Submission No 4

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Shop, Distributive and Allied Employees' Association, Newcastle and Northern Branch

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NEWCASTLE & NORTHERN

FIRST REVIEW OF THE WORKERS' COMPENSATION SCHEME

SUBMISSION

Newcastle & Northern Branch

Legislative Council
Standing Committee on Law and Justice

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EXECUTIVE SUMMARY

In June 2012 the NSW Government introduced amendments to the *Workers Compensation Act 1987* (NSW) and the *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

The workers' compensation system was originally designed to support and compensate injured workers but Government rhetoric has recast the system as a 'disincentive to work'.

This departure from the primary purpose of the scheme, coupled with a desire to reduce insurance premiums for employers and to improve the financial viability of the scheme, in the mind of the Government, was the justification for the termination of long term support for all but the most seriously injured. This had a devastating impact on those who were not deemed 'seriously injured'.

The 2012 cuts were too deeply and too harsh. They have had a shattering effect on many workers and their families.

In 2012 the Government asserted the scheme was in projected deficit and that the cuts were needed to ensure its viability. However, by 2015 the financial fortunes of the scheme has flipped and it appeared to be in rude health:

> *"The changes were made in the context of an extraordinary turnaround in the financial position of the scheme, from a projected $4.1 billion deficit in December 2011 to a scheme surplus of $2.6 billion in June 2014."*[1]

The Union submits that it is open to conclude that the swift turnaround in the financial status of the scheme was either due to misconceived assumptions which underpinned the original projection and/or the cuts made based on the projection were too savage.

Some minor amendments were made to the legislation in 2014 and 2015 to partially reinstate benefits to injured workers, but these have not gone far enough to restore fairness in the system. It should be noted that the re-classification of 'seriously injured' in 2015 to 20% whole person impairment ('WPI') still only accounts for 4% of injured workers.[2] The remaining 96% of workers are left to bear the lifelong costs of injury after the cut off periods.

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[1] Markey, Ray, S Holley, L Thornwaite and S O'Neill '*The Impact of Injured Workers of Changes to the NSW Workers' Compensation*', (Macquarie University Centre for Workforce Futures, 2015)
[2] Answers to supplementary questions on notice, WorkCover Authority of NSW – Attachment B, p2. In Standing Committee Review of WorkCover, 2014.

The Union objects to the premise that cutting benefits provides an incentive to return to work and submits the system is imposing a financial penalty on the worker for incurring an injury through no fault of their own.

In this submission we incorporate the case studies of five workers who have been injured and had their claims processed through the Workers Compensation scheme since the 2012 amendments. Their evidence strongly suggests that the determinations issued pursuant to s 294 of *the Workplace Injury Management and Workers Compensation Act* 1998 have not adequately compensated the workers.

There has been a clear transfer of risk and responsibility for the costs arising from workplace injury from employers and insurers to the injured workers themselves and the federal health and social security systems. This is grossly unjust.

This submission includes the case studies of a further five injured workers and their experiences of injury and treatment by employers and insurers under the current workers compensation scheme.

The Union submits that fairness needs to be restored to the NSW workers compensation scheme, the arbitrary and draconian cuts made the Government in 2012 must be fully rewound and that Government take the opportunity to support and compensate injured workers, thus reinstating the integrity and original purpose of the scheme.

To restore fairness to the system the Union submits the following changes are required:

i. Full income replacement while workers are recovering from their injury.
ii. Restore ongoing medical treatment for *all* work-related injury and illness, regardless of the type of injury. This includes medical, ambulance and other related medical costs, household help, aids and appliances, etc. Strokes and heart attacks should be recognised where these injuries are work related.
iii. Increase incentives for employers to support injured workers to remain at work rather than 'getting rid' of injured workers.
iv. Regulate to prohibit employers attending workers' medical appointments unless attendance is requested by the worker.
v. Reinstate journey claims.
vi. Reinstate lump sum payments for pain and suffering.
vii. Increased support for injured workers from insurers and employers.
viii. Reintroduction of nervous shock claims for partners of workers killed at work.

1. INTRODUCTION

The Shop Distributive and Allied Employees' Association, Newcastle and Northern Branch ('the Union') makes this submission consistent with the inquiry's terms of reference attached at **Annexure "A".**

The Union represents the interests of retail, fast food, warehouse and distribution as well as pharmaceutical manufacturing employees throughout Newcastle, the Hunter Valley, Port Stephens and the Central Coast. The Union currently has over 13,500 members.

The Union welcomes the opportunity to make this submission to the "First Review of the workers' compensation scheme" undertaken by the Standing Committee on Law and Justice. The Union trusts that the evidence of workers and recommendations submitted will be taken into account when making future decisions about the Scheme.

The Union submits that the 2012 amendments to the Workers Compensation Scheme have had a devastating effect on our members and injured workers at large. The Union appreciates that the Scheme needs to be financially viable, however vulnerable injured workers are bearing the brunt of these savings measures. Compensation is now grossly inadequate. The evidence that injured workers are under financial and emotional distress is compelling. This distress and detriment has been caused as a consequence of how the Scheme currently processes and manages workplace injuries which occurred through no fault of the worker. The Union submits that the balance needs to be restored to ensure a fairer Workers Compensation Scheme which supports injured workers.

2. THE PRINCIPLES OF A FAIR WORKERS COMPENSATION SCHEME

The Workers Compensation system is founded on the common law tort of negligence and the existence of a duty of care that an employer has to an employee. The Union submits that the underlying principle for workers' compensation is that employers profit from the labour of others, and therefore employers should bear the full *cost* of that labour, including all costs associated with work related injury. Injury in this sense includes the full range of physical injuries, ailments, illnesses, aggravation or acceleration of pre-existing injuries.

The *Workers Compensation Act 1987* (NSW) introduced a no fault system "to provide for the compensation and rehabilitation of workers in respect of work related injuries"[3] and similarly

[3] *Workers Compensation Act 1987* (NSW) - Long Title.

the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) "to provide for the effective management of work-related injuries and injury compensation for workers in respect of such injuries; and for other purposes."[4]

To compensate by definition, is to 'make amends' or 'offset'.[5] That is, if someone is to be compensated, the requirement is that it is adequate and detriment is offset.

Workers' detriment is no longer being 'offset'. The changes made by the previous Labor government in 2000 and the later changes of the current Liberal government in 2012 have resulted in the system which inadequately compensates workers. Workers are suffering loss of income, loss of medical support, loss of the ability to make journey claims, loss of pain and suffering claims, limits on lump sum payments. The retrospective effect of the changes has added another element of unfairness to the changes.

The system is no longer operating as it was intended and there has been an unjust shift of risk and financial burden for workplace injury from employers to workers. Employers have, in a de facto sense, successfully relieved themselves of a duty of care and it has become a responsibility of the worker and their families, the worker's personal insurance (if any) and the public purse in the reliance on welfare and Medicare. In return employers have enjoyed significant cuts to workers compensation premiums and relief from their duty of care.

The Union strongly oppose this risk and cost transfer and submits that fairness needs to be restored to the system. Workers should not have to bear the financial cost and pressure of an injury or illness suffered at work, whilst employers enjoy considerable financial relief.

A fair system would provide:

- Full income replacement while they are recovering from their injury.
- Journey claims to and from work.
- Full cost of medical treatment for the duration of the injury. This includes medical, ambulance and other related medical costs, household help, aids and appliances, etc.
- Cover all injuries, including strokes and heart attacks where work is a contributing factor.
- Develop return to work plans, involving work-related rehabilitation, modification of workplaces and work duties usually involve a third party such as occupational therapists, physiotherapists, and sometimes vocational retraining programs. A fair

[4] *Workplace Injury Management and Workers Compensation Act 1998* (NSW) – Long Title.
[5] *Australian Concise Oxford Dictionary*, (Oxford University Press, 5 ed, 2015).

system would provide everything that is required to support the worker's return to work.

- Death benefits including special provisions for children and funeral costs as well as nervous shock claims for partners.
- Lump sum compensation for permanent impairment including loss of limb, loss of function (eyes and ears), loss of body function such as walking, loss of amenity of life, disfigurement, reduction in life expectancy and pain and suffering.
- Legal assistance for pursuing claims.
- Reduction in the WPI thresholds

3. THE EVIDENCE – CASE STUDIES

(i) Workers A, B, C, D and E are five workers who have suffered significant detriment through determinations issued pursuant to s 294 of *the Workplace Injury Management and Workers Compensation Act* 1998; and

(ii) Five workers, F, G, H, I and J are workers who are still employed, but currently have no capacity for work or are working with restrictions. We include details of their injuries as well as well as the treatment they received from their employer and through their insurers.

