Submission
No 153

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Police Association of NSW

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Police Association of NSW submission in response to proposed changes to the Workers Compensation Scheme 2012

The Police Association of NSW appreciates the opportunity to meet with you to discuss our submission regarding the impact of the proposed changes to workers compensation that it will have on our members.

The key factors driving the deficit are, in our view, the poor performance of the Schemes fund management in addition to the impact of the global financial crisis affecting returns on investment. This will be covered in other submissions and in particular Unions NSW. We are firmly of the view that there are broader issues affecting workers compensation impacting on return to work outcomes, provision and coordination of treatment as well as unsatisfactory claims management by the Insurers.

This submission will address many of the aspects identified within the Actuarial report by Price Waterhouse Coopers, the Peer assessment conducted by Ernst and Young and most notably the Issues paper released by the finance and services Minister Greg Pearce.

The submission will conclude by identifying other aspects of workers compensation that we believe are having a negative impact on the financial sustainability of the scheme which need to be understood, highlighted and most importantly addressed in order for the scheme to work effectively.

Attached to this submission are cases studies of 3 injured police officers who have nominated to appear before the inquiry.

Annexure 1 - Constable Simon Shannon, New England LAC

Annexure 2 - Inspector Toby Lindsay, Far South Coast LAC

Annexure 3 - Detective Senior Constable Melissa Kilminster, Blue Mountains LAC

Please note: Our submission is only focused on the workers compensation provisions and provide no comments relating to death and disability, employer based workers compensation top up, income protection or superannuation which some members may have access to depending on their particular circumstances.

We will address each aspect highlighted within the Workers Compensation Issues Paper and Actuarial valuation:

1). Severely Injured Workers:

We agree in principle that injured workers with serious injuries should be compensated and assisted with improved income support, lump sum options and return to work assistance. The threshold of 30% WPI is excessive and is not a realistic indication of a person that is seriously injured. We have examples of members who have been deemed to have a WPI of 20-25% who are seriously incapacitated and are extremely limited in their ability to work. They continue to suffer financial hardship surviving off the statutory rate. If this is a serious initiative, the threshold to define a seriously injured worker therefore should be reduced in our view.

2). Removal of coverage for journey claims:

Our members are police officers 24 hours a day, 7 days a week. Their oath of office requires them to act and intervene in accordance with their oath irrespective if they are at work or not. Whilst it is sometimes the case when an officer intervenes they are deemed to be on duty, in many circumstances they can be injured or killed whist travelling to or from work because they are recognised as a police officer. Quite often our members are required to assist in incidents to and from work, placing themselves in harms way during their journey to and from work. Police work all hours of the day, they are often travelling home from work in the middle of the night where they are at higher risk of having an accident.

In May 2009 one of our members, Sergeant ' , was seriously injured when she was attacked in Kings Cross on her way to work in the early hours of the morning. She almost died from excessive blood loss and significant internal injuries and luckily 3 years on she is slowly recovering well. If she was not covered by workers compensation this would have had a catastrophic impact upon her family relating to medical costs and lost income. The Commissioner of Police publicly vowed his support for this officer and praised her for her courage and dedication to returning to work. Doctors said she would never work again, however defying all odds she has returned to work and has the full support of the Commissioner and NSW Police. This incident was classed as a journey claim and clearly highlights the ongoing necessity of such claims due to the risks faced by police officers travelling to and from the workplace.

Being called out to attend an incident during the night is not an uncommon occurrence for our members particularly in country areas where travelling excessive distances to reach a

job is a reality. In many circumstances they are not regarded as being 'on duty' until they arrive at their place of attachment or the scene of the incident. In these circumstances it is likely that they would not be covered in the event of an accident. The issues papers highlights the definition of "during the course of employment". In today's day and age where Blackberry's, ipads and working from home make the definition of a working day a very grey area, removing journey claims will result in the definition of 'work' being more complicated for the Employers in terms of workers compensation. There is a huge disparity surrounding work when you contemplate the different aspects of work. One must consider those workers who commence work when they start making phone calls (which could be from their home), or once they are in their company owned car driving to job, or it could be as soon as they are contacted by work to perform a particular function. What about those workers who do not have a fixed place of employment? All of these aspects are relevant and removing journey claims will only complicate the definition even further creating further ambiguity and inconsistency within industries forcing the onus back onto the Employers under their industrial obligations.

Journey claims relate to a very small percentage of claims to which we question the focus they have been afforded in the proposal. Put simply this change would have minimal impact on improving the scheme performance but have a catastrophic affect on the members who were denied coverage.

3). Prevention of nervous shock claims from relatives or dependents of deceased or injured workers

There are already significant safe guards around these types of claims within the legislation regarding those who can advance a claim and most importantly adequately addressing the negligence of the Employer. These claims are where workers are either seriously injured or are deceased and the devastating impact this has had on those family members. We are of the opinion that the Employer should be held accountable for the impact this has had on financially dependent family members. The loss of a loved one from a workplace accident would be devastating for all of those affected. We submit that the number of claims per year would be minimal and are vigorously tested already.

4). Simplification of the definition of pre-injury earnings and adjustments of pre-injury earnings

Currently police officers are paid during the first 26 weeks of workers compensation their loaded base rate of pay, which does not reflect what they were earning prior to being injured. Police officers regularly work shift work which attracts a shift penalty, perform overtime, earn allowances and have access to user pays shifts paid for by the provider of the event. On average injured police officers incur an immediate average loss of approximately $150-$200 per fortnight as a result of the current definition of weekly wage rate.

We would welcome a revised formula for the calculation of pre injury earnings for the first 26 weeks of an injury consistent with our longstanding position that currently injured police officers are financially punished when they are unfit for work due to injury. The revised calculation must incorporate an injured workers **full earnings** (inclusive of overtime, shift penalties, allowances etc) for a defined period prior to the injury (6 to 12 months as an example) averaged into a weekly amount to form the basis for the weekly benefit amount.

5). Incapacity payments – total incapacity

The current workers compensation system has a step down which occurs at 26 weeks. We are firmly of the view that this step down is sufficient and is already financially crippling injured workers. The PWC valuation on page 13 stated:

"Return to work (RTW) rates have plateaued since June 2010, however, some Agents continue to deteriorate. The valuation analysis showed that the Total Incapacity payment experience for the most recent four accident years in particular was poor compared to that expected over the last six months".

This demonstrates that the step down approach irrespective when it occurs is not a motivator to injured workers. The paper implies that by financially punishing an injured worker earlier they will return to work, this has not been demonstrated so far with the current step down at 26 weeks. To reduce the 26 week period to 13 weeks this would severely disadvantage many injured workers who require not just one bout of surgery, but numerous for the same injury. It would be near impossible to be able to have surgery, recover from the surgery and have the capacity to return to work within a 13 week period. The attached case study of Constable Simon Shannon confirms this position where he states:

"On the 24th December 2010, I started work at Curlewis before driving to Gunnedah Police Station to continue my shift. About 2.00am on the 25th we were called to a job involving two persons stealing two motor vehicles. We located both persons in one vehicle and in an attempt to apprehend the persons I was hit by the stolen vehicle. I was thrown several meters before landing on my back. In the hit I sustained a broken left leg. I received a spiral fracture to both the tibia and fibula which required surgery to insert a nail into the bone to stabilize the fracture. The surgeon discovered I also suffered damage to my Anterior Cruciate Ligament (ACL) in my left knee.

