

around the tracks



RAIL, TRAM AND BUS UNION • LOCOMOTIVE DIVISION, NSW BRANCH • ISSUE 10 • SEPTEMBER 2007

Divisional Secretary

As we prepare for our Divisional Conference, and the opportunity to critically review the progress of our Division and plan the strategies for the period ahead, we again find ourselves in a climate of orchestrated attacks on our industry and our members. The media, fuelled by politicians on a mission have been focusing on recent train breakdowns on the harbour bridge and other parts of the network to run sweeping attacks on not only the rail system, but somehow finding blame among the workers in the system. This environment has provided a stage for RailCorp CEO, Vince Graham to publicly prepare for EA negotiations by blaming the workforce for the failures in his system. There have been public attacks on Station Managers 'roting' overtime, poor 'maintenance cultures' and so on. At the same time, we have seen our colleagues in bus and tram come under fire in relation to their EA negotiations, and troubles experienced with the Tcard trials, while State Transit desperately attempts to recruit new drivers as many leave the industry.

Add to this media circus, the campaigning and propaganda surrounding the upcoming Federal elections, and we find ourselves in interesting times indeed. These distractions do not alter our primary objectives of focusing on the

needs and requirements of our members, and developing responses and strategies that not only defend their reputations, but also continue to improve their working lives.

Changes to Workers Compensation

Until recently, most Locomotive Division members were covered for by the NSW Workers Compensation legislation and system, regardless of whether they came within the Federal or State industrial relations systems. However, with recent changes to the Commonwealth Workers Compensation (and amendments to the Safety, Rehabilitation and Compensation Act 1988) the situation now exists where employers such as Pacific National, John Holland and others can opt to move their employees to the Comcare system. Potentially, about half our membership could be covered under the federal Comcare system, while others such as those employed in RailCorp will continue to be covered under the NSW Workers Compensation system. The full impact, and advantages and disadvantages of employees moving from the NSW to the Comcare system is currently a matter for close examination and discussion with major employers. We have compiled information in this Around the Tracks to provide an outline of the areas

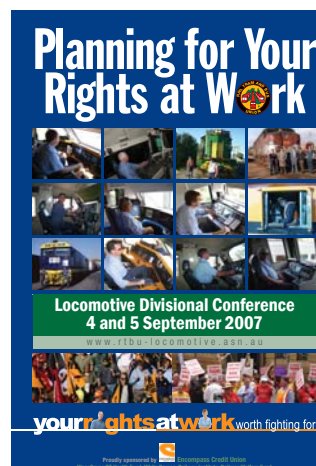


ALEX CLAASSENS
Divisional Secretary

that both systems have in common, as well as attempted to highlight some of the main differences between the two systems.

RTBU Locomotive Divisional Conference, 4 – 6 September 2007

Panthers at Penrith will again be the site of our third bi-annual Divisional Conference on 4 and 5 September, bringing together workplace and union leaders from across the industry to play a vital role in building the future of our union.



Ahead of this Conference, we have also surveyed new members to the Locomotive Division to gain an overview and feedback on their perceptions of the union and its work. A summary of the survey findings are reported in this Around the Tracks.

Looking Ahead

In 2007 our work is far from complete. There will be no respite in the period ahead. The Federal election campaign is in full swing, and we have an important job to do.

This election will determine whether a new wave of Workchoices is forced upon working people. We cannot allow Workchoices any more air. The next attacks would be more intense, more far-reaching, and more difficult to survive.

Each and every one of us must stand up, speak out and work to defeat Workchoices at this election. We must do this at a personal level – a community level – at a union level. We need to be talking with friends, family, colleagues about the dangers of another round of attacks on working families.

We need to plan for the immediate battles and campaigns around the federal election, and we need to lay the groundwork for whatever scenario we may face after the election. Either way, we cannot afford a moment of complacency, nor can we plan for purely defensive strategies.

