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The Hon Danny Pearson
Minister for WorkSafe and the TAC
Assistant Treasurer
Minister for Transport Infrastructure
Minister for the Suburban Rail Loop

Email: danny.pearson@parliament.vic.gov.au

Dear Mr Pearson

Proposed WorkCover legislation changes

ANMF writes to express its significant concern with the changes contained within the WorkCover legislation currently before the parliament of Victoria.

Our request is for the following amendments to be made to what the Allan Government is seeking:

1. That any changes do not come into effect until RTW Victoria and its scope is established and functioning. There is currently no clarity on this important initiative, for example for those whose claim will be rejected due to the new criteria, are they able to access RTW Victoria?

   We recommend an amendment to clarify that a worker whose claim does not meet the amended criteria can access RTW Victoria.

2. That eligibility to access any changes to the definition of mental injury are not implemented until the new psychological health provisions in the OHS Regulations 2017 are also implemented. Employer obligations and work in relation to prevention is critical given the entitlements for workers are being curtailed. This will mean, at the very least, employers will be forced to take their obligations to prevent mental injury more seriously and implement controls to do so. It is a very real potential scenario that WorkSafe Victoria could be investigating/prosecuting an employer for failures under the OHS Act 2004 whilst the worker/s who were injured as a result of these failures would not be entitled to workers compensation. Consequently, prior to removing access to benefits, the very least that could be done for our predominantly female membership who will be impacted by this change is to address the empty regulatory space. Our members are deserving of support from Government on this issue.

   We recommend an amendment that confirms that the changed definition of mental injury does not come into effect until after the new psychological health provisions in the OHS Regulations 2017.

3. The Whole Person Impairment (WPI) test for ongoing benefits post 130 weeks combine physical and mental injuries. As the amended legislation is currently, should a nurse/midwife/carer who is the subject of an assault and suffers significant back/shoulder rib injuries also suffer a significant PTSD / other psychological injury, the physical and mental injuries will be considered separately. Were they both assessed at 18% WPI each, our members would not be eligible for ongoing payments because

they didn't meet the 20% for one or the other injury. This would result in a shameful injustice, given their likely inability to obtain other meaningful work as a result of their significant work-related incapacity.

We recommend an amendment that confirms that both physical and mental injury will be combined for the purposes of WPI where they arise from the same event.

4. Retain the ability to appeal initial eligibility for claims to arbitration rather than having court and costly legal expenses as the only alternative. This was a significant reform by the Andrews Government to provide a low-cost jurisdiction that was easily accessible to injured workers and must be retained.

   We recommend an amendment that enables appeal of initial eligibility to arbitration.

5. Confirm the timeframe for completion of the independent review of the changes, as well as the scope for the review, to ensure that it is required to include the impact on injured workers as one of the terms of reference.

   We recommend an amendment including 'the impact on injured workers' as one of the review terms of reference.

6. In relation to stress and burnout we require the legislation to provide guidance and clarification on what is 'usual or typical' for a worker, a particular workplace and industry at a particular time. Words such as 'reasonably expected' are fraught with ambiguity and require succinct clarification so as not to result in frequent and prolonged disputation. Would stress and burnout from working in a one hundred year unprecedented event meet the 'usual or typical' requirements of the new Act? What 'traumatic events' are considered to be 'usual or typical and reasonably expected to occur'?

   We recommend an amendment that clarifies the intended meaning of 'usual or typical'.

We are not supportive of the level of changes being proposed. We seek that as a minimum the date of effect of the legislative amendments be changed to enable further discussion, clarification and the required accompanying work to be progressed and completed. We continue to make ourselves available to meet and resolve our issues.

Yours sincerely

Lisa Fitzpatrick
Secretary
ANMF (Vic Branch)

CC: The Hon Jacinta Allan – Premier of Victoria
Matt Toner – Office of the Premier
Luke Hilakari – Secretary VTHC
ANMF Records