*From the moment I woke after the accident my primary aim and focus has been to return to my position within the NSW Police Force. I have been guided by medical experts in regards to my full recovery time frame. As a result of the accident, to this date, I have **undergone four operations** on my left knee and leg and one on my right knee. This has been over a period of sixteen months. Initially I had the nail and screws inserted into my left leg to hold the bone in place. Another operation was performed to remove the nail and screws; however, this could*

only be done twelve months after they were inserted to give the bone time to heal. This has all been in an attempt to get back to my previous pre injury duties and back to the same previous physical condition I was in prior to the accident.

To say that I could have made a full recovery in a period of time that would have surely past by now is completely fanciful. My recovery time is based on the recommendations and guidance of my physiotherapist along with my surgeons. I have had to recover from one operation before I have been able to have the next. For example, I could not have the ACL reconstruction before I had the nail and screws removed. I could not have the nail and screws removed before the bone healed completely, which takes twelve months".

The ongoing surgery that Constable Shannon has endured has resulted in lengthy periods of total incapacity for work which would far exceed not only 13 weeks but also 26 weeks.

Sergeant Bruce Jarvis attached to St George Command injured his shoulder and knee in August 2011 during a physical struggle with a bail refused offender. He had a short period off work then commenced a return to work program until surgery was undertaken on the 24th April 2012 some 8 months after the actual injury date. He will remain unfit for work post-surgery for approximately 12 weeks, when added to the initial period he had off work this will exceed the proposed 13 week step down. 13 weeks is not a sufficient period of time for surgery, recovery and post-operative treatment.

The total incapacity period incorporates any period where an injured worker is unfit for work which can be for broken periods of absence. For our members who are regularly faced with physical confrontations, verbal abuse, assaults, exposure to traumatic events, exacerbations and reoccurrences to injuries occur frequently which could render them totally unfit for work under Section 36 of the Act. These periods of incapacity can and do exceed both 13 and 26 weeks and it is for this reason that we strongly oppose any additional steps downs from 26 weeks.

<u>6). Incapacity payments – partial incapacity</u>

The issues paper suggests that partial incapacity payments under the current scheme do not provide workers with an incentive to return to work. We strongly disagree with this suggestion. As indicated earlier in point 4, police lose their ability to earn overtime and shift penalties when they are totally unfit for work. They are motivated to returning to work on a return to work plan where they are able to access section 40 or section 38 benefits to make up their pay comparable to what they were earning pre injury, this is a great incentive for our members.

Unfortunately operational policing is a physical job and not all police who carry injuries are able to fully return to their pre injury role. For many, they are forced to assume a restricted duties position within NSW Police Force which results in an ongoing financial loss for them due to the inability to access overtime and penalty rates. If partial incapacity payments were

removed, this would see a large group of officers financially disadvantaged as a result of their permanent injury. The Issues papers implies that injuries completely recover and everyone can return to their pre injury role, this is definitely not the case with police officers who are redeployed where many of them are committed and remain working for NSW Police Force utilising their skills and experience in a different way. They should not be financially penalised because of this inability to perform their pre injury role.

We believe, from our experience, that the reason workers do not return to work on partial incapacity payments is as a result of Employers refusing to provide injured workers with meaningful suitable duties. It is a common occurrence that GP's are ready to certify an injured worker fit to return to work but there is a lack of commitment by the Employer regarding the availability of suitable duties. This process at times can take many weeks for the Employer to commit to providing suitable duties to an injured worker and unfortunately this results in a sense of betrayal and lack of motivation in the mind of the injured worker who is returning to that workplace.

A police officer advised us just this week that his Commander said that *'he will need to transfer him out of his command as he wants all of his officers being able to fulfil all of the requirements of their positions, not just part'*. For this officer who has served over 20 years in NSW Police, he is feeling very unsure of his future with NSW Police Force after being told this information. The approach being adopted by this particular Commander is not unfamiliar, further demonstrating the reluctance in retaining injured police.

An injured paramedic has informed us that due to her neck and shoulder injury she is unable to undertake her pre injury duties permanently and according to the Employer, clerical work is the only alternate work available for her to undertake. This however has caused ongoing aggravations to her neck injury from constant computer work. The Employer therefore rescinded the duties and since the 22nd Feb 2012 the injured paramedic has remained out of the workplace despite her Work Cover certificate stating she is fit for suitable duties with some restrictions (lifting, carrying and driving). She is being paid Section 38 payments and remains committed to returning to work considering she is losing a significant amount of money compared to her pre injury wage which attracted shift penalties and allowances as an operational paramedic. 3 months on and there is no assistance by either the Employer or the Insurer to assist this worker back to work. This injured worker should not be financially punished as she is ready, willing and able to comply, however suitable duties are not being made available to her. This injury has been ongoing for almost 4 years and needless to say this process has resulted in a secondary psychological condition affecting the worker.

For some of our members who cannot successfully re redeploy within NSW Police Force, they are unfortunately forced to source work in the open labour market. An Audit conducted in May 2011 by Assistant Commissioner Peter Gallagher concluded that 46% of discharged police officers were either partially working or were fit to work but were unable to find work as a result of their injuries. For this large group of officers to be cut off partial

incapacity benefits this would result in severe financial hardship and would work as a disincentive for them to find suitable work. Partial incapacity payments are a motivator in moving injured workers from total incapacity payments to return to work, gradually assisting them back into the workforce.

There is a necessity for incentives for Employers to offer workers suitable duties or alternatively there needs to be scrutiny of employers who refuse to provide suitable duties to workers when they should have the capacity to do so. Time and time again injured police are told *'we do not have any work here for you to do, unless you can put a gun on your hip, you are useless to me'*. This attitude makes the injured worker feel very vulnerable, unwanted, underutilised and all too often results in a secondary psychological condition. Employers find it too difficult to 'think outside the square' when it comes to providing suitable duties to injured workers and even more so when there is no punishment for non compliance. Work Cover has no power to force Employers to provide duties, the Insurer does not test the Employers decision and in the interim an injured officer is left feeling worthless and undervalued. A proposed scheme that essentially punishes the workers and imposes no duties or obligations on the employers or insurers is unfair, and unlikely to achieve reduced costs.

Assistance is currently available with job seeking, retraining, job modification, work trials and the provision of equipment which in our view is seriously under utilised and is not readily available for injured workers. The guidelines developed by Work Cover provide adequate options to assist with redeployment and return to work, however the application of such policies fail to translate into reality and be made available to assist injured workers.

7). Work capacity testing:

Assessing an injured workers capacity is already available to insurers under the current regime, however it is not utilised consistently or effectively. At present under the Work Cover guidelines, the Insurer can request that an injured worker be assessed when the medical information is not readily available or is inconsistent from the treating Doctor. Our experience however, is that when an Insurer has an independent report particularly relating to capacity for work there is a heavy reliance upon the provision of suitable duties by the Employer. If those duties are not made available to the injured worker there is little that can be done to enforce this recommendation. The current systems available need to remain however changes to the scheme need to strictly enforce the implementation of such outcomes on the Employer by the Insurer. If the duties are not being made available these assessments are pointless providing the injured worker with little or no options regarding suitable duties.

As indicated in point 6 above, there are many options available to assist an injured worker return to work, but it is up to the Insurer to offer suitable assistance to facilitate this,

whether that be the provision of equipment or perhaps a training course to develop alternate skills for a different job.