CONT PAGE 4 →



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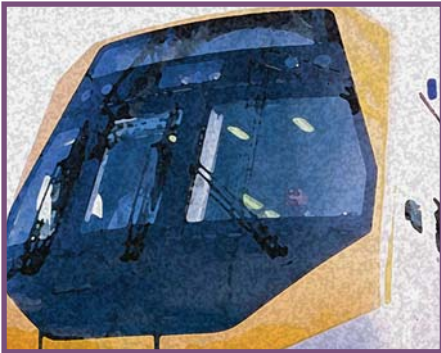
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contents

Divisional Secretary **1**

Locomotive Representatives **2**

New Member Survey Results **3**

When are workers covered by compensation? **4**

Federal government attacks Comcare workers compensation scheme **5**

Worker compensation payment and benefits **6**

Injury Management Flow Chart **8**

New Member Survey Results

As a part of the process of introducing improved Divisional organising structures and changes flowing from the 2005 Divisional Conference, the Locomotive Division surveyed new union members (those in the industry for under 4 years) for their feedback on workplace and union issues. The survey was part of our commitment to continuous improvement within the Division through gaining member concerns and feedback on a range of important issues.

The 'report card' based on the survey results highlight a number of key concerns and issues (both positive and negative) that new members have in relation to their work and the union. A summary of the main survey findings and analysis are reported here for the information and consideration of all members.

Surveys were completed by new members in RailCorp, Pacific National, Interail, Silverton and Patrick's. Of the total survey responses, passenger services were represented by 62% of survey responses; while 38% of total responses were from members in the freight area.

WORKPLACE CONCERNS AND ISSUES

While many members identified general wages and conditions, as well as job security as an ongoing concern, there were slightly different weightings on particular workplace issues between passenger and freight services. A majority of passenger services members identified OHS, personal security and safety related issues as their main concerns. While safety was also a high priority for freight members, they also emphasised the lack of training and structured career paths, as well as shift lengths and rostering as their major concerns.

All members surveyed were concerned about maintaining and improving existing wages and conditions, management manipulation of rostering, shift lengths and other working

conditions, and job security. Responses from members in passenger services reflect a perceived erosion of staffing levels and maintenance of a safe working environment as a key concern in most workplaces.

Freight members' responses clearly indicative a deterioration in management practices and perceived abuses of working conditions through the application of rosters, shift lengths and allocation of hours during peaks and troughs. Many members surveyed indicated that these practices are having a negative impact on social and family commitments.

UNIONISM IN THE WORKPLACE

Members surveyed were asked a number of questions about the levels of support for union principles and activity in their workplaces. Members responded that approximately 69% of members support the union, with 20% answering that they were not sure whether members in their workplace were supportive, and 11% responded that members did not support the union.

Member's responses on their personal support for the principles of unionism were overwhelmingly positive, with 88% responding that

CONT PAGE 8 →

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When are workers covered by compensation?

Workers (and deemed workers) are covered for injuries sustained from the time a worker leaves for work and until they return. They are covered at the workplace or away from their workplace, where injury sustained in the course of employment.

Here are some examples.

A person is covered:

- On a journey to and from work (but there are restrictions)
- Recess and lunch breaks
- Delegates attending seminars
- Workers going out at lunchtime who are injured are covered in most cases
- Apprentices and trainees attending TAFE and Colleges.

It is important to note that work must be a significant contributing factor to any injury occurring.

DELEGATES AND OHS REPRESENTATIVES ROLE

It is very important for union delegates and workplace OHS representatives to take an active role in workers compensation.

The workplace representative should assist injured members with their workers compensation claim and return to work plans. This is not a substitute for legal advice. If in doubt, contact the union for assistance.

If the delegate or OHS representative is unable to resolve an issue, it should be referred to the union organisers. The RTBU employs expert officers and legal advisers to assist members.

We will strongly support delegates and members in dealing with all compensation matters.

This Summary has been produced to assist you in your role as a delegate. In addition, the union has produced more detailed information including fact sheets on the law and other issues.

There is also the OHS website – www.ohs.labor.net.au – where you can find further information about compensation. **There is also a facility for Frequently Asked Questions and you can also have your questions answered.**

ROLE OF THE EMPLOYER

The employer's role is to provide not only a safe and healthy workplace but also an efficient system that optimises the recovery and return to work of workers who become injured or ill in the course of their employment.

Employers have a wide range of legislative responsibilities related to the management of workplace injuries.

Under the law, employers must have a workers compensation policy.

Under the law the employer must also:

- Have a return-to-work program that covers all their workers, in case there is an injury. The program must be developed through consultation with the union.
- Have a Register of Injuries book, where work related injuries are recorded.
- Advise the insurance company within 48 hours of becoming aware of a significant injury (7 days if not significant) and obtain a notification number.
- Provide a workers compensation claim form and forward claim to insurer
- Pass payment on to injured worker as soon as possible
- Provide suitable duties unless they can prove it is not practical
- Display a summary of the Workers Compensation Legislation, and insurer's information. Employers must display their return to work program, or, if a smaller employer, have it available on request.