(i) Case Studies involving determinations from the Workers Compensation Commission

Worker A – Female 45yrs

Role: Full-Time Department Manager of a Home, Hardware and Gardening Retailer

Injury Type: Psychological – psychological distress, depression, anxiety.

Details of Claim/Injury:

Worker transferred to new Store as a Department Manager in June 2013.

Upon commencing at the new store is told that she would no longer be a department manager and was 'extra' and was told not to discuss her role with co-workers

Co-workers asked the worker what role she was doing but the worker was unable to speak about her role. This led to other co-workers believing she was put in the store to spy on them.

Another department manager was transferred out of the store against her wishes and co-workers speculated that the worker was there to replace the out-going manager.

Co-workers wrote negative things about this on social media in support of the outgoing manager. The worker informed her store manager and was told 'not to worry' about it.

At a meeting co-workers were told that the worker was there 'assisting the Store 2IC in their role, but did not have a title.

In September and October of 2013, the store 2IC started giving the worker excessive work to do and the worker was working from 5:30am until 6:00pm or 9:00pm to get the work done as well as taking work home, and coming in on days off. The worker raised her concerns about the workload with the Store 2IC and Store Manager but her concerns were disregarded.

The worker was given the job of rostering staff, but not given the requisite information to complete the task. A handover between the outgoing manager and the worker did not take place and the outgoing manager was hostile towards the worker due to the belief that the worker was her replacement. Concerns were raised with the Store 2IC and Store Manager about this but were also disregarded.

In November the Area Manager conducted a surprise visit while the worker was in-charge of the store due to the Store 2IC not being present, having left early for the day. The Area

Manager asked various questions which the worker was not able to answer due to her short history in the store and her lack of knowledge given that she was not directly responsible for any role. The Area Manager advised the worker that he was unhappy with the answers provided by the worker and was extremely rude to her.

The Store 2IC and Store Manager sought to blame the worker for the issues that arose when the Area Manager visited.

These events led the worker to suffer from a severe onset of psychological distress leading to anxiety and depression. The worker was certified unfit for work and a workers compensation claim was made in regards to the injury. The worker was prescribed anti-depressants as treatment for the condition.

The Insurer conducted an investigation but did not interview the worker. The investigator instead only spoke to six co-workers.

The Insurer denied the claim on the basis of the statements of co-workers. No medical evidence was gathered.

Subsequently the Insurer referred the worker to an IME psychiatrist. The Insurer failed to provide a copy of the report from the IME to the worker or her legal representative.

After requesting a review of the decision to deny liability the Insurer maintained their decision relying solely on the statements from co-workers.

Return to Work:

The worker was unfit for work from 5 November 2013 until 14 April 2014.

The worker was then certified for work 3 days per week, 5 hours per day (15 hours total). The employer informed the worker they did not have any work available for her and if she did not return to full hours they would terminate her. This exacerbated her condition.

The worker continued to ask for suitable duties in line with her restrictions but these were denied.

The Union attended a meeting with the worker in early August 2014 to discuss other stores/opportunities to enable the worker to return to work within her restrictions.

In a letter dated 12 August 2014 the Area Manager offered the worker two options at two different stores, one option was at her pre-injury role and the other option was a lesser role.

The worker commenced work within her restrictions in her pre-injury role at a new store on 1 September 2014, after ten months off work without pay.

The worker enjoyed her time at the new store, however decided to leave the employer in August 2015 after she obtained a position with another employer closer to home.

Effects on the worker:

Financial

- The worker was not paid by her employer or the insurer during her time off as the claim was promptly denied. The worker was therefore without income for approximately 10 months. When the worker returned to work she was still on reduced wages.
- The worker was not paid any reasonably necessary medical costs of treatment or medication and out of necessity was forced to pay for these costs herself.

Daily Life

- Sleep disturbance due to "thoughts running through her mind";
- Excessive crying;
- Nausea;
- Withdrawn from social events;
- Unable to do domestic tasks due to lack of energy;
- Weight gain; and
- Unable to drive due to anxiety

Outcome:

The worker sought legal assistance and challenged the Insurer's denial of liability.

The matter was conciliated before the Workers Compensation Commission in July 2016, over two years and eight months after the injury was suffered.

The worker received a settlement for lost wages and medical expenses in line with ss 36, 37, 60 of the Workers Compensation Act 1987 (NSW).

Opined Outcome pre-2012 scheme:

Whilst the worker won her case and was able to recover successfully she lost weekly entitlements on her period of total incapacity. Additionally the 2012 amendments to Section

43 of the 1987 Act, precluded her from receiving any weekly benefits during a period when she was fit for restricted duties from 15 April 2014 to 30 August 2014.

Had the 2012 amendments not been introduced the injured worker would have received income support for that four and a half month period.

WORKER B – MALE 59 YRS

Role: Full-Time Shop Assistant for a Home, Hardware and Gardening Retailer

Injury Type: Acute distress disorder

Details of Claim/Injury:

Worker was bullied by a line manager and was subjected to constant over-monitoring via pages, calls and visits to his department. The worker kept a diary of the excessive calls and pages.

The worker was also given unreasonable workloads to complete on a regular basis and was managed towards meeting these workloads.

No understanding or assistance was given to the worker during periods of staff shortages whereby the worker was expected to help out in other departments consistent with customer service expectations. No matter what the staffing level or circumstances, work still had to be completed.

The worker's line manager would swear at the worker and use abrupt hand gestures if unhappy with work not being completed and this occurred despite there being valid excuses for not completing the work, such as assisting customers and being delegated responsibility for additional areas without staff.

An incident where the line manager verbally bullied the worker on 11 August 2015 occurred which led the worker to break down in tears at work and the worker mentioned to co-workers that he wanted to 'go under a bus'. He attended an appointment with his the Doctor on 12 August 2015 and was diagnosed with acute distress disorder.

The worker was sent to two IMEs. Both IMEs said the injury was work related. The Insurer still denied liability for the injury.

Return to Work:

When the worker returned to work no one greeted the worker to make him feel comfortable. The worker felt uneasy as there was no communication. Upon his return the worker no longer reported to the line manager. The worker felt he had a number on his back and was made to feel like a criminal for making a claim.

The Line manager has since been promoted and has been abrupt to the worker on several occasions since his return.

Effects on the worker:

Financial

- The worker was not paid by his employer or the insurer during his time off as the claim was promptly denied.
- The worker was not paid any reasonably necessary medical costs of treatment or medication and out of necessity was forced to pay for these costs himself.

Daily Life

- Excessive crying;
- High Blood Pressure requiring medication;
- Anxiety; and
- Decrease in social activity, feelings of isolation

Outcome:

The worker sought legal assistance and challenged the Insurer's denial of liability.

The matter was conciliated before the Workers Compensation Commission in July 2016, 11 months after the injury was suffered.

The worker received a settlement for lost wages and medical expenses in line with ss 36, 60 of the Workers Compensation Act 1987 (NSW).

Opined Outcome pre-2012 scheme:

In this case the 2012 amendments did not alter the workers entitlement as such but it was a case where considerable delay and obfuscation by the workers compensation insurer and their expeditious declinature was supported by a draconian attitude emanating from an implicit arrogance emerging from the 2012 amendments.

WORKER C – FEMALE 56 YRS

Role: Full-Time Shop Store Manager for well-known Clothing Retailer

Injury Type: Bilateral shoulder bursitis and torn right supraspinatus tendon.

Details of Claim/Injury:

The worker has suffered intermittent shoulder pain from late 2013 / early 2014. The injury was suffered due to the repetitive lifting, packing, folding, above-height work, stretching from ladders to retrieve clothing items, displays, hangers etc.

A workers compensation claim was submitted on 15 January 2015 and liability was provisionally accepted.

Surgery was recommended as the appropriate treatment but the Insurer denied the request, despite two specialists agreeing this was the necessary treatment.

The worker was put on a public waiting list and joined a private fund to try to speed up the surgery. This was extremely difficult without wages. The worker had to use personal and sick leave to draw some income despite the injury being a work injury.

Return to Work:

The worker was on suitable duties consistent with her work capacity certificate until 29 August 2015.

The worker was stood down from work on 29 August 2015 and was told not to return to work until fit for full duties. The insurer declined liability.

The worker has not returned to work since and has not been paid any weekly compensation from the insurer.

Effects on the worker:

Financial

- The worker was not paid by her employer or the insurer during time off as the claim was denied. This has led to serious financial distress. The worker also had to take out a private insurance cover to attempt to speed up surgery due to long public waiting lists.

