Australia:

State Labor government to make further inroads into workers compensation

Terry Cook
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Proposed changes to workers' compensation legislation by the Labor government in the Australian state of New South Wales have provoked a series of strikes, protests and public opposition from the trade union body—the NSW Labor Council—and Labor MPs.

An estimated 100,000 workers belonging to the Construction, Forestry, Mining and Energy Union, and other building unions across NSW are expected to strike today against the proposed changes, indicating the depth of feeling over the issue among workers. The Maritime Union of Australia has announced that it will join the protest.

Minister for Industrial Relations John Della Bosca tabled the amended legislation, which severely restricts the entitlements of injured workers, in state parliament on March 29. But following walkouts from a number of Sydney building sites and stoppages by transport workers, he agreed to a four-week delay to allow "consultation" with the unions.

The government has made clear, however, that there will be no fundamental changes. Premier Bob Carr stated that he would not consider altering "core elements" in the legislation. "We'll hear what the unions have to say but the system needs to be fixed and something has to be done," he said.

The "core elements" include measures to prevent workers pursuing common law actions by sharply raising the degree of impairment required to qualify. At present a worker has to demonstrate a 25 percent permanent impairment of part of his or her body, but under the new scheme the hurdle will rise to 25 percent of the whole body.

As a result the ability of injured workers to obtain a lump sum for permanent injury and for pain and suffering will be drastically reduced. Chairman of the Plaintiff Lawyers Association John Wynyard remarked: "People who are brain dead will get through and quadriplegics, but no one else will get through the threshold test. It is an impossible bar to jump."

In addition, the level of injury will no longer be decided in the Compensation Court on the basis of medical evidence but by "medical panels" whose decisions will be binding. The panel assessors will not be required to be medical practitioners and will make their decisions based on as few as two medical reports. Injured workers will have no recourse to the court to appeal against the decision.

NSW Law Society president Nick Meagher described the new panel system as "quite unbelievable". "Two medical reports in front of an unnamed medical assessor and that person decides the future of another person's life, with no right to appeal."

As well, the present Workers Compensation Resolution Service will be replaced by a Claims Assessment Service (CAS) staffed by government-appointed commissioners, who will determine all matters and disputes dealing with statutory claims. Injured workers will not be allowed to give evidence before the CAS commissioners and there will be no right of appeal to the Compensation Court.

The CAS is modeled on the State's Motor Accidents Compensation Act introduced in October 1999. That legislation included a total body impairment threshold of just 10 percent before common law action could be taken. According to the NSW Law Society, of the 43 cases lodged under the Act in the past 18 months, only two have received a settlement.

Law Society president Meagher estimated that the higher 25 percent injury threshold in the proposed workers compensation changes would mean 95 to 97 percent of injured workers would be denied access to common law remedies. Condemning the changes as being "among the most draconian anti-worker changes ever contemplated by a Labor government," Meagher said he knew of workers currently entitled to $350,000 compensation that would receive nothing if the new legislation went through.

The NSW government claims that the sweeping changes are necessary because of a $2.18 billion blowout in the WorkCover scheme due to mounting unfunded liabilities. This figure, however, is only the projected liability that would come about if all current claims were settled at the same time.

According to the trade unions, the real blowout is a deficit of $250 million caused by increased charges under the Goods and Services Tax introduced last year and lower returns from WorkCover investments due to the fall in the value of the Australian dollar.

WorkCover also faces revenue losses due to the failure of employers to pay premiums—a factor never mentioned by the government. According to union figures, 25 percent of employers in the construction industry do not pay their premiums or have premiums that do not cover the total number of workers on their books.

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The real reason for the latest attack on compensation rights is to cut the cost of insurance premiums for big business in order to make NSW more attractive for investors. Competition between the states, especially the two largest—NSW and Victoria, intensified following the release of the Hilmer report under the federal Labor government in 1995. Hilmer recommended the deregulation of state-run services and infrastructure to place them on a "competitive basis" to benefit big business.