DIVISIONAL SECRETARY

← FROM PAGE 1

We have to look ahead to where we want to be and be prepared to take our fight to wherever it needs to go.

Our future, as always is in our hands. We need to use this conference to continue to build on past achievements, but also to develop creative solutions and strategies for

the challenges we face in the coming period. This is not a time to sit and hear ourselves speak. This is not a time to whinge or moan about this minor detail or another. As union leaders, as workplace activists, your will and determination will largely determine the shape of that future.

FEDERAL GOVERNMENT ATTACKS COMCARE WORKERS COMPENSATION SCHEME

Legislation recently enacted by the Federal Government removes or reduces certain workers compensation entitlements of employees covered by the Federal workers compensation scheme (Comcare).

The Legislation has a detrimental effect on our members in a number of respects by reducing or removing what were existing entitlements.

RTBU members employed by Pacific National (ACT) Ltd – the old “NRC” - are currently covered by Comcare. The potential also exists for other rail employers to transfer from the various states schemes to Comcare. If they do, more members will be affected by these changes.

Two things have occurred recently that have impacted upon the workers compensation arrangements in Pacific National:

1. In April 2007, the Federal Government enacted legislation that either removed or diminished a number of workers compensation entitlements under the federal Comcare legislation.

The key changes to Comcare are:

- Employees are no longer eligible for workers compensation as a result of an injury incurred whilst travelling between home and work. The only exception is where an employee is travelling to and/or from a location on the instruction of the employer.
- Employees are no longer eligible for workers compensation as a result of an injury incurred during a work recess and where the employee is away from

the workplace. Thus, if an employee goes down the street for lunch and whilst there sustains an injury, no workers compensation is payable. The only exception is where an employee attends an off-site event with the approval of the employer.

- To claim workers compensation, an employee will have to show that work contributed to the injury/illness “to a significant degree”. This is a much tougher test than the previous one of a “material degree” It is also a recipe for legal nightmares where an employer wants to argue the point about is “a significant degree”,
- An employee is no longer able to claim workers compensation where the illness or injury is a result of what is defined as “reasonable administrative action” by an employer. This change can reduce the capacity to claim workers compensation as a result of stress.
- 2. Recently Pacific National received consent from the Comcare Board to bring the employees in the other parts of its operations under Comcare.

This means that employees of Pacific National (NSW) Ltd

(the old “FreightCorp), Pacific National (Vic) Ltd (the old “Freight Australia”), Pacific National (Tas) Ltd (the old “Tasrail”) and Pacific National (Qld)Ltd (a new entity).

The actual impact of any movement to Comcare depends upon the differences between the relevant state workers compensation legislation and Comcare. For example, only 2 of the 6 states provide for journey cover. The impact is not necessarily all negative, for example, in some cases the upfront payment can be better under Comcare.

An important incidental change to the application of Comcare is that last year the Federal Government enacted legislation to the effect that employees covered by Comcare will come under the Federal OHS legislation and not the relevant state OHS legislation.

Whilst this only effects members at two employers at present, there is a potential for it to spread to others if the employers so choose

As such, the circumstances surrounding the application of Comcare and the provisions under Comcare differ depending upon where the members come from.

RTBU met with PN, including CEO Don Telford on July 20, to seek clarification

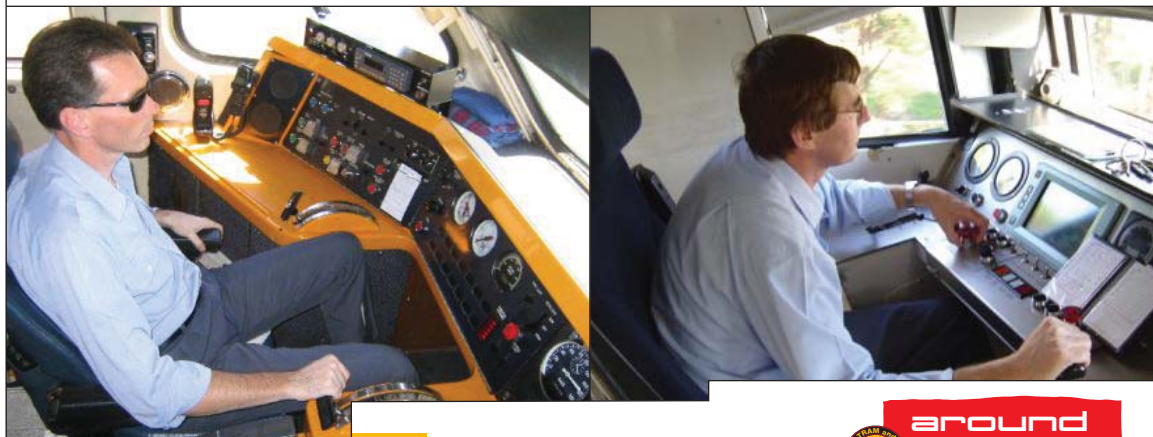
on the situation and to raise concerns previously addressed in correspondence. The meeting confirmed that Pacific National does want to bring all employees under the Comcare workers compensation system, which also has implications for application of OHS legislation.