- The worker was not paid any reasonably necessary medical costs of treatment or medication and out of necessity was forced to pay for these costs herself.

Daily Life

- Constant pain;
- Interrupted sleep;
- Depressive, stressed and anxious demeanour;
- Regular use of prescription pain medication;
- Difficulty washing hair, dressing and brushing hair/teeth;
- Physical restrictions on lifting, bending , carrying, reaching, pushing and pulling means it is difficult to do usual domestic tasks such as housework, washing, cooking, grocery shopping, cleaning, gardening;
- Unable to read as cannot hold a book for a period;
- Unable to exercise regularly due to loss of strength and pain; and
- Feelings of isolation as reluctant to go out due to constant pain.

Outcome:

The worker sought legal assistance regarding denial of surgery.

The matter was conciliated before the Workers Compensation Commission in June 2016.

The worker received a settlement for lost wages and medical expenses and approval for surgery in line with ss 36, 37, 60 of the *Workers Compensation Act 1987* (NSW).

Opined Outcome pre-2012 scheme:

Again the 2012 amendments to section 43 of the 1987 Act precluded the worker from obtaining any weekly entitlements during the period of partial incapacity. Had those amendments not been introduced the worker would have been supported totally throughout the period of her lost time from work pending surgery. The legislative changes have therefore had a devastating impact on the outcome.

WORKER D – FEMALE 43 YRS

Role: Full-Time Senior Sales Assistant for well-known Liquor retailer.

Injury Type: Central L5/s1 disc bulge with an annular tear

Details of Claim/Injury:

The worker has suffered intermittent back pain from early 2014. The injury was suffered due to the heavy and repetitive lifting.

The worker suffered severe onset of back pain on approximately 24 September 2014 while unloading three pallets of heavy liquor. The worker continued working, waiting for the pain to subside, however it increased, radiating into her buttocks and down her right leg as far as her foot. The worker reported the pain to her manager before leaving for the day.

The worker visited the Doctor the following day and a workers compensation claim was submitted.

Surgery was recommended as the appropriate treatment after other forms of more conservative treatment failed.

The Insurer denied the request for surgery, despite medical evidence and opinion that this was the necessary treatment.

The employee attempted to return to work with medical restrictions. The employer refused and the employee's employment was terminated on 13 January 2016.

The worker was put on a public waiting list and had no certainty about when the surgery would be performed.

Return to Work:

Effects on the worker:

Financial

- The worker suffered significant losses to wages which has led to financial distress, including borrowing money from her children to pay bills.

Daily Life

- Constant pain from lower pack radiating down legs;

- Unable to sit or stand for more than 20 or 30 minutes;
- Depressive, agitated and anxious demeanour;
- Regular use of prescription pain medication;
- Difficulty washing hair, dressing and brushing hair/teeth;
- Problems with bowel and bladder function due to injury and suffers associated pain while toileting;
- Effects on sexual relationship with partner has led to frustration and depression;
- Unable to have another baby;
- Unable to go fishing, play darts, walk the dog, go tenpin bowling, unable drive to Wollongong to visit children, friend and family, unable to go shopping with daughter which were all activities the worker enjoyed prior to her injury;
- Unable to exercise - loss of strength; and
- Isolation as reluctant to go out due to pain.

Outcome:

The worker sought legal assistance regarding denial of surgery.

The matter was conciliated before the Workers Compensation Commission in April 2016, over 18 months after the injury was suffered.

The worker received a settlement for compensation and medical expenses and approval for surgery in line with s 60 of the Workers Compensation Act 1987 (NSW).

Opined Outcome pre-2012 scheme:

This too was a case where the injured worker was certified fit for restricted duties and the employer would not provide her with any. The 2012 amendments to Section 43 of the 1987 Act significantly reduced the injured worker's entitlement to proper income support, during her period of partial incapacity.

WORKER E – FEMALE 61 YRS

Role: Part –Time checkout worker of a major supermarket

Injury Type: Full thickness tear of the anterior and mid supraspinatus tendon.

Details of Claim/Injury:

The worker injured her shoulder at work on 29 January 2014, however a workers compensation claim was not submitted until 17 April 2014.

The Insurer declined liability for the injury on 23 May 2014. This was challenged in the Workers Compensation Commission and the employer agreed to pay for surgery and medical costs.

On 28 July 2015 the Insurer sent a Dispute Notice to the worker stating "*factual and medical information indicating that work is no longer a contributing factor to your current diagnosis and ongoing symptoms…..are no longer able to support ongoing liability.*"

Both the worker's specialist and IME agreed that the injury was due to work.

The Insurer still denied the request for surgery.

The worker was put on a public waiting list and had no certainty about when the surgery would be performed.

Return to Work:

The worker worked at the store on restricted duties until she was stood down in July 2015. Weekly payments ceased on 11 August 2015 and the worker cannot find alternative work due to the restrictions and need for surgery.

Effects on the worker:

Financial

- The worker suffered significant losses to wages and payments ceased altogether in August 2015.
- The worker is in financial difficulty due to the above and was unable to buy Christmas presents for her family including her grandchildren. This caused the worker enormous emotional distress

Daily Life

- Onerous physical restrictions which render the worker unable to do domestic duties such as cleaning, cooking;
- The worker suffers from depression and is 'not herself';
- Can't pick up her Grandchildren or cuddle her husband;
- Suffers constant pain and discomfort;
- Reliance on pain medication to function; and
- The worker was made to feel like a criminal and was followed by investigators and photos were taken of her. The worker felt like a prisoner in her own home.

Outcome:

The worker sought legal assistance regarding denial of liability and surgery as well as lost wages.

The matter was conciliated before the Workers Compensation Commission in June 2016, over 10 months after payments ceased.

The worker received a settlement for lost wages and medical expenses and approval for surgery in line with s 60 of the Workers Compensation Act 1987 (NSW).

The worker has not received any money since the Commission's consent orders were generated on 15 June 2016. This is some three months. Furthermore the worker has not received any income for 13 months and is under extreme financial hardship.

Opined Outcome pre-2012 scheme:

Once again the worker was certified fit for restricted duties and the employer failed to provide any. The 2012 amendments to Section 43 of the 1987 Act precluded her from any income support even though she successfully argued her case and won.

Then, even after winning her case, in receiving an award from the Workers Compensation Commission, the insurer still failed to pay any entitlements to the worker after three months. Her legal representatives continued to enquire of the Insurer when the award would be paid with no response forthcoming until an official complaint was made to WIRO. WIRO investigated the Insurer, only to find the file had been completed and archived without payment being made. The matter has now been rectified.

(ii) CASE STUDIES – INJURED WORKERS

WORKER F – FEMALE 35YRS

Role: Part-Time night fill employee of major supermarket

Injury Type: Snapped disc L5/s1.

Details of Claim/Injury: Worker injured back lifting a box on 28 December 2015.

The worker reported the injury to the Health & Safety Representative, Team leader and Department Manager over the following days and continued to work despite being in pain.

The worker was told by her H&S Representative, Team Leader that she could not choose her own Doctor and that she must use a Company Doctor. Her Department Manager advised her that she must try physiotherapy first in line with the Employer's Physio Program. The employee contacted her Department Manager distressed and crying from the pain but was offered no option of immediate medical assistance such as a doctor's appointment. The worker booked the physio appointment herself after the store told her that they couldn't get an appointment till the following week. She was then told to try a chiropractor and attended an appointment.

After suffering severe pain and receiving no relief from Physio and Chiro treatment the worker went to her GP on 5 January 2016. The GP issued a workers compensation certificate and ordered a CT scan. The worker was scolded for visiting her Doctor and was told that she had 'not followed protocol'. The manager told her that her employer must attend Doctor's appointments with her. At this point the employer was reimbursing the worker out of petty cash rather than submitting a workers compensation claim. The CT revealed a snapped disc requiring surgery, with a piece of disc sitting 1mm from her spinal cord. The worker in the days following suffered loss of feeling in her leg and foot and was rushed to hospital.

A workers compensation claim was not generated until 15 January, some 2.5 weeks after the injury.

On 18 January the worker sent an email to the Insurer's case manager, EML, choosing a rehab provider and nominating the Union as her representative.

The worker missed her proposed surgery date due to the Insurer's case manager sending the worker to an IME on 28 January and then there was a delay in the IME's report.

Surgery was performed on 9 February 2016.

