

WORKERS COMPENSATION AND REHABILITATION POLICY

ACTU Congress September 1989

1. PREAMBLE

1.1 Since the adoption in 1985 of the ACTU Policy on Workers Compensation, as part of the Working Conditions Policy major changes to legislation have occurred in New South Wales, Victoria, South Australia, the Northern Territory and in the area of Commonwealth employment. In addition a Bill has been introduced to reform the Western Australian Workers Compensation and Assistance Act and a Report recommending reform of the Seamen's Compensation Act has been made to the Federal Government.

1.2 More recent changes in Workers Compensation in some areas have involved attempts by Governments to turn back some of the gains made by unions in establishing greater financial protection for injured workers.

1.3 The aim of establishing a national rehabilitation and compensation scheme would appear to be even more remote than it was in 1985. The influence of workers compensation costs on the economy at a State level and the way in which these costs have been manipulated as a component of State economic policy would seem to ensure that State Governments will wish to retain control over workers compensation schemes.

2. WORKERS COMPENSATION

2.1 Congress reaffirms its support for the long term goal of a national rehabilitation and compensation scheme. Noting, however, the difficulties in attempting to achieve a national scheme, Congress reaffirms its support for unions and State Branches in working towards the achievement of uniform standards provided that any such universal code of workers compensation continue to be administered by the States as agents for the Commonwealth.

2.2 The objectives of uniform standards should be:

(i) Workers compensation should be available to all members of the workforce and provide compensation for all injuries that arise out of or in the course of employment including travel and recreation breaks and for all diseases produced, exacerbated or accelerated by employment. Compensation should be available upon the death of a worker and should also be available for the dependants of a worker.

At present some categories of worker are still excluded from workers compensation e.g. the crew of fishing vessels; some injuries are excluded from compensation e.g. industrial deafness under the Seamen's Compensation Act; and recent legislation in New South Wales would exclude journey injuries, and to the Social Security System.

(ii) The primary method of compensation should be an income replacement scheme that provides 100% of lost earnings which

would have been received but for the incapacity or death of the worker and which take into account progression or promotion that would have been available to the worker but for the injury.

Currently there is a wide variety of schemes operating throughout Australia. Many of these place a ceiling on the amount of compensation which a person may receive without regard to their incapacity. Some schemes are based on a flat statutory amount, others on a percentage of award wages and still others on a percentage of pre-injury income. Schemes which have a financial ceiling or a maximum period of payment are basically inequitable.

(iii) The right to compensation should be based not only on physical impairment but also on an assessment of the potential of the injured worker to be re-employed. Factors such as the age, skills and experience of the worker must be considered in relation to the injury sustained.

(iv) Compensation must also provide for the total cost of all medical, rehabilitation and like expenses including special aids, home help, motor vehicle and house alterations incurred by the worker.

(v) Notwithstanding compensation for income loss, lump sum compensation must provide for any permanent disability sustained including pain and suffering associated with the disability.

(vi) It must be the aim of any workers compensation scheme to achieve the social and psychological rehabilitation of injured workers as well as attempting to equip them to return to their pre-injury employment.

(vii) The requirement of the employer to provide suitable employment for injured workers and in the absence of this the ability for the employer to be subject to financial penalty.

(viii) The delivery of workers compensation benefits must be speedy and efficient. At present not all schemes have time limits imposed on those administering the scheme and workers can suffer financial hardship because of long delays in receiving payments.

(ix) The preferred administration and funding of workers compensation is by a single Public Body which would be under the control of a tripartite Board or Council.

(x) In achieving these objectives, the value of existing methods of compensation should not be diminished.

(xi) The receipt of workers compensation by a worker should not disentitle him/her to any social security benefit which a person in receipt of some other type of income support, e.g. benefits from an insurance policy, would be entitled to receive.

2.3 Congress calls on the Federal Government to take urgent action to reform the Seamen's Compensation Act to provide seafarers with at least the type and level of benefits which have been adopted by the Commonwealth Employees Rehabilitation and Compensation Act. Such legislation

should also recognise the nature of the industry and the particular problems associated with the rehabilitation of injured seafarers.

3. REHABILITATION

3.1 Congress believes that all workers are entitled to a safe and healthy workplace, adequate compensation benefits following an injury, and comprehensive quality rehabilitation services.

3.2 In addition to comprehensive financial compensation including access to common law actions, the victims of occupational injury and disease should be cared for by readily available quality rehabilitation and health care services. Rehabilitation can be defined as "the restoration of the injured to the fullest physical, mental, social, vocational and economic usefulness of which they are capable." It is a process which begins from the moment of injury or ill-health and continues until the worker is as usefully restored as possible. Accordingly, injured workers should have ready access to high quality medical care with on-site facilities being made available wherever possible. Such facilities should be approved by the relevant unions.

3.3 Congress supports the concept of rehabilitation and calls upon employers, Federal and State Governments to provide rehabilitation services which are designed to prepare injured workers, wherever possible, for the resumption of their previous activity or if this is not possible then the most suitable gainful activity having regard to the worker's aptitudes and capacity. Such rehabilitation services should be developed in consultation with relevant Unions and be linked to services aimed at the prevention of occupational injury in recognition of the ACTU's policy that the primary focus should be on the prevention of occupational ill-health.

3.4 Congress calls on Federal and State Governments to co-operate in ensuring that existing rehabilitation services are properly accredited, co-ordinated and expanded and to ensure that services are located in areas of greatest need.

3.5 Congress recognises that for many injured workers rehabilitation may require retraining and supports the development of retraining programs and appropriate work therapy programs developed in consultation with relevant unions and designed to enable injured workers to return to gainful employment.

3.6 Congress believes that in order for rehabilitation to be effective it must:

- (i) aim at returning workers to their full potential in their community, family and life
- (ii) return workers to safe, meaningful employment
- (iii) actively involve unions and their members in consultation and decision making

(iv) have the commitment of the employer to the above aims.

3.7 Congress supports the development by Unions and employers of rehabilitation policies and programs. Such programs should be based on:

- (i) voluntary participation by the injured worker
- (ii) no loss of income while participating in the program
- (iii) the program should be consistent with the medical advice of the worker's own doctor
- (iv) employer co-operation in the provision of suitable duties, modified work stations and retraining or redeployment opportunities
- (v) access to the advice and assistance of multi-disciplinary professional teams, which include members with experience in such fields as:

- physiotherapy;
- occupational health;
- occupational therapy;
- rehabilitation medicine;
- ergonomics;
- workplace design; and
- rehabilitation counselling.

access to appropriate linguistic and culturally relevant assistance.

(vi) individual assessment of the injured worker and his/her workplace and adaptation of the workplace to fit the injured workers capacities.

(vii) the development of an appropriate timetable for returning the injured worker to his/her previous job or the most suitable employment consistent with the level of his/her capacity.

(viii) involvement of union representatives in decisions concerning alternative duties, work therapy programs and retraining of injured workers.

(ix) commitment by all parties to provide an environment in the workplace which is supportive of the injured worker with adequate training of employees, supervisors and management in the rehabilitation policies and procedures adopted.