The issues paper suggests that the suite of changes will support workers return to work, this cannot be achieved without penalty to Employers who fail to provide suitable duties. The work has to be on offer and made available for an injured worker to accept, in the absence of meaningful suitable duties the injured worker has no other alternative.

8). Cap weekly payment duration:

There cannot be a fixed timeframe placed on an injury to recover. We can easily demonstrate that both physical and psychological injuries are not all the same, it is impossible to put a timeframe on the recovery and severity of each injury along with each individual's response to treatment and the impact on this regarding their capacity to work.

I note the comments in relation to the Tasmanian weekly benefits model which is prefaced on the basis of benefits being based on a particular % of impairment. We are firmly of the view that injuries unfortunately reoccur and/or deteriorate over time through continued exposure in the workplace so it would be prejudicial to select a period of time to assess the percentage of impairment and apportion the duration of weekly benefits based on that 'one point in time' assessment of impairment.

Moving injured workers off workers compensation onto disability benefits is simply a cost shifting exercise. These workers have been injured during the course of their employment and they should not be forced to live off inadequate disability benefits.

The issues paper makes reference to 'work readiness', however there needs to be some acceptable that due to the severe nature of some injuries, some workers are in fact unable to work again and are totally and permanently incapacitated. Each year approximately 40 to 60 of our medically retired members successfully satisfy the high level test for total and permanent disability through their superannuation fund. This demonstrates that there are some injuries which unfortunately impact on an individuals ability to ever work again.

Section 52A of the Act currently gives the Insurers the ability to discontinue weekly payments for partial incapacity after a period of 104 weeks. We therefore question the necessity for an arbitrary cap on benefits where there is a satisfactory provision available which adequately addresses this proposal. Combined with this provision is the ability as previously mentioned of the Insurer to have an inured worker assessed regarding their capacity to work.

9). Remove 'pain and suffering' as a separate category of compensation:

Whilst we appreciate the administrative ease this proposal would provide, we would be very concerned regarding the removal of the assessment of an individuals own pain and suffering. It is widely accepted that each individual experiences differing levels of pain and

distress from their injury and the impact of an injury on a person's life varies greatly. The intent of Section 67 of the Act is to measure the actual pain, distress or anxiety an injury has on a person. As well as the pain, distress or anxiety that they have suffered or likely to suffer whether resulting from the permanent impairment concerned or from any necessary treatment. There is particular reference to the 'actual' pain suffered which clearly indicates the individual nature of ones pain or distress.

We would therefore be very concerned how a set figure could be determined based on a level of impairment for all injuries. There has to be subjective measures considered when determining ones pain and suffering based on their individual circumstances.

The pain and suffering for a back injury at 10% compared to an ankle injury of 10% one would argue is very different and could not be compared simply on the percentage of impairment. Statistics from the Workers Compensation Commission would support our position regarding the differences that arise in Section 67 payments which would greatly depend on the person, nature of the injury and their treatment.

10). Only one claim can be made for whole person impairment:

There has been a great deal of focus contained in the Actuarial valuation in respect of top up 66/67 claims. There are many of our members, who sustain an injury, seek a section 66 claim and who return to work.

In conjunction with NSW Police Force, we recently undertook research regarding 'assaults on police officers' though a Work Cover funded research grant. Some of those findings were:

- Across NSW, on average, 1 in every 4 operational police officers was assaulted each year
- the average number of assaults for officers assaulted in the period 2005 - 2009 was 2.5 assaults

Unfortunately because of the high risks associated with police work, injuries can re occur and exacerbate themselves, which quite often results in further surgery. This can result in a deterioration of an injury whereby it would be totally unacceptable for these injured workers to be denied further access to a section 66 claim.

The issues paper makes reference to limiting impairment claims to one claim which would ensure a claim is only made at the time an injury has stabilised. This comment on the surface would appear sensible, however it goes without saying that generally workers do not anticipate reinjuring themselves or exacerbating their injury and are hopeful they have recovered. Many are also optimistic that the surgery will 'fix their injury' and fail to acknowledge the possibility that there is a possibility of deterioration of their injury over time or that it may re occur.

Our member Inspector Toby Lindsay (Attachment 2) is a clear example where his serious back injury although appears to be stabilised will more than likely deteriorate over time and require further surgery. He has currently been assessed at 30% WPI by the Insurer and would be severely disadvantaged if he was limited to either one claim or by a defined timeframe for a permanent impairment claim to be made.

Police Officers in general are getting injured more and more. They are reinjuring themselves, their injuries are deteriorating due to inadequate treatment or simply just the nature of the injury is one which cannot recover. Our member Detective Senior Constable Melissa Kilminster (Attachment 3) has provided to the inquiry a chronology of events relating to her injury. It clearly highlights that although she has eagerly returned to work, sought treatment and surgery, her injury is one which is going to continue to deteriorate and require further surgery. Detective Senior Constable Kilminster has not applied for a permanent impairment claim, however, the continued deterioration and reoccurrence of her injury demonstrates that unfortunately injuries deteriorate, fluctuate and take time and should be compensated accordingly. She does not want to sit in a corner wrapped in cotton wool, her motivation has always been to be back at work and time and time again this has affected her injury. This will not prevent her from being back at work but she should not be precluded from seeking additional section 66 claims as a result of clear deterioration and aggravation.

We note the comments contained within the Issues paper relating to setting a threshold on permanent impairment claims. Setting the threshold at 10% in our view is excessive and is not indicative of the appropriate level for a permanent impairment claim to commence. We do however welcome a further opportunity to comment on additional proposals and we suggest the inquiry consider alternate thresholds for consultation.

<u>11). One assessment of impairment for statutory lump sum, commutations and work injury damages:</u>

Following on from point 10 above, we do not agree that there should be only one claim under Section 66, therefore we cannot agree with one assessment that determines all claims with particular consideration relating to injuries that deteriorate over time, re occur and are exacerbated. Whilst we agree that having injured workers attend numerous medical assessments is distressing, the current Work Cover guidelines state that a referral for an independent medical examination is only to be made when a proper assessment cannot be obtained from the treating medical practitioner(s). Although this guideline exists under the current scheme, our experience is the Insurers do not comply with this guideline and there is no punishment from Work Cover for failing to comply. The Insurers are currently requiring injured workers to be assessed by their independent Doctors due to an objection to an injured workers medical report, even if it was conducted in the correct form. This practice is inconsistent with the intention of the current guidelines. If the current guidelines were being adhered to, part of this recommendation would already sufficiently be addressed. The

current guidelines therefore need to be strengthened and enforced including penalties for non-compliance by Insurers.

Psychological injuries amongst our membership are unfortunately a reality of policing. These claims generally also have a degree of negligence by the Employer where they have failed in their duty of care to the employee. It is extremely important that any medical assessment relied upon to determine either a section 66 claim, commutation or WID claim be accurate and credible. Unfortunately there is too much disparity amongst medical assessors for anyone to agree that one medical assessment will determine all financial aspects of a claim.

One of our members who suffers from a psychological injury was assessed at 22% WPI by their treating doctor, however the Insurer's medico legal doctor assessed the percentage at 8% WPI which therefore did not result in a claim for our member having fallen below the 15% threshold for psychological injury.