This particular worker has suffered appalling treatment from the Insurer's Case Managers and Supervisors. Details of incidents are outlined below:

Insurer ignoring the worker's request to choose her rehab provider

On 8 February the Insurer's Case Manager sent another rehab provider inconsistent with the worker's written request. The worker received no notice from EML, but only received a call from the EML's nominated rehab provider telling her she would be at her home in 2 minutes with her Store Manager. The worker was not showered or dressed and was home alone on heavy painkillers. This led to confusion and panic. The worker accepted the employer's rehab provider due to the unavailability of her chosen rehab provider at such short notice for the home assessment, however she requested to use her own nominated provider for future services.

When in hospital the worker was awaiting discharge as her approved hospital stay had expired. The Insurer's Case Manager had still not approved at-home equipment to enable her discharge or transport home.

EML again denied the worker her nominated rehab provider. The social worker from the hospital and the worker's chosen rehab provider continued to contact EML with no response. EML had ordered their own rehab provider to provide the equipment in contradiction of the worker's numerous requests.

Reluctance of Insurer to approve reasonable expenses

On 15th February while the worker was in hospital her husband requested childcare for their 4 year old son, something that was part of the worker's usual duties prior to her injury. Days passed with no response from the Case Manager.

This was forwarded to the Case manager's supervisor on 18 February who said it was 'not protocol' to pay for this, despite this being a new expense due to her injury.

The husband had to appeal in a desperate manner for assistance outlining their financial distress from his time off work, no one to care for the child etc. It was not approved until 25 February after a stern letter from the hospital social worker, several emails and a heated telephone conversation between EML and the hospital's social worker.

Additionally transport for their 5 kids to school was requested by the hospital social worker in light of the worker's condition, the transport being part of the worker's usual duties prior

to injury and the worker's inability to drive. A record of the conversation was emailed to the rehab provider on 29 February:

> *"[Case manager's supervisor] was fairly opposed to the idea of paying for someone to transport the kids to and from school, noting that it was not a standard request and she did not see the insurer had an obligation to fund a "nanny" under Work Cover. We had a fairly lengthy discussion about this, during which I made it clear, that it was not a nanny, but transport and that it was a reasonable request given that the worker's injury and subsequent surgery prevented her from undertaking this and it was her usual responsibility so that her husband could work. At the conclusion of this discussion she advised she would review the request but not until next week, but that technically they were allowed 28 days to decide."*

N.B. The worker was to be discharged in two days' time. The case supervisor was refusing to look at the request till the following week so nothing would be set up for her once she went home.

Failure to respond to calls, emails, reimburse expenses in a timely manner

This has been constant throughout the process from the case manager and case manager's supervisor. The worker claims emails from the case manager were condescending, repeating her name and claiming that the worker was happy with her response and "Thanks for your understanding" and "Have a great day" when the worker was clearly upset, under financial distress and not happy.

Failure to provide physio after discharge

EML claimed they never received discharge papers re: physio. Hospital claim they sent it through. The worker did not have physio for two weeks after discharge from hospital.
EML refused to provide transport to physio so the worker had to arrange for the physio to come to her house herself.

Cancellation of Pain management specialist appointment

The Case Manager, cancelled an appointment with the worker's pain management specialist. The worker was referred to the pain management specialist (who had treated her in hospital) by her surgeon. The Case Manager did not communicate that the

paperwork was insufficient to the worker or the rehab provider and just cancelled the appointment. The worker only discovered the appointment was cancelled when she phoned to confirm the appointment at the specialist's rooms two days prior. Strangely the Case Manager said that the appointment was cancelled due to "insufficient paperwork", but that was only after the case manager made the effort to phone the specialist's rooms' (not talking to the treating specialist) or the hospital administration staff (not the treating specialist) to do supposed 'investigative' work as to the need for the appointment.

After complaining about the pain management specialist appointment being cancelled the worker's pay was suddenly "lost" and did not appear in her account until many complaints, calls were made saying "Sorry I can't help you." The worker's pay didn't go in until the Friday night (two days late).

Failure to provide reasonable travel expenses – subject of a WIRO complaint

- The worker is a mother of five children, and her husband is the primary income earner.
- The worker receives $327 weekly from the Insurer EML.
- The worker is medically unfit to drive.
- The worker and her husband are in financial distress due to her husband taking significant amounts of unpaid time from work to care for the family whilst the worker has been injured and particularly in hospital. This includes their mortgage being moved to 'interest only' repayments in order to stay in their home.

As part of the worker's rehabilitation plan she is to travel from her home in Greta NSW to Singleton NSW bi-weekly (on Tuesdays and Fridays) for hydrotherapy sessions. Singleton is the nearest available heated pool for the sessions with her physiotherapist.

The worker advised the Insurer on 6 April 2016 that she would require transport to her bi-weekly hydrotherapy sessions from 12 April onwards as her friend, who was previously driving her (claiming a kilometre reimbursement), was no longer available. The worker stated that she had obtained quotes from several taxi companies and the cheapest fare for a return trip was a fixed charge of $130.
Due to the cost of $260 per week to meet the two hydrotherapy sessions and in light of their financial situation, the worker requested that the Insurer set up an account with the taxi company who would invoice the Insurer directly.

The Insurer was advised of their financial situation and need for support on 22 February 2016 and again regarding requirement for travel to be provided by invoice (in light of high costs) on a conference call on 6 April 2016, a telephone call on 14 April and emails on 15 April and 18 April.

The Insurer declined the request for an invoicing system, however, they agreed to reimburse the expenses 'the next day'. Both the Employer's 'Injury Recovery Specialist', two union officials, the worker and her husband were on the conference call and were witnesses to the Case Manager's commitment.

The proposition of next day reimbursement seemed reasonable to the worker as she would be reimbursed the cost of taxi travel in good time to use for the next session. The worker attended a session on Tuesday 12 April and paid the $130 out of her own pocket. The worker sent through the receipt and reimbursement sheet that day to the Insurer for next day reimbursement as agreed on the phone conference of 6 April 2016.

By Thursday 14 April the worker had still not been reimbursed the $130. Phone calls were made to the Insurer and emails were sent which stated the worker did not have any money to pay for another taxi on to attend her session on Friday 15 April without the reimbursement. The worker requested by email that an invoicing system be set up in light of the payment issues to enable her to meet her bi-weekly sessions as she could not afford the cost. The Insurer ignored her request for an invoicing system. So the worker requested this again by email.

On a phone call to the worker the Claims Manager declined to set up an invoicing system due her travel not being able to be tracked. This is a strange excuse given that the travel is based on travel at a set time, between two set locations (i.e. home to pool return) for a set fee.

The Employer's 'Injury Recovery Specialist' advised the Union that she had contacted the Insurer to try to arrange an invoicing system in light of the cost and effect it was having on the worker's rehabilitation. The Employer agreed with the Union that the request for an invoice system was reasonable. This was declined by the Insurer's Case Manager.

On 18 April the Insurer was contacted again and notified that the reimbursement had still not been made. She further advised that she would not be able to make her appointment

on Tuesday 19 April without the reimbursement. The Insurer suggested she use a friend to take her to the appointment. Given the conversations that transpired between the 6 April and 18 April re: her friend no longer being available, this caused the worker much frustration and stress.

The worker, in light of her frustration, requested on 18 April that a Union official contact the Insurer to provide assistance. The worker had previously nominated the Union official as her representative and this was known by the Insurer. The Union official contacted the Case Manager by email in order to resolve the reimbursement issue and address the earlier commitments made in the conference of the 6 April, in order to gain travel and attend the sessions. The Union official received a reply from the Insurer's Case Manager refusing to discuss the matter, stating that she would continue to liaise with the worker and her husband only.

The worker missed two rehabilitation sessions on 15 April & 19 April due to the failure of the Insurer to provide reasonable transport in light of her lack of wages, cost of travel and financial circumstances. This was extremely upsetting for the worker as her rehabilitation was compromised.

The reimbursement was finally made on the 20 April 2016.
N.B. The worker was expected to be $390 out of pocket (3 x $130 cab fares) on a wage of $320 per week in order to meet the sessions.

After a complaint was made to WIRO on the 19 April 2016 a taxi account was set up on 29 April 2016.

Effects on the worker:

Financial

- The worker is under financial difficulty due to the reduced wages, husband taking time off work to care for the family whilst the worker was injured.
- Home loan repayments have been moved to interest only so they can stay in their home.

Daily Life

- The worker has a particularly damaged and aggravated nerve and associated severe pain (hindering her recovery time) and has developed an addiction to pain medication for which she is being treated;
- The worker is being treated for a psychological injury resulting from the stress of the physical injury, and treatment from her employer and insurer;
- The worker has onerous restrictions of rotating between sitting, standing and lying flat;
- The worker is unable to pick up or play with her five kids, the youngest being under school age;
- The worker is unable to drive and lives in a semi-rural area without public transport; and
- The worker is unable to basic domestic tasks such as cleaning or doing washing.