The transfer of all employees to Comcare would also have complications for the company in terms of structures and legal status, and requires further investigation.

Pacific National also stated that it is prepared to sit down and address the issue of “gaps” between the Comcare scheme and the various state schemes.

In a subsequent letter to the union, PN reiterated its desire for a single system for workers compensation and OHS, and stated that it wants to explore an outcome “that satisfies our company objectives and does not unfairly disadvantage our workforce”.

The company also proposed the formation of a working party to assess the “feasibility of our approach and generate a satisfactory outcome for all concerned”. It anticipates that the working party would “make recommendations” by the end of October “with a view to a final decision before Christmas 2007”.



Benefits and Payment Under Comcare

Under the Safety, Rehabilitation and Compensation Act 1988 you may be entitled to a range of specified benefits and payments directly related to your accepted work-related injury or illness.

Medical Treatment

You may be entitled to payment for a range of medical treatment. The most usual is treatment or services provided by a qualified medical practitioner (Your doctor). These may also include xrays, pathology, tests, hospitalisation, and the prescription of medications or medical aids directly related to your injury or illness.

Medical treatment payments also cover dental work, and treatment given to ease work-related injury or illness, such as physiotherapy, osteopathy, chiropractic or massage.

Support Services

Comcare may reimburse expenses related to providing home support services for serious injuries that make it difficult to cope with home duties. Payment may be approved for a range of household services such as home maintenance, cooking, cleaning and laundry services.

These support payments may extend to personal care or attendant services to assist with personal help such as washing and cleaning. Financial assistance may also be provided for essential home, workplace or car modifications or alterations required as a result of work-related injury or illness.

Income Support

As a result of your work-related injury or illness you may be eligible to receive income support while you are unable to work as a result of your injury or illness.

A fortnightly payment compensates you for your loss of income as a result of a work-related injury or illness. The method for calculating your rate of payment is set out in the SRC Act, and depends on:

- Your normal weekly earnings (NWE)
- Any amount you are able to earn (AE)
- The length of time you are unfit to work
- Whether your loss of income is before or after the first 45 weeks of incapacity

If you sustain a work-related injury, you may require a short period of compensation leave. If this is the case, compensation would be payable at a rate equal to 100% of your normal weekly earnings, less any amount you are actually earning, for periods of compensation leave up to a total of 45 weeks. See the box below.

If your injury or illness requires a longer period of compensation leave, after a period of 45 weeks your compensation leave is calculated based on the percentage of normal weekly hours you worked during the week, and subject to statutory limits. These percentages are:

Use table form p 13 – Comcare, All About Workers Compensation: A Guide for Employees, June 2006

It should also be noted that entitlements such as sick leave, long service leave and superannuation entitlements continue to accrue at the normal rates during periods of time off work on compensation leave due to incapacity caused by a work-related injury or illness.

As at August 16, 2007 the statutory maximum limit on income payment under Comcare was set at \$1,632.60 per week. This includes any payments such as dependent children (@ \$45.62, household services up to \$365.03 per week. These amounts are reviewed annually.

WEEKLY BENEFITS UN

TOTAL INCAPACITY¹

FIRST 26 WEEKS

Section 36 – A worker is entitled to receive their current weekly wage rate (CWWR) that they receive under their award or enterprise agreement. You are only entitled to the base amount, this does NOT include amounts for overtime or allowances.

You can not receive any more than \$1,535.90 per week as at 1 April 2007. (This amount is adjusted every six months)

AFTER 26 WEEKS

An injured worker is now only entitled to the statutory rate which is: (at the 1 April 2007 – and subject to change yearly)

- \$361.30 per week plus:
- \$85.20 for a dependent spouse and
- \$68.00 per week for on dependent child (up to \$354.60 for 4 dependent children and \$102.30 for each child over 4)
- Although you can not earn more than your CWWR – see box above.