Another case where the injured workers doctor assessed psychological impairment at 19% WPI, insurers doctor determined 11% WPI then after lodgement at the WCC the AMS determined 5% WPI therefore no Section 66 claim was granted.

Clearly these cases demonstrate that it would be extremely difficult to simply accept one assessment of impairment considering the statistics that are available which demonstrate great inconsistencies and opinions in the medical profession regarding impairment. The Insurers approach regarding the referral for additional assessments is in clear contrast with the current direction within the Work Cover guidelines. This needs to be given clear priority for review by the inquiry before adopting a drastic change to the current systems.

12). Strengthen Work Injury Damages:

We understand that a significant proportion of these cases are settled. The law in regards to these claims is rigorous and the assessments are already set at a very high standard.

Two scenarios are presented, we either have a significant increase of severely injured persons due the negligence of employer or cases are being settled inappropriately.

Good public policy creates a scenario where those who are responsible for damage due to negligence should bear the primary responsibly for their actions or inactions, the law in this area is designed to modify harmful behaviour. To remove this or minimise this area of the law is from a public policy point of view very dangerous.

The alternative is that claims are not being properly tested through the Court process. We understand that often litigation is settled and that a pragmatic approach is taken, which is appropriate however the large numbers of matters settled through mediation should raise concerns about the rigor being applied by insurance agents to this process.

We do not agree that the Civil Liability Act should apply to work injury damages claims purely on the basis of the aspect of defence relating to resources and the limitation on objecting to the allocation of those resources. For many police officers exposure to horrific incidents results in devastating psychological injuries. Many officers are then provided little or no assistance in addressing those issues by the Employer therefore continuing to not only expose them further but not monitor the welfare of their employees. Amending the provision will have a detrimental impact on our members where a lack of resources and systems have failed them and their health. To facilitate a system which will permit NSW Police Force to use the defence of not having enough resources to properly look after their own employees is a huge injustice to those police officers who are significantly hurt doing their job through no fault of their own.

13). Cap medical coverage duration:

Our firm position is that there is a lack of coordination by the Insurers of a worker compensation claim particularly relating to treatment. By simply placing a cap on medical coverage is a band aid solution to a broader problem. We do not support the capping of medical treatment but we do support the assessment of treatment being reasonable and consistent with the Work Cover guidelines regarding the provision of treatment. The current Work Cover Guidelines suggest that an Insurer should be actively case managing an injured workers claim which includes liaising with the Employer, Injured worker and their nominated treating Doctor. If there are concerns raised in relation to the capacity of the injured worker or the reasonableness of proposed treatment this should be addressed immediately with all parties involved to ensure a speedy resolution to any issues.

Under the current Work Cover guidelines, Injured workers may be referred to an independent consultant when the insurer is concerned about the:

- number of treatments provided and/or proposed treatment

- failure of the injured worker to return to work despite ongoing treatment

An integral component of this review involves the consultant liaising with the treating practitioner to determine the most appropriate way forward.

In practice, if the Insurers were using the avenues available to them within the legislation and guidelines the issues surrounding treatment costs would be minimal. There are sufficient provisions already available for Insurers to adequately address this concern.

The Insurer also has the option of utilising independent medical examinations who can make recommendations in relation to return to work, capacity for work and treatment to list a few. This is in addition to the use of an independent medical consultant who can act as a negotiator between the injured worker, insurer and the nominated treating Doctor to assist with return to work.

In our experience these assessments are under utilised and Insures often fail to properly address issues with the nominated treating Doctor to seek a quick resolution to an issue. These medical assessments give the Insurer the current ability to make informed decisions on a claim for weekly benefits or medical treatment but in fact they rarely rely upon them.

There is no need to introduce an arbitrary cut off for benefits or treatment, there simply needs to be greater involvement from the Insurers and rehabilitation providers in properly case managing and consulting with treating Doctors in determining the most appropriate form of treatment for an injury.

Our member Sergeant Brett Henderson-Smith who is a General Duties Team leader at Coffs Harbour Local Area Command stated the following to us regarding the issues with his treatment:

" In December 2009 I was injured at the Coffs Harbour Police Station stopping a person who attempted to run out of his cell. It had taken five police to carry him into the cell in the first place. As a result I suffered 2 x bulging discs in my back and a labral tear in my right hip. I was on sick leave for 3 weeks and on pain medication for over 18 months due to this injury. By February 2010 my physio basically diagnosed the tear in my hip. He told me that a MRI was the only way the tear would show up. My doctor sent me for an ultrasound which was negative and then a catscan. Both did not show the injury. He did this in consultation with Allianz because they wanted the cheaper options explored first. This resulted in a 3 month delay before I was referred for a MRI which showed the extent of the injury. MRI was in May. Surgery was in September. It took six weeks to get an appointment with surgeon after MRI was complete and another 6 weeks to schedule surgery after appointment. It took 10 months before I was able to operated on to repair the injury I suffered. I was on crutches for 6 weeks after my operation and on sick leave for 2 months. It was a further 3 months before I was able to work 38 hours per week and another 2 months before I was fit to return to operational duties. Throughout the process from the date of injury until I returned to operational duties I complied with all the obligations placed on me to return to work and seek treatment. Delays by Allianz caused a 3 month delay prior to the operation".

There is not a quick fix solution for injuries, they are generally complex and need time to heal. For some injured officers treatment allows them to function and remain in the workplace trying to avoid deterioration or worse still a re occurrence of their injury.

Sergeant Glen Gorick is an example of the necessity for treatment relating to his injury. He provided us with the following information:

"In November 2006 I attended a job that was the pinnacle of exposure to trauma that devastated my health and resulted in accumulated PTSD since 1985. I endured my health problems through 2007 and reported the PTSD in May 2007 where I commenced counselling with a psychologist. I returned to work on light duties until June 2008 when again I reported

off with PTSD and then undertook the services of St John of God and attended their hospital in Richmond. I then continued with counselling, but at a much higher level from a psychiatrist with 30 years of experience in the PTSD field and with his treatment was able to make the gradual return to work with a structured RTW program. In March 2010 I was able, with this treatment to make the full return to pre injury duty on a progress medical certificate. Between 2010 and present day, I have continued the treatment with the psychiatrist on a progress medical certificate to remain in the workplace. I have been continuing the treatment every three weeks to present day and without this treatment would not be able to remain fully operational and possibly not maintain the level of health I do. I can't stress that without this treatment and the support of my doctors it would have not been possible. Since returning to work I have been praised by my senior officers for being able to greatly contribute to junior staff with my experience and ability".

The actuarial report has clearly indicated a deterioration in claims management by the Agents. Our view is unfortunately that in nearly all cases injured workers are left to their own devices to manage their treatment and their injury. As many of our injured police have indicated, *" I got injured and had no idea what I had to do, I went to my doctor and just did what they suggested".*

Our member Senior Constable Brad Cooper from Inverell was injured on the 2nd July 2009 when he was attempting to break up a brawl; he was punched in the face and subsequently attacked by 3 of the offender's family members. He was exposed to blood, suffered a serious lower back injury and a psychological injury. Initially Brad did not have any time off work and battled on until 2010 where he couldn't handle the back pain any longer. He attended his doctor and was told to *'look for sedentary type work and lead a sedentary lifestyle'*, there was not much that could be done for his 3 prolapsed discs. Brad was devastated, he did not want to do office duties, he wanted to remain a full operational police officer and lead an active healthy lifestyle. He complied with his doctors suggestions and undertook restricted office based duties at the police station; this however further exacerbated his condition. By January 2011 he couldn't continue and was totally unfit for work. Psychologically he was suffering, financially he was even worse, the banks foreclosed on 2 of his properties as a result of him being on base pay being off work. He was not accustomed to losing $250 a pay. He was forced to seek financial hardship and access some of his superannuation to bail him out of financial strain.