Return to Work:

The worker has not returned to work as the worker is unfit for work.

Outcome:

The worker is currently receiving payments which are reduced due to the 2012 changes and the worker is in financial difficulty.

Opined Outcome pre-2012 scheme:

Whilst the 2012 amendments intrinsically would not change the entitlement the amendments are yet another example of the unnecessary delay and obfuscation by the Insurer buoyed by the arrogance of the draconian amendments. Furthermore any claim is reduced in value by the changes in weekly payments, leaving the injured worker worse off.

WORKER G – FEMALE 49YRS

Role: Part-Time online employee of major supermarket

Injury Type: Ruptured gluteus tendons right hip

Details of Claim/Injury:

The worker injured on 2 March 2015 and attended an appointment with GP several days later. An MRI was ordered which did not give an initial diagnosis. Physio was prescribed twice per week from March but this expired in May. Another appointment with her GP led to another scan being ordered which diagnosed frayed tendons.

In a return to work meeting in August 2015 the worker was told "We need you back on full duties and hours by February or you will be terminated." The employer also questioned about the progress of her physio sessions and the worker informed them that these had expired in the month of May preceding.

The worker visited a specialist and was prescribed PRP treatment in August but this was not approved by the Insurer.

The Insurer sent the worker to an IME in November who told the worker that EML were "a joke" and that they had left her injury too long and she now required surgery.

The worker had surgery in December 2015.

Effects on the worker:

Financial

- The worker has suffered a significant decrease in pay. The worker now struggles to pay bills.
- Prior to her injury the worker was able to do extra hours i.e over time but this is no longer the case.

Daily Life

- Frequent crying;
- Constant pain and physical restrictions;
- Worker states she was made to feel like she was doing something wrong by merely having an injury and restricted duties;

- The worker feels that her employer and case manager have not 'cared' about her workplace injury and the effect it has had to her quality of life. For example the worker was in severe pain and requested an emergency appointment at her GP. The worker was sent by her GP to the emergency department and her then RTW Coordinator just wanted to know when the worker would be returning to work for normal duties;
- The worker believes that at times her employer thought she was lying about her injury. She feels this is evidenced by the lack of treatment approval and how the injury was left too long / requiring surgery. N.B. Comments from IME. The worker felt bullied, harassed and threatened by EML by the clinical tone EML employed when contacting her about the funding process for payments, treatments and medication;
- The worker said the injury has severely affected her day to day life and that she now struggles to do simple everyday tasks like being able to put on her own underwear, putting on a sock or being able to cut toenails;
- The worker feels that they don't want her as an employee as she is injured. This is evidenced by their behaviour around wanting to terminate her and telling her to look for other work in full knowledge of her onerous restrictions.

Return to Work / Outcome:

The worker did not hear from the Case Manager from EML following her surgery in December until 2 March 2016. On this date she received a call from the Insurer's case manager requesting a clearance from her Doctor to return to work.

The GP issued a certificate with restrictions and forwarded to the case manager. The Insurer did not contact the worker until the worker phoned some 14 days later requesting an update. The worker was informed that there was no work for her at the store and she must seek other employment and show evidence to EML that this has been done or weekly payments, physio and medication would be cut.

In April a vocational assessment was conducted. The assessor told the worker words to the effect of "[We] will try to get you interviews, but you won't get a job because of your

restrictions" and "[The Employment Provider] just had to go through the process just to shut the insurance company up."

The worker has re-aggravated the injury on 24 August 2016. Her employer gave her tasks outside her return to work ('RTW') plan. The worker's RTW plan stated she was to rotate between putting stock away and working on checkouts with breaks. The checkout manager put the worker on a register for 4 hours. The worker stated that she asked for breaks and told the manager she was not supposed to be doing that work. The manager told her it was OK and that she would get it OK'd with the store manager.

The worker is currently off work as the employer claims to not have suitable duties available to offer the worker and the worker is receiving reduced payments.

The worker believes from conversations with the insurer and employer that they are looking at termination of her employment.

The worker is in distress as feels she is unemployable with her injury which is likely to be permanent with onerous restrictions.

Opined Outcome pre-2012 scheme:

Yet again the incipient attitude emanating from Insurers, particularly since the 2012 amendments, causes unnecessary delays and frustration for injured workers. Of concern in this case is the ability for the insurer to yet again rely upon the 2012 amendments in respect to Section 43 of the 1987 Act to deny weekly payments at any time alleging that the injured worker does have capacity for work with no regard been had for whether such a theoretical job even exists that would be open to her in the present labour market.

WORKER H – FEMALE 59YRS

Role: Part-Time online employee of major supermarket

Injury Type: Bulging disc L4/L5 which has damaged to nerve in foot and back.

Details of Claim/Injury:

The worker incurred the injury in March 2012 and had surgery in March 2013. The worker returned to work in 2014 and the worker had been working suitable duties in a role which was not her pre-injury role to date.

The employer told the worker in a meeting in November 2015 that it was no longer reasonably practicable for her to continue in the role as the duties were not the same as or equivalent to her pre-injury hours or role.

The Union argued that there is no requirement under s 49 for a worker to be on equivalent pre-injury hours and that hours can be on a part time basis as long as reasonably practicable. Furthermore the worker was not displacing other workers, and did not require training to do the role.

The employer stated it was not 'reasonably practicable' to provide indefinite reduced hours when the worker will never return to their pre-injury hours. When the Union questioned the employer's 'injury recovery specialist' as to why it was not reasonably practicable the employer stated that they had 'created' her role and it didn't exist in other stores. The Union had evidence this was not the case and the role existed in all other stores as part of a normal operating structure.

The employer's store manager conceded that the role did exist in the store and that keeping the worker in the role was not adversely affecting the business. This was in contradiction to the employer's injury recovery specialist.

The employer also offered as an alternative to cut the workers hours down to 15 hours per week on a permanent basis, but if the worker did that then after 12 months of not being in receipt of workers compensation payments they would then terminate the worker anyway.

The parting words from the employer's injury management recovery specialist were "nowhere in the Workcover Legislation does it say [the employer] needs to provide suitable duties indefinitely."

The employer still insisted that they would go down a redeployment / termination path. The worker has been attending appointments with a vocational assessor as part of the redeployment process since late 2015. The worker feels that 'no one wants her' as she has not had any job offers and she worries about her future.

Effects on the worker:

Financial

- Worker has been unable to do additional hours, so has therefore suffered a loss of opportunity to earn this extra income.
- The worker now has to pay people to cut her grass, tend to her gardens and do cleaning as she is unable to do these tasks. These were tasks completed by the worker, prior to her injury. These additional costs are paid for out of the worker's income.

Daily Life

- Feeling unwanted by her employer, the worker has had 25 years of service and is depressed about the treatment she has received. The worker is taking anti-depressants.
- The worker is anxious as she knows that she is going to be terminated.
- The worker has onerous physical restrictions.
- Unable to do shopping without assistance, cleaning, gardening.
- Suffers ongoing pain and is reliant on pain medication to function.

Return to Work / Outcome:

The worker has been working suitable duties for her employer.

The employer told the worker in a meeting in November 2015 that it was no longer reasonably practicable for her to continue in the role as the duties were not the same as or equivalent to her pre-injury hours or role. There is no factual basis for the employer's view that it is not 'reasonably practicable'.

The employer is proceeding with the redeployment/termination process and the worker is currently attending appointments.

Opined Outcome pre-2012 scheme:

Once again this is a case that has the potential for the insurer to invoke the 2012 provisions in respect of section 43 with the effect that the worker will not have proper income support once terminated.

WORKER I – FEMALE 35YRS

Role: Part-Time deli employee of major supermarket

Injury Type: Bulging discs and shifted spine.

Details of Claim/Injury:

The worker incurred the injury in August 2014 and attended six physio appointments on her employee's 'physio recovery' scheme.

The worker re-injured her back in December 2014 and informed her manager. The manager did not report the injury and the worker had to contact the insurer herself to initiate a claim.

The worker's manager insisted on attending medical appointments. This made the worker feel uncomfortable, however she felt that she had no choice. The worker had to undress behind privacy screens with the manager in the room.

Effects on the worker:

Financial

- Worker has not been able to do additional shifts which she was able to do prior to her injury.

Daily Life

- Worker suffers ongoing pain and has a reliance on pain medication.
- Unable to pick up her small children.
- Restrictions on lifting, twisting and bending.

Return to Work / Outcome:

The worker's return to work plan was not being adhered to which included lifting and task restrictions as well as rotation of duties. The worker also suffered a marriage breakdown and requested flexible working arrangements due to caring responsibilities for her small children and this was not considered by her employer.