This payment will be paid until the injured worker reaches retirement age (Maximum of 65) or is fit to return to pre-injury duties.

¹ Means you are unable to perform any duties at all.

² Means you are fit for suitable duties.



% Normal Weekly Hours Worked	% NWE Limit	Compensation Payable
Not working	75%	75% NWE
25% or less	80%	80% NWE – AE
More than 25% but not more than	50%	85% 85% NWE – AE
More than 50% but not more than	75%	90% 90% NWE – AE
More than 75% but less than 100%	95%	95% NWE – AE
100%	100%	100% NWE – AE

UNDER THE NSW WORKERS COMPENSATION ACT

EMPLOYEE INJURED

PARTIAL INCAPACITY²

SUITABLE DUTIES AVAILABLE AND BEING PERFORMED

Section 40 - Make-up pay is available to the injured employee. This payment is to cover any difference between: the weekly amount the worker would probably be earning, but for the injury and the average weekly amount which the worker is earning or would be able to earn in some suitable employment from time to time after the injury.

NO SUITABLE DUTIES AVAILABLE

This is known as a **Section 38** benefit, where you are entitled to receive your current weekly wage rate (CWWR) that you would have received under your award or enterprise agreement. This is a base rate and does not include any amounts for overtime or allowances.

AFTER 26 WEEKS

An injured worker is only entitled to your current earnings plus make – up pay to a maximum of the statutory rate which is \$361.30 per week. (This is at 1 April 2007). The maximum that you can receive is your average weekly earnings – set out above. This payment will be paid until the injured worker reaches retirement age (Maximum of 65) or is fit to return to pre-injury duties.

AFTER 26 WEEKS

An injured worker is now entitled to receive 80% of your current weekly wage rate (CWWR) – set out above.

After a further 26 weeks, the injured worker is now only entitled to the CWWR until they reach retirement age (maximum of 65) or is fit to return to pre injury duties.

1 2-MONTH REVIEW

Section 40 – If you are not at work after 12 months i.e. Unemployed or you have been terminated, your benefit will be reassessed. The insurer will make a determination on what job you could get and only pay the difference between the pre-injury wage and the job they have assessed you as capable of doing. E.g. A storeman earning \$600 per week is injured and after 12 months is assessed by the insurance company as capable of doing a machine operators job, but this job only pays \$500 per week. The insurer will only pay the difference (in this example -\$100 per week) until the injured worker's retirement age or until they are fit for their pre-injury job.

2 YEAR REVIEW

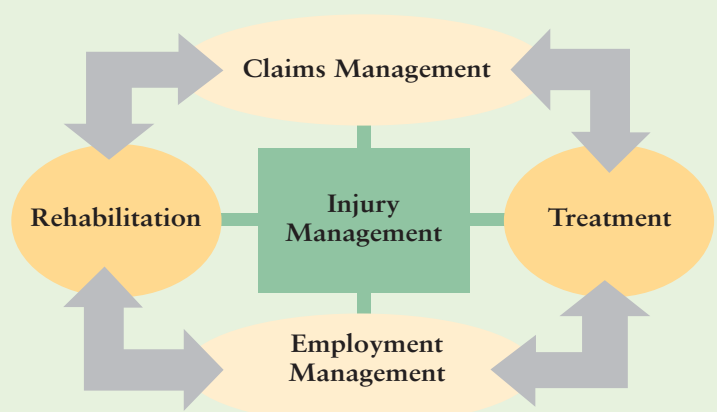
If you have received 104 weeks of Partial incapacity benefits and are not seeking suitable employment, have unreasonably rejected suitable employment or have not been able to find suitable employment because of the state of the labor market, your compensation payments may be discontinued by the insurance company.

INJURY MANAGEMENT IS A SYSTEM

Injury management comprises the interrelationship of four primary components:

1. Employment management practices including:
 - RTW program development and implementation
 - Early injury reporting mechanisms
 - Suitable employment options
2. Treatment including medical and medical investigation services
3. Claims management, and
4. Occupational rehabilitation including accredited provider services. The injury management system aims to reduce the incidence of long-term work loss and work disability.