Brad was at a loss, the sedentary type of life was not assisting his injury, he was psychologically spiralling into a bad place. Thankfully intervention was made by the Rehabilitation Coordinator and a second opinion was obtained from an orthopaedic specialist in Dubbo who diagnosed him with having damage to the sacro/iliac joint and there was treatment available to assist. In July 2011 Brad commenced a new physio regime in Sydney. It involved significant physical and specific manipulation as well as targeted and specific exercises that he also had to undertake at home. By September 2011 Brad was

having profound success with this new physio that he returned to work on restricted duties again, this time not sedentary but a graded approach involving additional equipment with a thigh holster, load bearing vest and a gel belt. By late 2011 Brad was back fully operational in highway patrol doing what he loved, police work.

He attributes this great improvement to the intervention of a different orthopaedic surgeon who properly diagnosed his injury combined with fabulous physio treatment that he obtained. Brad still receives physio and counselling today which allows him to maintain full operational policing duties at a minimal cost to the Insurer for the outcome that is being achieved.

Brad's example clearly indicates that there is greater need for a more hands on case management approach from the Insurers. Injured workers do not understand the aspects from a medical perspective, they simply adhere to the advice they are provided. Many of our members, particularly those with back and neck injuries require ongoing treatment for them to maintain their full duties in NSW Police Force. Policing is often referred to as a "contact sport" and unfortunately many officers sustain injuries on a daily basis, if a minor medical cost keeps them at work performing at the optimum level then this in the long run reduces the overall cost for Employers and Insurers.

Sergeant Allan Tunnicliff injured his back at work in Aug 2010 when he was lifting a heavy box of ammunition. He did not take time off work initially, he consulted his general practitioner who recommended physio and CT guided injections. He followed the advice of his doctor whom he trusted, unfortunately his back was deteriorating and was not improving. One year after the initial injury in September 2011, his back totally failed on him to the point where he couldn't walk and was taken via ambulance to hospital. A neurosurgeon saw him, ordered an urgent MRI then operated on him a few days later. He had sustained back in Aug 2010 a L4/L5 protruding disc injury and by Sept 2011 the L5 had blown out onto the sciatic nerve. The Neurosurgeon was firmly of the view that he should have been operated on 12 months earlier. Allan returned to work on restricted duties in Feb 2012 and is happy maintaining his injury with physiotherapy. He is scheduled to see the surgeon again in Aug 2012 for a review, it is highly unlikely he will be able to return to operational policing duties again.

Our member Senior Constable Jace Roser from Coffs Harbour provided the following information:

"I had what is called a SLAP tear (SLAP is an acronym that stands for "superior labral tear from anterior to posterior".) in my left shoulder. The injury causes shoulder instability and in my case my shoulder would actually move out of the joint and back in (subluxation). The injury occurred on the 21/6/11 while trying to subdue a mental health patient. The GP Dr has listed this as a recurrence of an older injury. I have injured this shoulder twice before in the past and it has responded to rest/physio. On this occasion I injured it twice in the one job and

actually tore the Labrum. It took until the 8/11/2011 to have an MRI then the surgery was performed (shoulder arthroscopy) to cut and clean around the torn labrum and cut and reattach my beceps tenson to my upper arm (biceps tenodesis) on the 17/01/2012.

It can be said that most injured workers are very much unsure of what Doctors to see, whose opinion they should trust, when all they want to do is to get themselves better and back to work. There is a large gap in the current system between health care providers, the Insurers, Employers and the injured worker. Instead of trying to cut treatment from injured workers, perhaps the focus should be aimed more towards assisting injured workers get the most appropriate form of treatment for the diagnosis of their injury. There are also many of our members who although are at work whether it be on full operational duties or on restricted duties still require ongoing treatment from a psychological perspective to maintain those particular duties.

There is also a heavy emphasis contained in the valuation reports regarding the 110 'large' claims for workers compensation which account for 23% of the outstanding claim liability. It is clear from the information that Work Cover themselves through their own file reviews have recognised the gap in claims management, relating to the lack of independent care need assessments, care plans, controls around expenditure and outcomes. Consistent with the recommendations made by PWC, Work Cover needs to focus on developing a strategy for better managing and caring for this significant subgroup of claims. This recommendation is consistent with our view outlined above that all injured workers not just the 'large' claims require intensive case management particularly relating to treatment and return to work assistance. The remaining 77% of medical expenditure therefore is divided amongst the remainder of claims, once converted into $ terms this would not equate to large amounts of money per individual claim.

This recommendation by PWC is clearly indicative of the lack of proper care and assistance provided to injured workers irrespective of the type of claim.

14). Strengthen regulatory framework for health providers

Consistent with our comments in the previous section, we agree that evidence-based treatment with proven health and return to work outcomes for injured workers is a positive step forward and should be strengthened and enforced. We want to see our injured members getting the appropriate treatment that is going to facilitate recovery and return to work. Police officers want to get back to full policing duties and finding the most effective type of treatment is the most important aspect of claims management.

15). Targeted Commutations:

As we have outlined earlier, the increase in WID claims is potentially due to the inability for injured workers to seek commutations due to its strict limitations resulting in Insurers using the WID capacity to indirectly achieve a commutation. There is also no involvement of Work

Cover when settling a WID claim in comparison to a commutation. We would welcome the introduction of commutations across the board with some restrictions including the removal of Work Cover in the process. PWC reported that the tail claims are the most costly for the Agents and require urgent appropriate management (Page 21 PWC Report). It can only be assumed that many of these claims do not meet the current criteria for commutations particularly in respect to meeting the 15% WPI threshold. Removing or reducing the threshold for commutations would open up opportunities for many of the tail claims in particular allowing access to commutations which over time would reduce the deficit. Injured workers who receive small ongoing amounts of money often feel that the ongoing dealings with an Insurer are stressful and time consuming. If they had the option of obtaining a commutation and managing their treatment themselves this would alleviate those concerns. It is also recognised that from an administrative perspective it is also quite costly for the scheme.

Increasing the option for commutations would reduce ongoing costs to the scheme and could be of benefit to both parties. The calculation however would require a great deal of fairness to ensure it was financially viable for an injured worker to accept and seriously consider a commutation. We would welcome the opportunity to consider the types of claims that the issues paper alludes to.

16). Exclusion of strokes/heart attacks unless work a significant contributor:

The current legislative test applied to the definition and causation of an injury in our view satisfactorily addresses the test applicable for all injuries which includes strokes/heart attacks. The test relating to a personal injury arising out of or in the course of employment provides adequate rigour to prove or disprove causation and connection with the workplace. These types of injuries in our view should not be excluded and should be dealt with on the merits of each individual case consistent with any other medical condition.