The worker had a negative appraisal in regards to her performance. The underlying reason for the underperformance was the non-adherence to her return to work plan and restrictions.

The worker felt that the managers did not care about her injury or her well-being. This is evidenced by the employer recommending she cut back her hours or convert to casual employment due to her family circumstances and not making any attempt to accommodate her request for flexible work.

Opined Outcome pre-2012 scheme:

Yet again this case is one where the potential for the invocation of the 2012 Section 43 amendments would be detrimental in supporting the worker in her recovery and return to full employment.

WORKER J – FEMALE 28YRS

Role: Full-Time Office Worker

Injury Type: Severe soft tissue damage to right shoulder and whiplash

Details of Claim/Injury:

The worker was asked to stay back at work for thirty minutes to complete an additional task for her employer before she commenced her journey home.

Upon her journey home the worker was stopped at a red light at a four way intersection. The worker was read-ended by a driver who failed to stop or slow down at the red light. The driver at fault was travelling at 80km/h.

The extent of the injuries required the worker to wear a collar and cuff for three weeks, was signed off work for four weeks and was unable to drive for seven weeks. The worker was also prescribed physiotherapy twice a week as part of the rehabilitation plan.

Effects on the worker:

Financial

- The worker's claim was rejected as it was a journey claim. The worker therefore was not eligible for compensation for her injury.
- The worker had to pay for their own physio and medical expenses and the worker required extensive physio for over a year (twice a week for the first 6 months at $73.00 per session. Sessions then became weekly and then monthly).
- The worker was unable to work due to the injury and was out of pocket approximately 200 hours of wages as a direct result of the accident.
- The worker's partner had to take time off work to take the worker to doctor appointments as the worker was unable to drive.
-

Daily Life

- The worker suffered quite a lot of pain from the accident and could not move their right arm past 10 degrees for several weeks after the accident. The worker's partner had to help shower, dress, and assist the worker to use the toilet. He also became responsible for all food shopping, cooking and

cleaning, which were part of her usual duties prior to the injury as the worker was in too much pain.

- The worker was not allowed to drive for seven weeks. Living in a semi-rural area approximately a 40 minute drive from the worker's workplace meant the worker did not have transport to and from work and relied upon lifts from co-workers to get to and from work. These co-workers did not live locally and the trip to collect the injured worker was out of their way.
- The worker still suffers pain in her neck and shoulder as well as restrictions on movement two years post-injury. The worker has also been diagnosed with PTSD from the accident and is currently being treated for this.

Return to Work / Outcome:

The worker was off work for several weeks without wages.

The claim was denied by the Insurer.

When the worker did go back to work, she was not fit for her full pre-injury hours for some time. This meant that the worker was on reduced wages, through no fault of her own.

The IME stated in his medical report that the workers will have a 5% permanent injury for the rest of her life as a result of the accident but the worker is not eligible for compensation for this permanent impairment.

Opined Outcome pre-2012 scheme:

The 2012 amendments to Section 10 of the 1987 Act precluded this injured worker from receiving any compensation whatsoever. Had such amendments to "Journey Claims "not been introduced the injured worker would have had weekly income support and all treatment and medical expenses covered. Here is yet another example of a worker through no fault of their own is penalised and caused to suffer financial and personal hardship due to the State Governments draconian 2012 amendments

4. THE FINDINGS

i. THERE IS AN ADVERSE IMPACT ON INJURED WORKERS DUE TO CUTS IN PAYMENTS AND MEDICAL EXPENSES. THESE CUTS HAVE UNNECESSARILY PENALISED WORKERS. COSTS ARE BEING SHIFTED FROM EMPLOYERS TO INJURED WORKERS AND THEIR FAMILIES.

Compensation by its definition is to 'offset' suffering or injury. The changes to the compensation payment structure in 2012 means that workers are not being adequately compensated as they are immediately on less money when they are not at work or not working a certain number of hours. The reason they are not at work or on reduced hours is because they are considered injured to an extent that they do not have the capacity to perform those duties.

If a worker is not working or working less than 15 hours due to an injury then as time goes on the payments decrease down to as low as 80% after 14 weeks. Cuts in payments were designed to provide an 'incentive' for injured workers to return to work. They are not acting as an incentive but rather a 'penalty' for being so seriously injured as to have no capacity. It is grossly unfair to expect injured workers and their families to bear the brunt of these costs savings measures.

Retail workers are classified as low paid workers, even when on full pay. A 20% reduction in their pay has devastating effects on their financial situations. Some workers have had to move mortgages to interest only, borrow money from children or other family members, miss bill payments or increase their debt levels. Here are some examples:

- Worker D has suffered severe financial distress from her considerable 20% drop in income and has had to borrow money from her adult children to pay for basic bills and expenses. The worker attempted to return to work as she did have some capacity but her employer refused and the worker was terminated by her employer.

- Worker F has a major spinal injury and currently does not have any capacity for work. The worker is receiving 80% of her pre-injury average weekly earnings. The worker has had to convert her mortgage to interest only so that she can stay in her home. The worker's husband has had to take significant amounts of time off work to care for their five children, particularly while the worker was in hospital for an extended period and suffered an associated loss of income.

- Worker G is suffering financial hardship and is currently on 80% of her pre-injury income, struggling to pay basic bills. The worker has been told by her employer "We need you back on full duties and hours by February or you will be terminated." The worker told her doctor that she needed to return to work for financial reasons and could no longer suffer the loss in income due to having no capacity for work. Her GP reluctantly agreed to certifying the worker fit for some capacity. The worker later had to push for this to be increased to meet the 15 hour minimum so as to not suffer the significant loss in income.[6]

In addition to the above detriment, workers also lose an opportunity to earn additional income due to their injuries. Not much is said in regards to this loss and it is therefore rarely taken into account. The simple reality, however, is that if people are restricted to working a number of hours due to a work injury, incurred through no fault of their own, they should not suffer the loss of opportunity to earn extra income in the future. This should be taken into account for part time workers as a compensable amount. This is particularly the case for women, who often have to cut back full time work due to having children. If they incur an injury whilst on reduced hours they are locked into that lower income or a percentage of it unless they recover and can increase their hours in the future. This avoidance of loss is due to recovery which is largely out of an injured worker's control. This cost like the above loss in income is borne by the injured worker and is grossly unfair.

It should be noted that this financial stress has flow-on effects to psychological health which will be explored in more detail below.

ii. Inadequate incentives for employers to support injured workers to remain at work will continue to undermine any return to work efforts.

Workers are being terminated by their employers rather than returning to work, despite having capacity which could be accommodated.

Employers 'clearing their books' of workers with 'permanent modified duties' has been happening since the 2012 changes took effect. Employers use the excuse that they no longer have a need for the person to do the role, or no longer have suitable duties, when evidence has suggested that the role is an ongoing one and will be completed by another worker without restrictions.

[6] https://www.workcover.nsw.gov.au/workers-compensation-claims/payments-and-expenses/weekly-payments/payments-when-working

The basis for large employers clearing the books is these large employers are 'risk rated'. These larger employers cannot avoid the extra cost in premiums by reducing injuries or returning injured workers to work. The only way they can address substantial cost increases is to reduce staff levels.

Some examples:

- Worker D attempted to return to work as she did have some capacity to fulfil suitable duties but her employer refused to accommodate the restrictions in any of their business units. The restrictions involved rotation of sitting and standing and a lifting restriction. The worker was terminated by her employer.

- Worker G was issued a work capacity certificate which stipulated suitable duties and some work capacity. She was informed that there was 'no work for her at the store' and she 'must seek other employment' and show evidence to the Insurer's case manager that this has been done or weekly payments, physiotherapy and medication would be cut. In April the Insurer's case manager ordered a vocational assessment to go down a redeployment/termination path. The vocational assessor told the worker words to the effect of "[We] will try to get you interviews, but you won't get a job because of your restrictions" and "[The Employment Provider] just had to go through the process just to shut the insurance company up. Once a report was sent back to the Insurer's case manager stipulating that she was 'unemployable' the employer miraculously found suitable duties for the worker to do in the store. The Insurer's case manager therefore looked down a redeployment/termination path as first choice rather than having the worker return on suitable duties.