INJURY MANAGEMENT



Injury Management Flow Chart

1. **Report the injury** (whether it is serious or not) to your employer as soon as possible.
2. **Accurately complete the Workplace Injury Register** (include details of witnesses, if available).
Employees should keep a permanent record of events
3. **Nominate a treating doctor**
 - You have the right to choose your own doctor, rehabilitation provider, and other health professional
 - We recommend that you do not use a doctor nominated by the company as your treating doctor
 - Read your WorkCover Certificate carefully, and seek clarification from your doctor
 - Return the WorkCover Medical Certificate to your employer.
4. **The employer makes an initial notification of your injury to the insurer.**
5. **The insurer contacts you**, the employer and your doctor within 3 days of receiving the initial notification to:
 - determine your treatment and workplace rehabilitation needs,
 - approve payments for necessary treatment and workplace rehabilitation,
 - commence development of an Injury Management Plan, and
 - determine your eligibility for provisional weekly payments.
 When insurer issues a notification number, the employee should record and keep these details with their records
6. **The insurer will ask you to provide you:**
 - WorkCover medical certificate, and
 - a signed information authority (consent form).
 The insurer may also ask you to lodge a claim. The employee must co-operate with the insurer and comply with any reasonable request to provide additional information
7. **You may need to attend additional medical examinations**, which the employer arranges and pays for. You must comply with such requests.
Medical certificate must be updated following any additional medical examinations
8. **Provisional weekly payments** should commence within 7 days of the initial notification (unless there is a reasonable excuse).
The insurer will notify you in writing and, often, by phone about any payments it has approved, and the reasons for any payments not approved.
9. **Your employer should consult with you**, your doctor, the union, the insurer and other treating health professionals to:
 - establish a common return-to-work goal,
 - identify, negotiate and offer suitable duties,
 - design a Return-to-Work plan which outlines the duties to be performed,
 - monitor your progress and upgrade your RTW plan until you have achieved your goal.
 - the employee must comply with the RTW plan
10. **At all times through the injury management process**, the injured worker should be treated with dignity and respect, and should not be subjected bullying by the employer or insurer

If you think there is something wrong with the injury management process, then there probably is. Do not simply accept what the employer or insurer says. If there is a reason to dispute an insurer's decision on any matter, you should contact the union.

If the worker is not eligible to receive provisional weekly payments AND the worker makes a claim for weekly payments, he/she may be able to use sick and annual leave entitlements whilst the insurer assesses the claim. In this case, the insurer has 21 days in which to make a decision on the claim.

NEW MEMBER SURVEY RESULTS

← FROM PAGE 3

they did support union principles and the remaining 12% responding that they were unsure. When asked whether they would be prepared to become actively involved in union activity in their workplace, 25% of members responded that they would, 14% of members said they wouldn't, while the majority (app. 61%) answered that they were unsure.

The survey responses indicate a strong perception of the need for unionism and effective union intervention in workplaces. The responses also reflect that the new organising structures are well placed to encourage and involve a range of members who are currently unsure of whether they want to be directly and actively involved in workplace union organising. The responses indicate that while members are critical of some aspects of union activity, there is overwhelming support for the need for a strong union presence to address major issues and concerns in the workplace. The new workplace organising structures being developed and implemented need to directly address these issues to ensure that the main concern's of members are being addressed, and that members are encouraged to be involved in a range of union initiatives.

LOCOMOTIVE DIVISION PERFORMANCE

Members were asked about the performance of the Division in a number of key areas. In the area of industrial campaigns, approximately 50% of members rated the Division's efforts as Above Average or Very Good, while approximately 50% of

responses rated them as 'Not So Good'. Similar responses were received in relation to work on improving wages and conditions and workplace union organising, while a slight majority (app. 55%) of responses indicated that the quality of communication within the Division was 'not so good'. Only 33% of members responded that they were aware of the new workplace structures within the Locomotive Division.

These responses provide the basis for continued efforts in ensuring that the new workplace organising structures, and the resources and supporting structures focus on consulting with and informing members of negotiations and campaigns for improved entitlements and working conditions. We need to continually review and evaluate our workplace organising structures and processes, as well as how these activities and strategies are communicated to members. There is a constant need, which is reflected in the survey responses, for our communications to be targeted and appropriate to the information and members involved.

We thank all members who took the time to respond to the survey, as this feedback provides invaluable information for the ongoing work and priorities of the Division. This information will be supplemented by other member surveys and consultation as the new workplace organising efforts are consolidated and refined. The more we understand precisely the concerns of members around particular issues, the more we can fine tune the strategies to effectively deliver outcomes that we all want.