Agent Performance:

Many of the recommendations from the Actuarial valuation surrounding the Agents are consistent with our view that the Agents are not effectively managing their claims. The legislation currently provides the Insurers with capacity to review reasonable treatment, have injured workers assessed where the information cannot be reasonably obtained from the treating Doctor and appoint independent consultants to assist with return to work. Our experience is that this does not occur in practice which has resulted in the scheme in its current predicament. It is disappointing that the largest Agents are in fact not improving in their performance which will no doubt continue to contribute greatly to the deficit without any significant change being placed upon the Agents in respect to their performance.

The other main recommendation regarding the Agents from PWC focuses yet again on the early intervention and management of claims. Early intervention is currently not occurring and has contributed to the lack of proper individual case management of a claim as highlighted throughout this submission. It is highly inappropriate to propose a reduction in

benefits whilst at the same time criticism has been directed towards the lack of early intervention by Insurers with limited proposals focusing on their role.

The aspect of Agent remuneration has always been a contentious issue. Consistent with the PWC recommendations the remuneration of Agents needs serious reviewing in conjunction with assessing the key drivers for the Agents.

Premium reduction over the years has no doubt contributed to the lack of income to assist with the management of the scheme. Whilst we acknowledge that not all of the deficit can be dealt with by an increase in premiums, there does need to be some analysis conducted on the appropriate increase that would be applicable to assist in reducing the deficit.

In summary, whilst we acknowledge the scheme is in deficit it is clear from our submission that further penalising injured workers and in particular police officers, will not result in significant change to the financial situation of the scheme. There are sufficient legislative provisions currently available to the Insurers to adequately properly manage claims from all perspectives. The inquiry needs to focus on removing barriers to enforcement, strengthening of the current provisions with a focus on return to work, the provision of suitable duties in conjunction with a fair assessment process for injured workers with significant permanent injuries.

We cannot stress enough, that police officers are obliged to place themselves at risk each and every day they attend work. Whilst other injuries would no doubt suffer injuries of similar severity, police officers are faced with a much higher frequency rate. They sustain injuries which, for some are beyond repair. Ongoing treatment costs, weekly benefits and adequate permanent impairment compensation is paramount and it is our firm view that these benefits must remain unchanged. Any proposed system should be aimed at supporting injured workers, not punishing them.

Most importantly the focus needs to be on the prevention of workplace injuries, with adequate measures in place to ensure the health and safety of all employees at work to ensure they do no get injured in the first place.

We welcome the opportunity for further consultation regarding aspects of this submission and any other proposals the inquiry feel should be considered.

Yours Faithfully

Peter Remfrey

Secretary

Police Association of NSW

Attachment 1:

Dear Inquiry into the NSW Workers Compensation Scheme

My name is Simon Shannon. I am a Constable based in the Oxley Area Command. My position is lock-up keeper at Curlewis, a one man police station.

I have been asked to submit my story to the committee so it can hopefully provide a different perspective.

On the 24th December 2010, I started work at Curlewis before driving to Gunnedah Police Station to continue my shift. About 2.00am on the 25th we were called to a job involving two persons stealing two motor vehicles. We located both persons in one vehicle and in an attempt to apprehend the persons I was hit by the stolen vehicle. I was thrown several meters before landing on my back. In the hit I sustained a broken left leg. I received a spiral fracture to both the tibia and fibula which required surgery to insert a nail into the bone to stabilize the fracture. The surgeon discovered I also suffered damage to my Anterior Cruciate Ligament (ACL) in my left knee.

From the moment I woke after the accident my primary aim and focus has been to return to my position within the NSW Police Force. I have been guided by medical experts in regards to my full recovery time frame. As a result of the accident, to this date, I have undergone four operations on my left knee and leg and one on my right knee. This has been over a period of sixteen months. Initially I had the nail and screws inserted into my left leg to hold the bone in place. Another operation was performed to remove the nail and screws; however, this could only be done twelve months after they were inserted to give the bone time to heal. This has all been in an attempt to get back to my previous pre injury duties and back to the same previous physical condition I was in prior to the accident.

I have also had two arthroscopes on the left knee and one on the right knee. Each operation returns me to crutches and rehabilitation, with my weight being supported by my right leg. This has caused irreparable damage to my right knee. The continual surgeries, mobility difficulties and rehabilitation have placed considerable stress on my family. My partner, Nadia, also a police officer, is left to run our household and care for our two young children. Our eldest child has just turned two years old. After each operation I am unable to help in any aspect of caring for our children or maintaining the house. While Nadia is understanding of my limitations and the predicament we find ourselves in, we find our relationship has suffered to some degree over the period of my recovery.

I have also been seeing a psychologist as a result of experiencing symptoms relating to Post Traumatic Stress Disorder.

I returned to work in October 2011 for a short period of time before an operation on the 1st November 2011. My role during that period was in an administration capacity, back capturing exhibits onto the new data base.

Sixteen months down the track and my recovery continues with further operations. On the 30th May 2012, I am having an ACL reconstruction on my left knee and arthroscopy on my right knee. The arthroscopy on my right knee is to confirm the diagnosis of my previous surgeon. This diagnosis is that as a result of the accident and extra stress placed on the leg after several operations, my right knee is now at a point where it will prevent me from ever returning to pre injury duties.

I have again commenced work in an administration role working through exhibits etc. I work six hours per day two days a week. I will continue until my next operation on the 30th May.

To say that I could have made a full recovery in a period of time that would have surely past by now is completely fanciful. My recovery time is based on the recommendations and guidance of my physiotherapist along with my surgeons. I have had to recover from one operation before I have been able to have the next. For example, I could not have the ACL reconstruction before I had the nail and screws removed. I could not have the nail and screws removed before the bone healed completely, which takes twelve months. To simply give an injured worker financial and medical assistance up to a date based on some unrealistic time period or how much the government wants to pay regardless of those workers injuries is disgraceful. Recovery takes time. No two people's injuries are the same and it takes different individuals different amounts of time to recover. To judge all injured workers based on one example is wrong.

Thank you for allowing me to present you with my story and I hope it provides you with a better understanding of how injured workers feel about the proposed changes.

Yours Faithfully,

Simon Shannon

Attachment 2:

Joint Select Committee on the NSW Workers Compensation Scheme,

NSW Parliament, Sydney.

Att: Ms Vanessa Viaggio, Principal Council Officer.

To the Honourable Committee Chairman and Members,

Dear Sirs,

Please find below submission relating to the NSW Workers Compensation Scheme.

By way of introduction, I'm a 39 year old sworn member of the NSW Police Force stationed at the Far South Coast Local Area Command / Batemans Bay as an Inspector of Police. I am also a member of the Police Association of NSW Commissioned Police Officers Branch. I reside near Jervis Bay with my wife and three children on our small farm. I have served the NSW Police Force and the New South Wales community as a fully operational uniformed police officer for 18 years, both throughout the state and in East Timor whilst on secondment to the Australian Federal Police (AFP) and the United Nations Civilian Police contingent.

Prior to achieving promotion and appointment to the commissioned rank of Inspector in 2010, I served in the Shoalhaven area (Nowra) as a General Duties Sergeant for 8 years. During that time (2004) I was injured, whilst on duty, in a major car accident on the Princes Highway at Bewong. Unfortunately as a result of this 'at work' car accident I was diagnosed with and now suffer from a degenerative spinal disease (Syringomyelia) caused by a Syrinx (cyst) in my spinal cord at neck level and multiple disc and nerve related damage. Subsequent to the accident, for a number of years (2004-2007) I underwent conservative treatments with neurosurgeons, GPs, physiotherapists and other specialists, all whilst turning up to work and putting up with the many painful and debilitating symptoms that ensued. These included constant severe pain in shoulders and neck, constant headaches, loss of feeling and strength in my hands and nerve pain.

