

STANDING COMMITTEE ON LAW AND JUSTICE

2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

PRIVATE ROUNDTABLE DISCUSSION WITH INJURED WORKERS – SUMMARY REPORT

On Thursday 8 September 2022, the Standing Committee on Law and Justice met privately with four individuals with experience of the workers compensation scheme as an injured worker. These individuals were selected from those who had contributed to the inquiry by either making a submission or as one of the authors of the 79 pro forma contributions by injured workers.

A private roundtable discussion was held with these individuals. They were encouraged to share their experience of the workers compensation scheme with the committee and identify ways in which it could be improved.

A number of common themes emerged from the discussion, namely:

- the participants initially had every intention of returning to work following recovery from their original injury
- their experience of the workers compensation scheme either prevented recovery from their injury or led to a secondary injury which made a return to work impossible
- lengthy delays were experienced in accessing treatment and/or relevant treatment was denied which impeded their recovery
- the adversarial nature of the system was counter-productive and hindered recovery
- the assignation of multiple case managers throughout the participants' time in the scheme was problematic
- the scheme requires injured workers to frequently prove their injury and situation which can be traumatising
- there are appropriate regulatory standards available but they are either not being enforced or there is not sufficient power to enforce them
- treatment should be led by doctors, not insurers.

Return to work

The majority of roundtable participants had worked in professional roles, some at a senior level, prior to their injury.

A number of the participants informed the committee of how their desire had always been to return to work. They had initially viewed the workers compensation scheme as the start of their recovery, with an assumption that they would return to work once they had recovered. Most were of the view that, even now, they wished their health was such that they could work.

A common view amongst participants was that their injuries were exacerbated by their experience of the workers compensation scheme. This included experiencing delays in being able to access timely treatment and/or being refused appropriate treatment. They spoke of further damage

resulting from their interactions with insurance companies. The cumulative effect of this was to prevent their return to work.

Difficulties accessing treatment

All participants spoke of the difficulty they had in accessing treatment. They related stories of the lengthy delays they experienced before treatment commenced, with delays as long as three or four months. They viewed these delays as having exacerbated their injuries and, in some cases, preventing recovery. Some participants spoke of being denied treatment that multiple health professionals considered beneficial.

In terms of the reason for these delays, some participants believed it could be attributed to a fear of liability on the part of insurance companies and employers. One participant advocated for the separation of medical assessment from treatment in order to prevent unnecessary delays which ultimately impacts on the ability of individuals to recover from their injury.

It was the strong view of a number of participants that they were repeatedly pushed towards the use of antidepressants or psychotropic medication. This was despite a clear desire to not use them as they believed other suitable options were available and alternatives had been recommended by those treating them.

One participant expressed frustration that their doctors are unable to lead the treatment process and that this acts as a significant obstacle to the success of the scheme. One solution proposed was to enable access to appropriate, timely treatment that is led by their doctors and specialists.

Independent medical examiners

The participants were generally critical of the use of independent medical examiners (IMEs) by the insurers. They were of the opinion that IMEs are deliberately selected by the insurers to obtain specific outcomes. Frequent descriptors used by the participants included 'doctor shopping' and 'cash for comment'. One participant stressed that these practices need to be eliminated and this could be achieved by having the doctors allocated in each case by the Independent Review Office. Another participant suggested that a process be instituted to allow the removal of IMEs from the list of those registered with SIRA if they have been the subject of numerous complaints.

Role of insurers

Every participant viewed their experience with their respective insurer as a negative one. They described how the system is adversarial at heart and pushes them into an unfair fight with the insurers. They spoke of the need to make multiple phone calls and send numerous emails to have things resolved or corrected. The delays in receiving a response were a common source of frustration. Participants spoke of having to contact the Independent Review Office to ensure complaints were dealt with, and to receive replies to their emails or phone calls. The adversarial nature of the workers compensation scheme was viewed as contributing to secondary psychological injuries.

All participants spoke of having to constantly prove themselves or counter incorrect information on the system multiple times. All participants had been allocated several case managers throughout their time in the workers compensation scheme, from a minimum of five different case managers to more than 16 in the case of one participant. A lack of handover between case managers seemed apparent and participants recounted how they had to prove themselves each time with the new case manager resulting in the need to constantly retell their story. They voiced concern that those

with psychological injuries are constantly in a position of having to recall their trauma. In order to counter this, one participant suggested that a system be created that includes a health summary designed to help injured workers communicate with health professionals. This system could keep all their medical records in one place that is accessible to all, and saves them from having to retell their story.

A number of participants spoke of frequent delays in relation to payments, both to themselves, and to treatment providers. The precarious state of their finances was a source of constant stress. One participant highlighted how delays in payment led to one treatment provider suspending provision of services until the insurer had paid the outstanding invoices.

Some of the participants highlighted how their insurer had accepted (or SIRA or the Independent Review Office found) that aspects of their claim had been mismanaged and this mismanagement had aggravated their injuries. Participants stressed that despite this recognition of mismanagement, the resulting situation remained unfair as they are not compensated in any way.

In order to avoid mismanagement of claims, some participants advocated for better enforcement of the standards that exist, including the granting of greater power to SIRA to ensure that standards are complied with. They also called for SIRA to take a more active role.

Lack of autonomy

A key theme that emerged from the roundtable discussion was the lack of autonomy experienced by injured workers when part of the workers compensation scheme. One participant described how 'everyone is making decisions about you, but you have no say'. Another voiced having 'lost my autonomy'. It was proposed that:

Injured workers need to have a voice in their treatment and in the choices made about themselves. They need input into the way iCare governs itself and enacts legislation and the way the regulatory bodies respond to reported misconduct by insurers and employers. Being ignored, especially when you are desperate just reinforces hopelessness, anxiety, low self-esteem, shame and depression.

Another participant told the committee of how she felt 'trapped' in the system, despite her psychiatrist having recommended that she exit the system in order to recover. It was seen as a flaw in the workers compensation scheme that it did not properly allow exit from it when needed and desired. One suggestion was that all injured workers should have the option to exit the system and receive compensation at any time in order to prevent further damage being inflicted by remaining in the system.

Additional suggestions

Participants struggled to identify any positive aspects of the workers compensation scheme when specifically asked. Some acknowledged that they had experienced a few good case workers and health professionals who had spoken up for them, but believed they were subsequently sidelined by the insurance companies. One participant could see nothing positive from her experience, but nonetheless voiced that there was the *potential* for the scheme to operate in a positive way.

As one participant noted:

The system needs to be trauma informed and supportive. You should not be retraumatised, fighting for basic rights, income and treatment, having to endlessly repeat your story to

revolving case managers, rehab workers, specialists, IME, and employers, legal representatives, etc. This is especially important to those with psychological injuries but also to prevent psychological injury from the system itself. Guidelines should be produced, and relevant staff trained and supervised to support workers, not add to trauma.

It was also suggested that a detailed guide be created for injured worker that explains every step of the process. 'The current scheme was viewed as 'endless for many of us, and there is no clarity. Knowing what will happen next will alleviate fear and anxiety'. It was proposed that the guide include the rights and responsibilities of injured workers, employers and insurers, with information on the appeal process. Further, details on where to seek psychological support should also be included.