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Mr Leigh Shears

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Resolved to publish ☒ Yes / ☐ NoFirst review of the workers' compensation scheme

The Statement of Mr. Leigh Shears

1. I am a Boilermaker by trade, 45 years old, married, have 3 young children and trying to pay of a mortgage on a house at Ellalong in the Lower Hunter Valley.
2. In January of 2011, I sustained a lower back injury whilst working in the heavy shipbuilding industry in Newcastle. I was diagnosed with a 6mm annular tear L5/S1, disk bulge and fractured T12.
3. Following 6 months of being on restricted duties my employer terminated my employment. After losing my job, I was contacted by the insurer (Allianz) informing me that my entitlements for Workers Compensation weekly benefits would cease, they alleged "I was to blame for my termination".
4. I succeeded in winning my unfair dismissal claim, notwithstanding this the insurer refused to recognise the decision of the Fair Work Commission continuing to deny me access to workers compensation weekly benefits without justification. I spent the next 18 months without any income until a settlement was reached with the insurer through the Workers Compensation Commission, supposedly what I was entitled to during this period. On reflection there appears an issue of insurance company tactic's to reduce costs at the expense of injured workers, transferring the burden onto their families and the community. The outcome of my settlement for weekly benefits was \$250 a week, despite my preinjury wages being \$1200 gross a week.
5. The defense for this unjust reduction, as was explained to me, was that my capacity to work was taken into account. I have now learnt that the insurer was allowed to (in effect) make a capacity decision regarding my matter retrospectively, a cozy arrangement that lawyers on both sides seem to have adopted.
6. Without any assistance from WorkCover or the insurers I secured employment in April/May 2012 as a Boilermaker for an engineering company who worked in the mining industry. At the time I'd just had a new born child and acutely felt my family's expectations weighing on me. I was desperate, accruing debt, broke and starved back to the only type of work I had ever known since I was 17. At the end of June that same year I suffered a significant aggravation to my initial injury.
7. As a result of this aggravation to my injury, I had no capacity for work for approximately the next two and a half years. 12 months following the second injury my employment was terminated.
8. Following the aggravation of my injury the insurer (Employers Mutual) for my then employer refused liability on the basis of me having been injured at my previous employment. My previous employer's insurer (Allianz) also refused the claim arguing it was done at the new employer. It didn't go unnoticed that both are scheme agents of the nominal insurer who was WorkCover. Neither of the two fighting insurers would meet their obligations including Injury Management despite their legal obligation to do so until I went to the Union for help. The Union with the assistance of WIRO was eventually able to get an Injury Management Plan developed with Employers Mutual and my retraining in work health and safety commenced.

9. I am currently employed full time with the capacity for 38hrs/per week, with permanent mobility restrictions including weight limitations, sitting limitations, standing limitations and a prohibition on awkward postures. My current employer was able to take advantage of the Injured Worker employment incentives offered through the WorkCover scheme, receiving the wage subsidy for a period of 12 months. I believe that access to this benefit was central in my ability to gain fulltime employment.
10. I am currently only entitled to medical benefits. I have been advised that my medical entitlement period expires in October 2017. I continue and will always experience difficulties as a result of my injury. I suffer chronic pain and at times significant mobility restrictions. This injury has dramatically changed my life and how I do things. It has an impact on what tasks I can and cannot perform and places a burden on my family, as a result I feel like I am letting my family down for which I feel a sense of inadequacy and guilt.
11. I have been assessed based on the first injury as having an 8% whole of person impairment. I am yet to be assessed for the aggravated injury. This assessment has meant that I have no entitlement to domestic assistance. As a result I have had to spend thousands to buy a ride on lawn mower and a special bed. These are costs which are never considered.
12. Despite some of the changes to the NSW Workers Compensation system which have been drip fed since the major changes of 2012, the treatment of and attitude towards injured workers has not changed and in some regards worsened.
13. The hostility from some Employers and Insurance Companies in regards to workers claiming workers compensation continues to affect injured workers and their families, having detrimental long lasting effects. My experience with the workers compensation scheme appears to be an all too common one, an experience of pain, frustration, fear, anxiety and confusion. Sustaining an injury, particularly a permanent injury such as I have can create these experiences, unfortunately exposure to the scheme all too often acts to maintain and exacerbate those experiences.
14. I am currently being subjected to another dispute with Employers Mutual over an alleged overpayment from some two (2) years ago. How payments for expenses are itemised on payment advice (pay slip) provided by the insurer continue to be a significant issue which raises the anxiety levels of injured workers that can often distract focus from the recovery process. The advice is unclear and provides no capacity for the injured worker to trust that the insurer is meeting their obligations in paying the legal entitlements to the injured worker.
15. I have sought the assistance of my insurers Case Manager on numerous occasions, seeking to understand what I had been paid and for what. The response has always been a verbal assurance that my entitlements have been paid correctly and that the insurer cannot change the pay advice (pay slip) to make it clearer, *"that's just the way we do it"*. This dismissive attitude towards injured workers appears to be cultural within the insurers. It's no surprise to me, even after numerous times raising concerns, that there may be errors in payment's either by me not receiving the correct



