related injury, all workers are entitled to comprehensive and quality rehabilitation services; and to return to suitable and decent employment. Further, injured workers are entitled to compensation that restores them to the position they enjoyed prior to their injury.
4. Congress reaffirms its position that improvements and consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. While the long standing Congress aim of establishing a national scheme to deliver these outcomes remains valid, Congress acknowledges that this is not the only way to achieve this objective. As such, Congress affirms that achieving national consistency and world's best practice in these areas is of paramount importance.

## Rehabilitation and Return to Work

5. Congress calls upon employers and governments to work with unions to provide rehabilitation services that achieve maximum recovery and prepare injured workers, wherever possible, to return to their previous position. In cases where this is not possible, then workers must be redeployed to the most suitable position in respect of their aptitude and capacity.
6. Congress calls upon governments to work cooperatively to ensure that existing rehabilitation services are properly accredited, coordinated and expanded so that they are accessible to all injured workers.
7. Congress recognises that in many cases the rehabilitation of injured workers does not facilitate their return to suitable and meaningful employment. As such, effective rehabilitation services must also deliver genuine retraining programs to meet this objective.
8. Congress believes that for rehabilitation services to be effective they must:
  - a) Be implemented properly and without regard to the insurers' cost assessments;
  - b) Ensure that employers health and safety management systems enable the immediate reporting of injuries;
  - c) Return workers to their full capacity in their workplace, community, family and life;
  - d) Return workers to safe, meaningful and durable employment as early as possible;
  - e) Actively involve unions and their members in consultation and decision making;
  - f) Have the commitment of the employer to the above aims; and
  - g) Be independent of the employer or insurance company.

9. Congress supports the development by unions and employers of rehabilitation policies and programs that are based on the following principles:

- a) Voluntary participation by the injured worker;
- b) Respect for the worker's privacy;
- c) No loss of income while participating in the program;
- d) Eliminating or controlling the hazard that caused the injury;
- e) Consistency with the medical advice of the worker's own doctor;
- f) Employer cooperation in the provision of suitable duties, modified work stations and retraining or redeployment opportunities;
- g) Access to the advice and assistance of multi-disciplinary professional teams;
- h) The injured worker's right to choose their rehabilitation provider;
- i) That rehabilitation be provided to the injured worker at the closest possible location to their home or workplace;
- j) The development of appropriate and effective individual return to work plans;
- k) An individual assessment of the injured worker and their workplace;
- l) The adaptation of the workplace to suit the injured worker's capacity;
- m) The development of an appropriate timetable for returning the injured worker to their previous position, or the most suitable alternative, that is consistent with the level of their capacity;
- n) The involvement of union representatives and injured workers in decisions concerning alternative duties, rehabilitation programs and retraining; and

- o) The commitment by all parties to provide an environment in the workplace that is supportive of the injured worker with adequate training of employees, supervisors and management in the rehabilitation policies and procedures adopted.
10. The employer must ensure that participation in a rehabilitation program or the rehabilitation program itself will not prejudice an injured person. Furthermore, an injured employee must not be dismissed or have their employment damaged because of a work-related injury or any resulting temporary impairment for at least 2 years after the later of either:
- a) The date on which the employee is certified fit for work; or
  - b) The date on which the claim for compensation is accepted.
- In the event of dismissal of the injured employee or damage to their employment the applicable tribunal will be empowered to review and remedy the situation.
11. Regulatory authorities must enforce workers' rights to rehabilitation and to return to work.
12. All workers must be provided with a comprehensive statement detailing their entitlements regarding rehabilitation and return to work.

## **Workers' Compensation**

13. Congress believes that nationally consistent workers' compensation standards must:
- a) Be available to all members of the workforce regardless of the retirement age (including the self-employed) and provide compensation for all injuries that arise out of, or in the course of work, including:
    - i) Travel and recreation breaks;
    - ii) All diseases caused by, exacerbated or accelerated by employment; and
    - iii) Be available upon the death of a worker to their dependants.
  - b) Be primarily an income replacement scheme that provides 100% of lost earnings. This must take into account any progression or promotion that would have been available to the worker had they

not been injured. Unions oppose schemes that: do not recognise overtime and penalty rates; have a financial ceiling or a maximum period of payment; are inequitable and/or inadequate.