In 2008 I had a series of three separate 'nerve block' operations to my spine, which failed to assist in controlling the ever increasing pain and related symptoms I was suffering. After significant consideration, in May 2009, with numerous independent and insurance examinations supporting and recommending major corrective surgery, I underwent a spinal disc removal and fusion at the C5/C6 (neck) level. Following this, I

endured an extensive period of immobilisation (months) and pain management. I then commenced the required lengthy physical and occupational rehabilitation and returned to work many months later. Unfortunately during this period I had a fall and cracked the spine fusion. As a result I recommenced immobilisation and pain management with significant medication. I again slowly passed all treatment, assessments and achieved full duty / pre-injury status including promotion to my current role / position (Whilst recovering immobilised from the first horrible spinal op. in a hard collar neck brace I studied as hard as I could and managed to get through the NSW Police promotions cycle - more to keep my sanity instead of just looking at the four walls of my home).

Unfortunately the injury got the better of me again as the broken fusion and discs bone failed to re-grow again nor fuse (in essence I had a broken neck for over a year). Numerous examinations and expert opinions were sought and in July last year (2011) I was required to have the original surgery corrected with multiple disc removals, the original disc re-fused and another one replaced with an artificial prosthesis (being at C5/C6 & C6/C7 level). I am currently trying to repair my body whilst again undertaking an extensive long term rehabilitation program and slow staggered reduction of the significant pain medication that I've required for years and become dependent upon. All this whilst completing my return to work duties and trying to be a husband and father.

In summary – as a result of the car accident in 2004 and since severe symptoms presented in 2007 I've undergone five surgeries including three separate nerve blocks and two spinal discectomy / fusion / disc replacement operations and extensive rehabilitations (Spine fusions require between 12-18 months for bone to re-grow and to fully fuse). It appears I have suffered approximately 30% impairment as a result of the accident and subsequent corrective surgeries.

In addition to the abovementioned injury, during my policing career I have suffered numerous other 'on duty' injuries including chipped teeth, severely bruised testicles, numerous muscle injuries, cuts, scrapes, bruises and giardia (water poisoning - East Timor). Although it may appear I'm injury prone, this is far from the case. Policing, like a number of other jobs, is a 'contact occupation'. This is a known fact and an inherent occupational risk. Most officers 'bounce back' with the right human and financial support.

I love my job and my intention is to again return to full duties and achieve a decent quality of life that has been missing for some time for both myself and my family whilst living with the residual impairment and symptoms as best I can. Unfortunately it is the considered opinion of my treating specialist that the degenerative nature of my injury will see further corrective surgery required in between 5-10 years <u>all going well</u>. With the

above in mind I request you consider the impacts that potential changes in the workers compensation scheme will have on injured workers such as myself.

Submission points –

- Totally incapacitated / unfit for work – The considered 50% reduction from 26 weeks to 13 weeks fully paid workers compensation for certified unfit to work injured workers will have a major impact on the average person's ability to maintain financial security whilst at the same time dealing with often life altering injuries and treatment. As in my case each spinal fusion requires a recommended minimum 12 to 16 weeks of total incapacity. This period is vital to allow re-orientation of spinal movement and the commencement of bone fusion as mentioned earlier that on average takes 12-18 'months' to complete. Furthermore, the likelihood of further flow-on spinal fusion / disc replacement surgeries, again as in my case, will see periods of total incapacitation amongst other years of semi and full productivity. Further to this point, the consideration relative to cessation of treatment at 2.5 years post injury will place an untenable financial impost on people such as myself, who in all likelihood will not be able to afford some or all flow-on surgery or maintenance treatments to prevent same.
- Partially unfit – suitable duties. If consideration is being given to reducing the full wage and approved treatments from 130 weeks / 2.5 years for partially incapacitated (suitable duties) injured workers to another lesser time period I request that the Committee considers the following. Since my accident in 2004, I have required 5 surgeries and numerous GP, specialist, physiotherapy, exercise rehabilitation programs, MRI's, scans, X-rays, examinations, assessments and medications ALL deemed necessary by the insurer, it's experts, my employer, Workcover, my Doctors and I. A good deal of these were required to satisfy Workcover / workers compensation legislative requirements in addition to being treatment options or aides. If treatment was ceased for me at 2.5 years post injury, then the financial burden for all the necessary corrective surgeries and treatments I've endured in an effort to 'get better' would have fallen on my shoulders. This seems most unfair given the injury was at work, whilst working. In occupations such as mine this would provide a huge disincentive to potential recruits and to those officers who must place themselves in harm's way to fulfil their oath of office. This was highlighted recently during significant reductions in Police Death & Disability coverage.
- Section 66/67 compensation. In 2010 I instructed solicitors to prepare a section 66/67 compensation application relative to my injury, impairment, pain and suffering. This was stalled by the fact that I was unable to reach maximum

medical improvement and required further surgery which occurred in 2011. I am now re-commencing this process however the likelihood that future surgery in my case is high. If potential changes to this current compensation system are implemented and an injured worker is only allowed to make one Section 66/67 claim and this is capped by either a higher impairment percentage and/or a 10 year post injury cut-off, then again myself and other workers with similar injuries, impairments or treatment requirements will be significantly disadvantaged.

As I mentioned earlier, I've had numerous injuries as an operational police officer and was unfortunate enough to sustain a major one. I have not made a previous claim for the other injuries although treatment was approved and undertaken. Having suffered a degenerative type injury, with further treatment slated, how would it be fair to say that I should not be compensated for future increased impairment or pain and suffering. In addition, what if it takes me more than 10 years post injury (I'm already at the 8 year mark) to reach maximum medical improvement and to be at a point where I can lodge a claim for section 66/67 compensation? The current arrangement is sensible in that injured workers are being compensated for what has occurred, with potential to re-examine same if their condition deteriorates relative to that injury.

- Many injured workers return to work and lead productive lives, yet require either ongoing treatments and maintenance or likely future surgery due to the degenerative nature of injuries. Physically, a high standard must be maintained to reduce likelihood or onset of foreseeable injury / illness re-occurrence. Injuries / illnesses such as mine have a lengthy healing and rehabilitation period (such as the 12-18 bone growth period for a spinal fusion) followed by definite requirement to maintain physical condition as well as ongoing check-up examinations and scans. This requires a significant financial outlay and again sound benefits can be seen by supporting this healing / rehabilitation period in terms of long term prognosis and hence future financial liability reduction.
- Ongoing costs in regional areas for basic necessities of rehabilitation and maintenance, such as medications, exercise / gym, hydrotherapy, scans, specialists and simple things such as travel costs is significant due to lack of options and geographic isolation. What changes the obligation of employers / insurers over time to assist with this? and or the sound financial benefit of ensuring injured workers reduce or prevent the chance of re-occurrence of injury in the first place by pro-active measures.
- Maintaining current support to injured workers in regards to long term rehabilitation, as mentioned above, has a sound financial cost benefit, not to

mention the human and duty of care elements. In our case the reduced Police Death and Disability scheme already see's police and their families financially penalised for having long term injuries and related rehabilitation needs in a high risk occupation. To further reduce workers compensation entitlements would cause further financial imposts on already hurting injured workers and their families. In effect double jeopardy.