amount (a shortfall) or being paid more than I'm entitled to (over payment), thus leading to another unnecessary dispute.

16. Whilst in my current employment I suffered a downgrade in my capacity for work for a period of three (3) weeks, due to an exacerbation of my injury, which is to be expected throughout my life now as advised by my doctor and neuro surgeon. I was advised by the insurer at the time that I do not have an entitlement for financial benefits for the period of downgrade. During this period I had to access my entitlements for sick leave for the period, this strikes me as a transfer of liability of the insurer onto the workers. If I had not had the accrued sick leave this would have left my family to starve. I was then contacted 4-5 months later by my Case Manager advising me that I had an entitlement for weekly benefits during the period of the incapacity as long as I had not been paid by my current employer for that time.
17. I have been treated by a number of health professionals over the past 5 years. Most of the treatments I have received to relieve or improve the symptoms of my injury and increase my capacity to work have been short lived at best. The only treatment that has provided me with the ability to manage my injury that assures a level of relief of pain and increased capacity to stay in employment has been physiotherapy. At time's I have required treatment for four (4) days/ week for 4-5 weeks and at other time's I have required treatment only once a fortnight.
18. The insurer has seen fit to deny any further physiotherapy treatment stating they are in the business of offering treatment focused solely on recovery and not maintenance despite an objective of the Workplace Injury Management and Workers Compensation Act 1998 being "*to provide effective and proactive management of injuries*". Considering there is no prospect of a full recovery from the type of injury I sustained, management of symptoms is my only option to remain productive in the workforce and active generally. Where I can afford it I pay for physiotherapy treatment myself.
19. It needs to be noted that over a long period of time I have been able to reach a point physically and mentally to again be a productive employee, active husband and father and participate for the most part fully in my own life.
20. I believe the length of time it has taken me to reach a point to have the capacity to re-enter the workforce and play a productive role in life was significantly hampered by the way the workers compensation system was designed, changed and is being administered.
21. The continued denial of treatment and extended wait times that insurers have in 'approving' treatment has had a significant affect in my recovery process. I have suffering mental health issues and thoughts of suicide due to a complete feeling of hopelessness and fear.
22. Pressure from the insurer, the denial of my entitled benefits and representational rights by my Union, the right to choose my treating doctor and the choice of rehabilitation provider are issues that I believe still need to be addressed. The subtle manipulative tactics by the insurer to groom me to make choices which were not necessarily in my best interest, such as setting up appointments with their doctors or rehabilitation provider without prior consultation or approval with myself, or

setting up meetings that should have included a prior notification so I could inform and invite a support person or my Union representative.

23. A question I am left asking is; if the employees of the insurer don't know me and as such should not hold any sort of grudge or dislike for me, what is motivating their behavior that they seek to injure me?
24. From a personal perspective I ask this review to abolish the practice of insurer pre-approvals of medical expenses, that any reasonable medical costs incurred by an injured worker should be reimbursed in a timely manner and that medical benefits are restored for the life of the injured worker. These are the steps which need to be taken now if I am to have any certainty of being able to lead a productive life.

Leigh Shears 11/10/16