

Branch Newsletter

April 2014



CHANGES TO THE COMCARE SCHEME – REDUCTION IN WORKERS' ENTITLEMENTS

On 19 March 2014 the federal government introduced the *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014*. This Bill will take away important health and safety protection and threatens to remove access to workers' compensation for injured workers in a wide range of circumstances. It is likely parliament will debate the Bill after the Federal budget and politicians will thereafter decide whether it should be enacted or scrapped. Unions are working to ensure that politicians are aware of the dangers of the Bill and do not vote to pass the Bill in its current form. The proposed changes to the Comcare scheme would remove workers' rights in the following ways:

Health and Safety Regulation would be removed

The changes remove the requirement of employers to comply with State-based health and safety regulations. This would mean workers under Comcare would have a significantly lower level of protection than their state co-workers. Comcare has a small inspectorate nationally (45 in total) and has historically had low rates of proactive interventions and prosecutions.

It is likely this inspectorate may actually decrease in size. Indeed, the CEO of Comcare confirmed as much in the Senate Estimates Hearings in November 2013. At the same time, the Bill would allow more and more businesses to self-insure. This means more workplaces with less or no health and safety monitoring. We consider this will have a significant impact on the health and safety of workers under Comcare.

More disputes and more delays in accessing Comcare assistance

The changes open up the scheme to new self-insured employers with the concern that the system won't cope with the influx of claims. Workers will be waiting longer for their claims to be heard by the Administrative Appeals Tribunal and cuts to rights will result in more disputes. The AAT provides for an independent review of decisions after a claim is knocked back by an employer. Various registries cannot cope with the current claims and have taken to outsourcing their work to other registries that have capacity. The concern is that an influx of more claims will mean workers will be waiting years for an outcome.

New exclusions will affect the most tragic injuries

The government will exclude workers, even if they are severely injured or deceased, if their injuries are allegedly caused by their 'serious and willful misconduct'. At the moment, compensation is paid if a worker's injuries result in death or serious or permanent impairment, despite it being the result of serious and willful misconduct. There is good reason for this. When someone is so seriously injured or has died, they and their families have extreme difficulty in explaining the circumstances of a workplace accident. It will now be very easy for an employer to allege a worker's injuries are caused by their 'serious and willful misconduct'. This power imbalance is grossly unfair and needs to be removed.

Continued page 2

Workers injured in recess breaks won't be covered (2011 changes to be reversed)

The government will remove compensation for injuries which are suffered by workers who were temporarily absent from their place of work during an ordinary recess (e.g. while on a lunch break). Recess claims were removed by the Coalition in 2007, restored by Labor in 2011 and now removed again by the Coalition. It is the simple truth that if workers were not at work, they would not have been injured and therefore they should remain a workplace injury.

Injured workers will be excluded if they 'voluntarily and unreasonably submit to an abnormal risk'

The government will remove compensation for injuries in cases where the worker 'voluntarily and unreasonably submitted to an abnormal risk of injury'. Previously, workers who were injured whilst working were not excluded. Workers' compensation is a no-fault system and yet the government is intending to introduce fault, although addressing the fault of the worker whilst remaining completely silent on the fault of the employer. This is grossly unfair and needs to be stopped.

The upshot is the proposed changes to the *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014*, if passed are going to mean fewer rights for workers and more opportunity for employers to take advantage of those vulnerable in the workplace.

CAN I DONATE LEAVE TO A COLLEAGUE TO HELP THEM OUT IN DIFFICULT CIRCUMSTANCES?

This question was recently put to the Union and is not something that has previously been considered. It would seem that under current industrial law this is not possible but is apparently something that could be included in an enterprise agreement where there is an entitlement to days off in addition to statutory entitlements and also depending on the employee's terms and conditions of employment.

The following article was found on ABC NEWS on 7th May and makes for interesting reading and could potentially pave the way forward for something similar in Australia.

MOTHER CALLS FOR LAW TO ALLOW EMPLOYEES TO DONATE LEAVE TO THOSE WITH SERIOUSLY ILL CHILD

By Felicity Sheppard



Photo: French boy Mathys Germain who died from liver cancer. His father was gifted 170 days' paid leave to be with him. (D'un Papillon a une Etoile)

A mother whose son was diagnosed with leukemia has called for Australia to emulate a French law that allows generous employees to donate leave to colleagues with a seriously ill child.

France's parliament passed a bill last month, tabled by Loire MP Paul Salen in 2011, which was inspired by a real life story of goodwill where weeks of paid annual leave were gifted to a father so he could spend as long as possible with his terminally ill son.

On the other side of the world, New South Wales mother Sonja Malcolm has struggled to balance the needs of her son, who was fighting acute myeloid leukemia, with the family's financial obligations.

Continued on page 3

Four weeks after being dealt the "horrific" news that her son Liam had the life-threatening condition, she returned to work. "I worked for TAFE, full-time hours but I was casual," she said.

"You don't accumulate holidays, just sick leave. If I didn't work, I didn't get paid."

The family was eligible for a carer's allowance, but at \$114 per fortnight, it was not enough to cover the cost of hospital parking for the same period.

Ms Malcolm said she received generous, but ultimately, unusable offers of help from those around her, who she says would welcome changes to the law similar to those in France.

I had a number of colleagues ... they would say to me 'I've got months and months of accumulated leave. If I could give it to you, I would'."

Sonja Malcolm

"I had a number of colleagues who were long-term full-time employees ... they would say to me 'I've got months and months of accumulated leave. If I could give it to you, I would'," she said.