- Having worked hard for 18 years my family and I have achieved many things including a suitably large mortgage which is commensurate with my pay and grade. Reducing benefits or off-setting workers compensation scheme costs over onto the injured worker will significantly alter mine and many thousands of other workers ability to maintain what we have worked so hard for (our homes, children's educations etc). There is a clear breach of fairness here. I didn't want to be injured. My family and I have lived with the consequences for 8 years now. We've lost enough quality of life. Reducing the appropriate workers compensation support because I've passed an arbitrary time period or cost level would be simply unfair. Reducing impairment or pain & suffering entitlements to meet the State's other financial obligations is truly unfair.

- One size does not fit all in terms of injury healing, treatment and rehabilitation timeframes and costs. Nor does an injury preclude a worker from future productive contribution to the workplace or the probable likelihood for the need of ongoing support to achieve this productivity and appropriate quality of life. People are our greatest asset. We need to protect and develop them as best we can, whilst at the same time providing fair compensation for workplace injuries.

I thank you for your time and humbly request you consider my submission in your deliberations relating to the NSW workers compensation scheme. I will happily provide any further evidence to the Committee if and when called to do so.

Yours sincerely,

Toby LINDSAY

Attachment 3:

On 22nd July 2005, I Melissa Kilminster was the front passenger of a fully marked police vehicle sedan where my partner and I responded to an urgent job. Whilst proceeding code red to the incident, the driver lost traction and control of the vehicle, resulting in the vehicle spinning out of control and into the fence line of the fence line a number of times. As a result, I sustained a dislocated left shoulder, which required hospitalisation for the joint to be positioned back into the socket.

An orthopaedic review was completed, where it was established that the joint and surrounding muscles/tendons and ligaments was weakened by the dislocation, where it was undoubtedly established that future surgery would be required. On 27th July 2005, I returned to work performing restricted duties whilst strengthening the muscles of the shoulder joint. Within weeks, I completed my rehabilitation requirements and returned to full operational duties.

From 2005 to 2011, I was required to maintain the strength in the shoulder joint to ensure the shoulder remained stable. Unfortunately by mid 2011, the strength and stability in the shoulder weakened requiring me to undergo an arthroscopic reconstruction in July 2011. During the procedure a nerve block was required in the c5/c6 spinal section to assist with pain management after the operation, with this block proceeded to last for two-three days. Within two days, I was discharged from hospital in an arm sling, where I was unable to feel or move my entire arm. A week later, my Orthopaedic surgeon referred me to a Neurosurgeon, with the feeling and movement still absent in my arm. After three months, the feeling and movement finally returned to my arm.

Whilst undergoing treatment and in the shoulder stabilisation sling, I returned to work within 8 weeks post operation, catching a bus and two trains to attend my workplace in Flemington LAC, Detectives.

By September 2011, the stability of the shoulder commenced to weaken resulting in the shoulder subluxing (*moving in and out of the socket joint*) whilst still in the stabilisation sling. Whilst working in the Detectives office, my shoulder completely dislocated, resulting in the Ambulance attending and transporting me to hospital to have the shoulder relocated under sedation.

In October 2011, I was reviewed by another Orthopaedic Surgeon, where in November 2011; a second arthroscopic shoulder reconstruction was completed. Two days following the surgical operation the pain in the shoulder was tremendous, resulting in my body not tolerating the pain causing my body to have a seizure. CT scans were completed whilst in hospital, which revealed the shoulder joint to still be unstable and subluxion still occurring.

I was transferred to Concord Hospital, where I underwent a third operation, being an open laterjet and capsular plication, resulting in the shoulder being screwed into place with extra supportive bone. To assist the shoulder I was put into a shoulder fusion metal brace, where I was unable to move my entire arm for six weeks.

With a number of my investigations at court, whilst I was absent from work, I completed and organised over fifty (50) witness statements for a fraud investigation and complied and completed a full coroners inquest brief of evidence. My dedication and commitment to these investigations was paramount, although being off work due to my health.

Prior to undergoing the third operation, surgeons predicted it would be at least twelve months before I was able to return to work on a restricted duty basis. In February 2012, I returned to work on a restricted duties basis at Hawkesbury LAC, with the surgeons being pleased with my progress. Within weeks I returned to full hours, with physiotherapy assisting in the muscle strength and range of motion.

In April 2012, after completing work I closed my vehicles door and felt my shoulder to dislocate. Being unsuccessful in relocating the joint myself, I was transported by Ambulance to hospital, where the Orthopaedic surgeons relocated the shoulder joint.

Advising my Orthopaedic of the dislocation, a further CT scan was completed, indicating that the third operation was unsuccessful and early degenerative changes noticed.

Consultation with my surgeon, has determined that a further major operation is required, with the possibility of the shoulder being fused. This meaning, all movement/ function of the shoulder is lost completely, with the only function from the left arm being from the elbow to hand. This is a permanent procedure, resulting in a number of life chances. The only possibly, other then the fusion, is a procedure involving taking the hip bone, grafting the bone to rebuild the bone structure of the shoulder and using artificial implants to reform the ligaments to strengthen the complete shoulder. These procedures are unable to be completed by the Orthopaedic Surgeon I am currently seeing, where I have been referred to a third Orthopaedic Surgeon where my shoulder will be reviewed on 24th May 2012.

On 30th April 2012, whilst opening a door, my shoulder again dislocated, resulting in me again being transported to hospital to have the joint relocated. Not only is the shoulder easily dislocating, four sedations were required by doctors to relocate the joint, causing immense pain and discomfort. Having one day absent from work, I returned to work on 2nd May completing my Detective Duties.

On 8th May 2012, I was travelling home from court on the train and in a support sling, my shoulder again subluxed resulting in the shoulder fully dislocating. I was required to attend hospital again to have the bone relocated, which again required two attempted by surgical doctors under sedation without success. I was informed by the orthopaedic registers that the ligaments/muscles/tendons and bones were completely weak resulting in the shoulder

being in a subluxed position, and was unable to be relocated 100%. On 9th May 2012, I returned to work completely my duties as a Detective.

Not only has this injury impacted me physically for a number of years, under the new disability agreement, my family and I am going to be financially impacted. The new agreement requires all employees currently on workers compensation to be back to full hours by September 2012, or a 15% loss of wage occurs. With my next major surgical operation expected to take place within the next few months, the chances of me returning to full hours by this time is minimal.

Immediately after my operations have taken place, I return to my working duties at the earliest time, begging my doctors to return as early as possible. My career is a major part of my life, where I see myself as a very dedicated and motivated Detective. Unlike other people, I have never taken advantage of having days and weeks off work as my injury is covered under workers compensation. My career has been affected by my injury where I am now in the position of the possibility of accepting that I could be made permanently restricted.

This injury was duly caused and a direct result from a motor vehicle accident whilst on duty at work that I had not control over. The injury was foreseen to be an ongoing injury that will impact my family and me for the rest of my life, both physically and mentally. The new changes the Government propose to place on Workers Compensation concerns me significantly with my injury being a severe and complex medical diagnosis requiring ongoing medical treatment. This treatment is not only required at the current time, but tests have determined that the bone joints have established arthritis as a result of the operations which will impact me in the future years to come.

Melissa Kilminster