The proposed changes to workers' compensation in NSW are based on, but go beyond, similar ones introduced by the former Liberal government in Victoria in late 1996. These reduced workers' rights to take common law action by tightening the qualification level of injury and eliminated the "table of maims," which laid out payments for certain types of injuries. As a result, thousands of injured workers, who were previously eligible, were disqualified.

The NSW government carried through a series of cuts to workers' compensation over the three years from 1995 to 1997. These included a 25 percent reduction in benefits, stricter eligibility testing for access to benefits and stress claims, a cutback in rehabilitation benefit entitlements from 12 months to 6 months and the ending of weekly benefit payments after two years.

Changes included tough sanctions on injured workers who refused to return to work on what was termed "suitable duties" or who refuse to take a "suitable job offer." According to many workers, the offer of so-called suitable duties is often simply a means of either forcing them off compensation altogether, or putting them back to work despite a continuing injury.

All of these measures went ahead with the compliance of the NSW Labor Council and its affiliated unions.

In 1996, the unions maintained a deafening silence when legislation curtailing workers' compensation rights made its final passage through parliament with the support of the Liberal Party opposition, the Greens and various independents.

While the NSW Labor Council kept a lid on the opposition of workers in factories and on construction sites, the mining union, which had initially threatened statewide strike action over the legislation, made a backroom deal with the government that exempted its members from the new provisions.

The changes not only reduced the lump sum payment for permanent disability by 25 percent but forced workers to prove that their job was the "significant contributing factor" to their injury. The legislation introduced an "automatic review of weekly payments" after two years providing a mechanism to cut workers off compensation.

A little light was thrown on this shabby record at a recent Labor Council meeting called to discuss the latest compensation changes.

In the course of the debate, Public Services Association general secretary Maurie O'Sullivan blurted out that unions had "remained silent over the previous six years when the government had done things against the movement's interest." He went on to claim that things would be different this time. "I say to Bob Carr and John Della Bosca, you do not deserve the charity of our silence and you are not going to get it."

But the latest union campaign is not aimed at defending the rights of injured workers. Union officials were concerned that Della Bosca's sudden decision to ram through the sweeping legislative changes could have triggered protests, particularly in industries such as construction and mining where the undermining of safety standards has led to increased accidents. According to a union spokesman, the minister reneged on a previous commitment to delay his actions for a week to allow a compromise to be worked out.

The Labor Council's show of opposition may also be connected to the present bureaucratic wrangle inside the rightwing faction of the NSW Labor Party. Labor Council secretary Michael Costa is soon to resign to pursue a career in parliament, clearing the way for his assistant and protégé John Robertson to take over his post. However, the succession is being challenged by the state secretary of the Transport Workers Union Tony Sheldon, who is backed by Della Bosca.

The Labor Council told a Sydney newspaper, the *Daily Telegraph*, that it had lined up some 34 Labor MPs to vote against the legislation. But the worth of this "opposition" was quickly revealed when Premier Carr threatened the electoral endorsement of any Labor MP who voted against the government. Parliamentarians and trade union officials were quick to accuse Carr of making a hasty overreaction, saying that the MPs, whose names were listed on the Labor Council website, had not committed themselves to voting against the amendments but only to "stand up for injured workers". Only one of the MPs indicated he would vote against the legislation—and then not in parliament but only if it was brought back to the Labor caucus.

Another of the "rebels," Ernie Page, dismissed Carr's threat as "anomalous" and predicted that the conflict would be settled through negotiation, well before any MP had to trouble himself or herself with the issue of crossing the floor in parliament. Page's comments simply underscore the cynical character of the Labor Council campaign and the protest of the MPs, which is aimed at posturing as defenders of workers compensation while cutting a deal with Carr and Della Bosca that will leave the "core elements" of the scheme in place.

Labor Council secretary Michael Costa is scheduled to hold further discussions with the government this week to reach a "compromise". He stated that the outcome needed to "meet the Premier's challenge on compensation reform" and had to be based on "putting downward pressure" on WorkCover's costs. Stripped of its bureaucratic jargon, Costa is indicating to Carr that the trade unions already agree costs can be cut but require one or two small concessions in order to save face and suppress the anger of workers whose access to compensation will be severely eroded.

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