"It's such a simple solution. It's so logical and it's a way that people in the workplace can gather together to do something to help.

"For an organisation to be able to do that, it's of no cost to them aside from some administration."

Liam is now in remission but Ms Malcolm, who volunteers with the Cure our Kids charity, is only too aware of the many cancer families out there still doing it tough.

She believes any move to introduce a similar scheme in Australia would be met with "overwhelming support".

"I think one of the things you learn when you go through something like this is the capacity of people to step up and do things ... people want to help," she said.

Colleagues of French father donated 170 days of memories

When French man Christophe Germain's nine-year-old son Mathys was diagnosed with liver cancer, co-workers at mineral water company Badoit ran a collection to help.

But it was memories, not just money their kind gesture gifted the family.

With the approval of company bosses, workers dipped into their leave balances and gave what they could. Collectively, staff credited 170 days of paid leave to Mr. Germain, who "enjoyed every second" with his terminally ill son.

Mathys lost his fight with the disease, but his parents went on to create D'un papillon a une etoile, a foundation in their son's honour.

With the support of Mr. Salen, the foundation campaigned for changes to the law, which would allow workers across the country to credit leave to other parents of seriously ill children.

"This action is intended to allow parents whose child is sick and dying, to take advantage of great generosity, in [a] painful moment of life," a message posted on the foundation's website says.

Mathys loi (law) was passed by the French Senate on April 31, two years after the bill was passed by the National Assembly. Mathys' parents have welcomed the decision after what they describe as three and a half years full of doubt and hope.

Continued on page 4

Would gifting leave work in Australia?

Under current Australian laws, employees are unable to donate leave in order to ensure statutory entitlements are met.

But a spokesperson for the Department of Employment says enterprise agreements could allow for the donation of leave in cases where an employee is entitled to days off, additional to their statutory entitlements.

"Donating leave entitlements to colleagues is not generally permitted because employers are required to provide their employees with a minimum amount of leave under the Fair Work Act 2009," the spokesperson said.

"Where an employee is entitled to extra leave, in addition to the minimum statutory entitlements provided under the NES (National Employment Standards), donating part of that additional leave may be permissible, depending on the employees' particular terms of employment."

John Dugas, a human resource management lecturer at the University of Newcastle in New South Wales says legislating the donation of leave is "extremely progressive".

"They've had some interesting developments in France ... to try and get the work-life balance better," he said.

"This seems to be in the same vein.

"In Australia, we are allowed to trade our days for money, this falls somewhat in the same category. People say 'I'm prepared to forego leave, to pass it over to a colleague'."

Mr. Dugas says that while such a scheme would be generous, it would need to be carefully implemented.

"Notionally, it's wonderful and very charitable in terms of social behaviour," he said.

"But the devil is in the detail. Who defines what seriously ill is? Is it open for rorts?"

If it can be successfully implemented, Mr. Dugas says there are benefits that extend from workers to the workplace.

"The company may indeed find it does very positive things to its reputation at perhaps not very much cost," he said.

<http://www.abc.net.au/news/2014-05-07/french-law-allows-workers-to-donate-leave/5435968>

DIVISIONAL CONSULTATIVE MEETING [DCC] 27TH MAY

The next meeting of the DCC is scheduled for the 27th of May in Canberra. The Union has so far submitted the following items for inclusion on the meeting agenda:

- FSM appointments being substantive rather than filled with higher duties;
- Proposed Recruit physical protocol;
- Terms of employment for FIFO employees;
- Fitness testing and medical monitoring;
- Merit based selection process for promotion beyond LFF;
- FRMS2 project;
- Consultation station design Cat 8, 9 and 10 stations;
- Brisbane Station upgrade and renovations
- Compliance with workplace exposures and hygiene/decontamination as recommended in NFPA 1851
- Interpretation clause 6.18.1 in ARFF EA

Continued page 5

A comprehensive report on the outcomes of the meeting will be contained in our next newsletter.

The next scheduled meeting between the Senior Officers of the Union and the EGM is also scheduled for the 27th May following the DCC.

UFUA AVIATION BRANCH

Box 8, TLC Building
16 Peel Street
South Brisbane QLD 4101

Phone: (07) 3846 5580
Fax: (07) 3844 8026
Email: ufuavat1@bigpond.com.au
E-mail: someone@example.com

Branch President: Joe Stenhouse
Senior Vice President: Jon Vaughan
Junior Vice President: Simon Osborn
Branch Secretary: Henry Lawrence

BCOM Delegates

North Queensland: John Ring
South East Queensland: Karl McDonald
New South Wales: Al Lerpiniere
Victoria: Jake Callaghan
South Australia: Simon Osborn
Tasmania: Simon Owen
Western Australia: Les Milhinch
Northern Territory: Ricky Nolan

National WHS Co-ordinator: Mal Lacy
Deputy WHS Co-ordinator: Wes Garrett

Organizers

Cairns: Mike McCarthy
Mackay: David Tromba
Maroochydore: Derrick Runge
Coolangatta: Peter Young
Melbourne: Brendon Mimmo
Launceston: Trevor Mortyn
Perth: Vacant
Broome: Matt Reynolds
Karratha: John Le Bon
Ayers Rock: Perry Stedman
Avalon: Marc Jansen

Townsville: Tim Creighton
Rockhampton: Phil Turner
Brisbane: Karl McDonald
Sydney: Mat Crook
Hobart: Scott Greenwood
Adelaide: Wes Garrett
Darwin: Vacant
Port Hedland: Dennis Nixon
Alice Springs: Dan Thompson
Hamilton Island: Shane Campbell
Canberra: Vacant