- c) Be based not only on physical or psychological impairment, but also on an assessment of the potential of the injured worker to be re-employed. Factors such as the age, abilities, place of residency, language and literacy skills, and the experience of the worker must be considered in relation to the injury sustained.
- d) Provide for the total cost of all medical, rehabilitation and other expenses including special aids, childcare, domestic assistance, motor-vehicle and house alterations incurred by the worker.
- e) Provide lump-sum compensation for any permanent disability sustained including pain and suffering associated with the disability.
- f) Ensure that unfettered common law rights for workers to sue their employer for negligence are enshrined in legislation in addition to other forms of statutory compensation.
- g) Achieve the physical, social and psychological rehabilitation of injured workers, as well as attempting to equip them to return to their pre-injury employment. Where this cannot be achieved, the aim must be to provide genuine retraining to achieve meaningful and productive alternative employment.
- h) Ensure that the employer provides suitable employment for injured workers, and in the absence of this, that the injured worker maintains full and ongoing benefits.
- i) Ensure that the delivery of benefits is speedy, efficient and fair. Delayed payment and treatment will result in physical, psychological and financial hardship to injured workers.
- j) Provide for the establishment of Dust Disease Tribunals (based on the current NSW model) in all jurisdictions to administer the delivery of benefits to workers suffering dust diseases.
- k) Ensure that the administration and funding of workers' compensation (except for the administration of dust disease benefits) is carried out by a single public body, which is controlled by a board or council comprising of equal numbers of government, union and employer representatives.

- l) Provide an independent appeals tribunal that has the power to arbitrate on disputed claims. This tribunal should be cost neutral to the appellant.
- m) Ensure the receipt of workers' compensation by a worker does not preclude them from accessing any social security benefit, to which a person in receipt of another type of income support, such as benefits from an insurance policy, would be entitled to receive. Further, a worker's superannuation or redundancy payment should not impact on the timing, or the amount of their compensation payment.
- n) Ensure that every worker has access to a doctor of their choice; and that if their doctor recommends medical treatment the worker can choose the medical provider.
- o) Ensure that disputes over workers' compensation claims are dealt with expeditiously and with minimum impact on injured workers. Dispute settlement processes must be quick, accessible and low cost for workers.

## Self-Insurance

- 14. Congress opposes self-insurance for employers as it generally limits access to benefits, compromises privacy, undermines the premium pool and discourages workers from exercising their rights. However, Congress recognises that self-insurance currently exists in all jurisdictions. Therefore, Congress believes that self-insurance should only be available to employers who have an exemplary record in health and safety and a demonstrated commitment to workers' rights. Further, self-insurance licenses must be automatically revoked in cases where there is a workplace death or serious injury.
- 15. Congress believes that the administration of workers' compensation by self-insurers must be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client, to fully protect employee privacy.
- 16. Congress calls for workers to have access to an independent body which can review an employer's self-insurance status. Further, employers seeking to become, or to remain, self-insurers must be able to demonstrate that the majority of their employees genuinely favour this option.

## Achieving National Consistency and World's Best Practice in Rehabilitation and Workers' Compensation

17. Congress reaffirms its position that the ACTU and unions must work towards the achievement of nationally consistent standards in rehabilitation and workers' compensation, which constitute a best practice scheme to be delivered by each jurisdiction.
18. Congress calls on the Federal Government to return Comcare to its original function as the scheme applying to Federal public servants and to return all private sector participants to the applicable State or Territory run scheme/s.
19. The ACTU and unions commit to supporting injured workers; and to ensure that education about rehabilitation, return to work arrangements and compensation issues, are included in training for delegates, health and safety representatives and union members.
20. Congress resolves that the ACTU will work with Trades and Labour Councils and affiliates to commence an urgent campaign to improve rehabilitation services, return to work arrangements and compensation for injured workers in each jurisdiction. The campaign will be properly resourced, with budgetary provision made for its effective implementation.
21. Congress calls for improvements to be made in the form of:
  - a) Comprehensive coverage of the work relationship, including on journeys to and from work;
  - b) A return to a basis of 'no-fault' compensation for all workplace injury and diseases;
  - c) Abolition of the illegitimate use of 'whole of body assessments', which act to reduce compensation and limit access to statutory lump-sum payments and common law remedies via legislated minimum thresholds;
  - d) Introduction of genuine rehabilitation options, including full technical or tertiary retaining;
  - e) Removal of time limits and step downs on weekly payments that effectively shift the injured worker onto social security benefits;

- f) Maximising the resources in a scheme by removing profit incentives to third parties, thus ensuring that benefits are distributed to workers; and
  - g) Fast and effective conciliation and arbitration of any workers' compensation matter in dispute by an independent tribunal.
22. To properly achieve this aim, research needs to be undertaken to provide an injury profile for the entire Australian economy upon which an appropriate workers' rehabilitation, return to work and compensation package can be developed. Congress calls on the Federal Government to commission this research as a matter of urgency.
23. Congress calls on the Federal Government to establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes onto injured workers and government services, including the public health system and social security.