- Worker H, an employee with 25 years of service returned, to work in 2014 following an injury which required surgery. The worker had been working suitable duties in a role since this time. In November 2015 the worker was told it was no longer 'reasonably practicable' for her to be working at the store. When pressed as to detail the employer was not able to justify their stance and the role was available for the worker, not causing the employer any detriment. Despite this the employer is still seeking to redeploy/terminate the worker. The employer also offered to cut the workers hours down to 15 hours per week on a permanent basis, but if the worker did that then after 12 months of not being in receipt of workers compensation payments they would then terminate the worker anyway. The clear expression from her

employer that they do not want her as their employee has led to the worker suffering stress and anxiety regarding her future.

iii. STIGMA AND DISCRIMINATION AGAINST INJURED WORKERS IS COUNTERPRODUCTIVE AND UNDERMINES THE OBJECTIVE OF SUPPORTING INJURED WORKERS, OFTEN LEADING TO THE EXACERBATION OF, OR CAUSATION OF SECONDARY, PSYCHOLOGICAL INJURIES

It is well known that workers suffer stigma from being a workers compensation 'claimant'. This has negative effects on workers mental health. Worker's experiences overwhelmingly say that they have been treated like criminals by their employer and or their insurers or are just simply not wanted. Feelings of worthlessness and isolation are rife amongst injured workers.

The Union's experience is that many workers are treated like criminals and employers are still insisting on attending employee's medical appointments with injured workers. This is despite warnings around attendance issued by the Fair Work Ombudsman.[7] These breaches of privacy are harmful and do not encourage an open and supportive environment for workers and their nominated treating doctor. Workers report that employers are pushing their doctors to amend certificates, workers are having to get undressed behind screens whilst their employer sits in the room and they are told that their employers 'must' attend the appointments.

It should also be noted that insurers have the power to withdraw financial benefits, medical treatment harass and pressure injured workers, unbridled with effective appeal rights, thus undermining the progress of recovery and return to work.

Here are some details:

- Worker A suffered a psychological injury and the Insurer conducted an investigation. The insurer's investigator did not interview the worker, but interviewed six co-workers. The Insurer did not gather any medical information to support the denial of liability. The worker was sent all of the statements from her co-workers which caused the worker much distress as the statements from co-workers were made out of self-interest in support of their employer and were untrue. When a subsequent dispute was lodged by the worker's legal representative the Insurer ordered an IME but did not send through any reports to the worker or their legal representative. The Insurer

[7] https://www.fairwork.gov.au/about-us/news-and-media-releases/2012-media-releases/september-2012/20120927-statement-on-employee-medical-conferences

dragging out the claim, failing to interview the worker and afford her the opportunity to relay her story, exacerbated the worker's condition. Moreover the reluctance of the employer to offer the worker suitable duties upon her return made the worker's return to work even more difficult as she was clearly not wanted. This worker's claim dragged out for more than 2 years and 8 months and she is still awaiting receipt of payment ordered by the Workers Compensation Commission.

- Worker B's claim was denied despite two IMEs stating the injury was work-related. The worker was not greeted upon his return to work and received no communication from his employer prior to his return as to what would occur. The worker simply went back to work as if nothing had happened and was no longer working under his line manager who was the cause of his psychological injury. Moreover the worker felt he "had a number on his back" as the problematic line manager has now been promoted to Assistant Store Manager. This worker is still awaiting receipt of a settlement amount ordered by the Commission. It is now thirteen months since the injury was suffered.

- Worker C continued to work with restrictions from the date of injury and was accommodated for over seven months with suitable duties. The worker was then told liability and associated required surgery had been denied and was stood down from work on 29 August 2015. The worker was told not to return to work until fit for full duties. Surgery was denied by the employer despite two specialists agreeing that surgery was appropriate treatment. This led the worker to feel 'pushed out on the street'. The worker has since developed a depressive, agitated and anxious state from the treatment she has received from her employer and the Insurer. The worker has successfully fought for her surgery to be paid for by her employer in the Commission however the delay she has experienced to resolve her claim has led to unnecessary pain and suffering which is ongoing. The worker is yet to receive the compensation or surgery that was ordered in June 2016, some twelve months following the recommendation from medical professionals that she undergo surgery.

- Worker D attempted to return to work with restrictions but was told she was terminated. This led the worker to feel hopeless and of no value. She is now in a depressive, agitated and anxious state. The worker is also isolated due to physical restrictions and constant pain/need for medication. The worker's financial distress from loss of income has also exacerbated her psychological illness.

- Worker E was investigated by the Insurer. The worker was aware that she was being followed which led to feelings of anxiety and of being 'a prisoner in her own home'. Only when the worker received a file with photos from the Insurer were her suspicions confirmed that she was being 'treated like a criminal' for simply suffering an injury at work. The worker suffers from depression as a result of the treatment from her employer. The worker is still awaiting receipt of a settlement ordered by the Commission in June this year and the matter has been ongoing for thirteen months, with the employee being without income.

- Worker F has had particularly appalling treatment from her employer and the insurer. First the worker was told she must attend physio first and not her Doctor (a four day wait for an appointment with a physio). This occurred when the worker had a conversation with the employer while distressed and crying from the pain. Only later once the worker went against her employer's instructions and visited her GP was a scan ordered and a diagnosis made. The worker was found to have a snapped disc with floating piece sitting 1mm from her spinal cord and she urgently required surgery. The worker was encouraged not to make a workers compensation claim by her line manager as it "might not be needed" and the employer was reimbursing the worker for medical appointments and expenses out of petty cash. The worker did not know her rights or the law and it was only when she phoned her Union did she understand the gravity of her treatment. A workers compensation claim was originated by the employer over two weeks after the injury, this was despite the worker making various requests for this. The Insurer's case manager has treated the worker appallingly, with the worker having received condescending emails and phone calls from the case manager, repeating her name, denying conversations and commitments were made, ignoring questions from the worker and claiming that the worker was "happy" with her response, writing "Thanks for your understanding". Furthermore the sarcastic ending of an email with "Have a great day" was written in reply when the worker stated she was upset, under financial distress and not happy. Worker F also had her pay withheld after complaining about her pain management specialist appointment being cancelled. The worker's pay was suddenly "lost" and did not appear in her account until many complaints were made. The worker's pay was finally received two days late after an apparent "glitch" in the system.

- Worker G states she was made to feel like she was doing something wrong by merely having an injury and restricted duties. The lack of care was displayed in an incident where the worker was in severe pain and requested an emergency appointment at her GP. The worker was sent by her GP to the emergency department and her employer's RTW Coordinator just wanted to know when the worker would be returning to work for normal duties. The Employer said to the worker when she was unfit for work "We need you back on full duties and hours by February or you will be terminated." The worker believes the delays and lack of approval for treatment is because her employer and the Insurer believed she was lying about the injury. The delays meant the injury was left too long and the worker required surgery. The worker has felt bullied, harassed and threatened by the Insurer's Case Manager through the clinical tone they have employed when contacting her about the funding process for payments, treatments and medication including threats to cease payments and medical support. The worker's future is unclear and it looks that she will never return to pre-injury duties or hours. The worker is understandably anxious about this and cries frequently as she does not forsee anyone will want to employ her with her injury and associated restrictions.

- Worker H suffers from depression and is on medication due to her injury and her employer's attempts to terminate her. Worker G has 25 years of service with her employer and considers her employment her 'whole life'. For her employer to terminate her for being injured leads the worker to feeling worthless and unwanted. The worker has been attending redeployment appointments for almost one year but has the feeling that 'no one wants her' as she is injured.

- Worker I informed her employer of her injury and it was not reported for over a month. The worker had to contact the insurer herself to initiate the claim as she felt the employer just thought she was lying and a 'whinger'. The worker was told by her employer that they must attend medical appointments. The worker had to undress behind screens in the consultation room with the employer present. Upon returning to work the employer did no accommodate the worker's restrictions and return to work plan. The employer also received a negative appraisal when the reasons behind the underperformance were that her restrictions were not being accommodated. Furthermore the worker requested flexible working arrangements due to her relationship breakdown and responsibilities of care for her small children.

The employer suggested the worker reduce hours or cut back to casual due to her restrictions and family circumstances.

iv. THE IMPACTS ON WORKERS' LIVES POST-INJURY ARE NOT COMPENSATED

Injuries have had an impact on workers post-injury lives. Adjustments can also have domino effects on personal wellbeing. Various examples have shown that workers who have suffered physical injuries have suffered secondary psychological injuries through feelings of hopelessness, lack of support from employer or insurer and or isolation, reduction in family or social outings etc.

The financial effects of injuries are also devastating. The cuts to payments mean that workers are earning less income due to no fault of their own. Workers are unable to meet bill payments, have increasing debt, unable to afford basic bills and in one case unable to buy Christmas presents for family.

Some evidence of the effects that work injuries have on workers lives are below:

- Worker A suffered from psychological distress leading to anxiety and depression. The worker was unable to drive, suffered sleep disturbance was on prescribed anti-depressants for her condition. The worker was withdrawn from social events and relied heavily on her family to driver her and to complete domestic tasks for her.

- Worker B also suffered a psychological injury due to the actions of a supervisor. The side effects of were anxiety, excessive crying, high blood pressure, feelings of isolation and decreases in social activity.

- Worker C suffers from constant pain in her neck and both shoulders. The constant pain interrupts the workers sleep and the worker relies on prescription pain medication on a daily basis. The worker finds herself in an irritable and angry state due to the loss of sleep and when the pain is particularly bad the worker suffers from panic and anxiety. The worker is unable to do simple housekeeping tasks without assistance, such as shopping, cooking, hang washing on the clothesline and gardening. These tasks were all things that were part of the worker's usual duties and able to do unassisted prior to incurring the injury. The worker now relies on over use of a tumble dryer to get washing dry. The worker is unable to do daily walking or read a book due to pain incurred from holding the book. The worker has become

withdrawn from social activity due to pain and associated irritability. The worker also has difficulty getting dressed, washing hair and brushing teeth.

- Worker D has suffered financial distress as well as psychological stress from her spinal injury. The worker suffers constant pain from lower back (and a burning feeling) radiating down legs. She is unable to sit or stand for more than 20 to 30 minutes. The worker is often in a depressive and agitated state due to the pain and relies on prescription painkillers to function daily. The worker has problems with bowel and bladder function due to the injury and suffers pain while toileting. General showering and self-care is limited due to pain and physical restrictions, as is dressing, putting on shoes and socks. The worker can no longer go dancing, ten pin bowling, play darts, fishing and shopping with her daughter, activities she enjoyed prior to her injury. The worker is unable to do tasks which gave her pleasure prior to her injury such as going taking the dog for a walk and can no longer drive to visit her daughter in Wollongong or friends as she is only able to drive for 30 to 40 minutes. The worker planned to have a baby with her partner but has been unable to due to the injury and her sexual relationship with her partner has suffered due the injury which has caused frustration and depression. The worker also feels isolated and withdrawn due to her physical restrictions and is now reluctant to go to social occasions as she has lost confidence.

- Worker E suffers constant pain and interrupted sleep. The worker cries excessively and is in a depressive state and is 'not herself'. The worker relies on prescription pain medication to combat the constant pain. The worker is in financial difficulty due to loss of wages and was unable to buy Christmas presents for her family including her grandchildren. This has caused the worker significant additional distress as this was something she prided herself on and gave her great pleasure prior to her injury. The workers onerous physical restrictions render her unable to do domestic duties such as cleaning, gardening and cooking. The worker is also unable to pick up her Grandchildren or cuddle her husband which she finds distressing. The worker was made to feel like a criminal and was followed by investigators and photos were taken of her. The worker felt like a prisoner in her own home and affected her mental well-being.

- Worker F is under financial difficulty due to the reduced wages and her husband having to take time off work to care for their five children, particularly when the worker was in hospital for an extended period. The worker was a night fill employee

and would go to work once the children had gone to bed so caring for the children was part of her usual duties prior to incurring the injury. The worker's home loan repayments have been moved to interest only so they can stay in their home, this has caused distress and panic at the thought of losing their house and not being able to pay off the principal. The worker suffers extreme pain and has a particularly damaged and aggravated nerve in her spine. This has led to the worker developing an addiction to prescription pain medication for which she is being treated. The worker is being treated for a psychological injury resulting from the stress of the physical injury, and treatment from her employer and insurer. The worker has onerous restrictions of rotating between sitting, standing and lying flat to get comfortable. The worker is unable to pick up or play with her five kids, the youngest being under school age. The worker is unable to drive and housebound as lives in a semi-rural area without public transport. This has led to a previously active and social 35 year old mother becoming housebound and withdrawn. The worker is unable to basic domestic tasks such as cleaning or doing washing and this puts pressure on other members of her family to assist with tasks that were part of her usual duties prior to incurring the injury.

5. RECOMMENDATIONS

i. RESTORING FAIRNESS TO THE PAYMENT SYSTEM.

Payments to workers should be returned to 100% of the worker's average weekly earnings regardless of whether the worker has capacity to work. A worker should not be penalised financially due to being so seriously injured that they do not have any work capacity. To cut a worker's pay for being injured such that they cannot work, acts as a penalty for something which is not their fault. This is a gross injustice and goes against the intent of the workers compensation scheme which is to support workers, not to penalise them. Workers and their families are suffering due to the cuts to payments. The evidence of low paid retail workers in this submission is compelling, with workers unable to pay bills, buy Christmas presents for their families or pay their mortgage due to cuts in payments.

ii. RESTORE ONGOING MEDICAL TREATMENT FOR ALL WORK-RELATED INJURY AND ILLNESS, REGARDLESS OF THE TYPE OF INJURY.

Restore medical benefits for injuries regardless of the WPI. It is not fair and just to shift the burden of ongoing medical costs to injured workers, their families and the public purse i.e. Medicare. Furthermore the 2012 changes proscribe stroke and heart attack claims. The Union submits this is an injustice and all injuries should be covered if they are found to be work-related.

iii. INCREASE INCENTIVES FOR EMPLOYERS TO SUPPORT INJURED WORKERS TO REMAIN AT WORK RATHER THAN 'GETTING RID' OF INJURED WORKERS.

This submission contains evidence that employers are seeking to rid themselves of permanently injured employees, rather than supporting them in the workplace. The Union submits that incentives should be created to keep permanently injured workers in the workplace rather than redeploying them.

iv. REGULATE TO PREVENT EMPLOYERS FROM ATTENDING MEDICAL APPOINTMENTS UNLESS IT IS REQUESTED BY THE WORKER.

It is the Union's experience that workers are commonly told that employers attending their medical appointments is a requirement. The Fair Work Ombudsman ('FWO') has similarly expressed concerns about this practice. The Union considers this problem is widespread and there is a need for regulation to protect the privacy of workers.

v. REINSTATE JOURNEY CLAIMS.

The Union submits that journey claims were a feature of the scheme for many years and should be reinstated. Taking away worker's ability to claim is a step backwards and again another example of an unfair shifting of risk and detriment to the worker. The journey claims cost an estimated $93 million per year[8] which is a relatively small nominal value in light of the full cost of the scheme, yet has a significant impact on the small numbers of workers who claim each year.

vi. REINSTATE LUMP SUM PAYMENTS FOR PAIN AND SUFFERING.

The Union submits that this submission contains compelling evidence of the devastating impact and cost to workers enjoyment and quality of life as a result of workplace injuries. The case studies have explored the widespread psychological and physical effects such as depression, ongoing pain and reliance on medication to function. This detriment is not being compensated and workers, their families and the public purse are currently covering these costs whilst employers are benefiting from lower premiums and insurers are reaping profits.

vii. INCREASED SUPPORT FOR INJURED WORKERS FROM INSURERS AND EMPLOYERS.

The Union submits there needs to be a shift in focus on the welfare and support of injured workers rather than acting in line with 'minimum legal obligations'. Greater regulation and oversight of the behaviour of insurers, their case manager and

[8] 12th August 2015 Hansard – The Hon Adam Searle https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-117/link/2

employers around their conduct and treatment of injured workers needs to be undertaken. Access to an independent complaints service with qualified counsellors would be beneficial for workers in addressing the stress and difficulty workers suffer in the claims process.

viii. Reintroduction of nervous shock claims for partners of workers killed at work.

Once again the prevention of these claims has shifted detriment to injured workers' families. If a nervous shock claim can be made out, the ability to claim for compensation should not be prevented by legislation. To do so would be grossly unjust and would be another example of the inadequacy of the 2012 changes in compensating injuries suffered.

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

First review of the workers' compensation scheme

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
   (a) Workers' Compensation Scheme
   (b) Workers' Compensation (Dust Diseases) Scheme
   (c) Motor Accidents Scheme
   (d) Motor Accidents (Lifetime Care and Support) Scheme.

2. In exercising the supervisory function outlined in paragraph 1, the committee:
   (a) does not have the authority to investigate a particular compensation claim, and
   (b) must report to the House at least once every two years in relation to each scheme.

Committee membership

The Hon Shayne Mallard MLC	Liberal Party	*Chair*
The Hon Lynda Voltz MLC	Australian Labor Party	*Deputy Chair*
The Hon David Clarke MLC	Liberal Party	
The Hon Daniel Mookhey MLC	Australian Labor Party	
Mr David Shoebridge MLC	The Greens	
The Hon Bronnie Taylor MLC	The Nationals	