

## FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

**Organisation:** Name suppressed

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Partially  
Confidential

### Submission 3 – General

I would like to start by pointing out the gross conflict of interest that exists whereby EML, a publicly listed company, answerable to shareholders and their expected dividends, operates a state legislated insurance scheme for injured workers. There is not one element of ethics, integrity or transparency behind this system and this is clearly evident in the way in which injured workers are treated and their injuries managed – it is all about cost. The mantra of “Safe, Durable and Timely return to work” makes me sick every time I hear one of the EML minions repeat it to me.

For god’s sake, EML sponsor an AFL football team – wouldn’t the money be better off going to injured workers?

This next paragraph will require qualification, but I think in 2012 the Australian Bureau of Statistics published information on the NSW Workers Compensation System that stated approximately 92 cents in the dollar was being spent by insurance companies in investigations, surveillance and the use of independent medical examinations, as opposed to treatment where the figures are grossly lower.

I studied a Masters of Workplace Health and Safety at university, graduating in 2014. I can confirm my classmate was a former employee of EML who worked on the Police portfolio. My classmate left the organisation in disgust at the way EML treated injured workers. I confirm my university colleague informed me of the following operations that occur within the EML workers compensation division, particularly the Police Portfolio:

- A rewards system exists for the closure of claims, remunerating the case manager financially
- Peer reviews of cases are regularly undertaken, chaired by Team Leaders, whereby group discussions are held. The themes are strongly cost orientated. Team Leaders were often quoted telling their subordinate case officers not to inform their injured worker/s of their entitlements to assistance with activities of daily living “unless they ask for it”
- Surveillance is overused and ordered on an ad hoc basis with no foundation. It is used to see if they can “catch the injured worker out doing something wrong” or “gather evidence to help refute a claim for workers compensation or assistance with activities of daily living”
- Team Leaders instruct their subordinates to never mention anything to do with the worker’s potential entitlements for whole person impairment

#### RECOMMENDATIONS:

- Incentive bonuses for case managers should be eliminated
- The rights and entitlements of injured workers should not be withheld from workers by the insurers
- All independent medical examiners reports should be released, without prejudice, regardless of the recommendations to avoid unnecessary stress caused to the injured worker and improve transparency
- To order surveillance, the insurer must have some reasonable cause to suspect it is required. The ad hoc nature and overuse of surveillance is causing too many ill effects, exacerbating injuries and stifling rehabilitation

## Submission 1:

This relates to a Police Officer who destroyed two discs in her back in 2002 whilst wrestling with an offender. The officer was very determined and made every attempt to return to full duties, to no avail.

Throughout the 14 year history with (predominantly) EML workers Compensation this officer has had to endure a significant number of independent medical examinations, activities of daily living assessments and functional assessments to the point where she has now developed a secondary anxiety disorder and is no longer medically fit to participate in any dealings with EML. I, her husband, manage all the interactions.

### INDEPENDENT MEDICAL EXAMINATIONS:

In 2013 she was sent to \_\_\_\_\_ who in short commented that she was able to return to 40 hours per week of secretarial duties following physiotherapy rehabilitation. This was despite the fact two of her lumbar discs could be clearly seen in MRI imaging to be dehydrated, collapsed and impinging on nerves creating severe pain and disablement. Amazingly, her treating doctor performed an Anterior Lumbar Interbody Fusion (ALIF) within a matter of months of the so called independent medical examiners advice. As this procedure was costly, EML fought tooth and nail to stop it from happening. The procedure left the injured worker with a number of screws and plastic discs in her back, however it was reasonable and necessary which is at odds with the advice of the so called independent medical examiner. In addition, Dr \_\_\_\_\_ seemed uninterested in much of the injury chronology that the injured worker wanted to report.

Following this surgery, her bones rejected the screws, causing significant pain and disablement. The only option was to perform an exterior fusion. EML decided they wanted a second opinion. They wrote to a second so called independent medical examiner with questions to the effect "...are there more subtle and less invasive treatment options available...". We believed this was to avoid additional cost. As it turned out the independent examiner opined that a further surgery was the only option. HOWEVER during the process of waiting for a second opinion, the injured worker was left for approximately 3 months in crippling pain, with the screws literally coming out of her back, whilst EML went through the bureaucracy of trying to source a cheaper remedy. The injured worker eventually underwent the recommended surgery and now has an additional four rods in her back together with the screws and fake discs and continues with ongoing pain.

It was expected that the injured worker be on complete rest for up to 6 months following each surgery. Following the initial surgery, EML took it upon themselves to send out a large parcel containing a long handled toilet brush, a broom with an extension handle and arranged a therapist to come out and start teaching the injured worker how to clean the house again! At this point in time she had not even ventured from the upstairs quarters of our home to the downstairs quarters!!!

\_\_\_\_\_ is another dubious so called independent medical examiner who completes his reports in a scathing tone which reflects an open disbelief of the injured workers injuries, despite the clear MRI imaging. He falsely represents facts in his reports and in one of his reports he has left information relating to another injured worker in his report which is inappropriate. \_\_\_\_\_ would remark that

the injured worker came alone to the interview, yet I her husband was sitting beside her throughout. There are serious concerns with this process. This doctor is very arrogant and puts his hand up in the injured workers face when she tries to report her symptoms and injuries to him, as if he has already decided what he is going to write. Needless to say the three medico legal reports commissioned from                    are unfavourable and are at odds with the four other treating specialists that this worker sees.

This injured worker is assessed at 22% whole person impairment. EML scoured the ends of the earth to find a doctors notation whereby the injured worker was involved in a minor rear end car accident. They provided this notation to                    when he completed an assessment for whole person impairment. The accident occurred well after the initial injury sustained whilst arresting an offender and the back damage could already be clearly seen on the MRI imaging. The car accident was minor, both cars were driven away from the scene and no parties were injured. The injured worker attended her GP as a precautionary measure as she was pregnant at the time.                    cunningly apportioned 12% of her whole person impairment to this accident in an attempt to avoid a figure of 15% from either injury and open the door for work injury damages. This is a highly inappropriate tactic, regularly engaged by EML.

#### SURVEILLANCE:

Again, despite the fact that the injury is clearly seen on MRI imaging, surveillance was ordered on the injured worker. The surveillance captured photos of the injured worker leading her kindergarten aged daughter into a catholic primary school, with other children in the frames. This is just disgraceful.

Whilst part of the treatment for the injured worker is to integrate back into society and activities of daily living, she now does not want to leave the house in fear of being followed, thus stifling any attempts at following her recommended treatment plans (e.g. walk once a day etc) and achieving her rehabilitation goals. It is counter-productive to the rehabilitation process and has contributed to the causation of a secondary psychological illness.

#### ASSESSMENTS FOR ACTIVITIES OF DAILY LIVING:

The injured worker has in her possession from her treating GP, her neurosurgeon, her pain management specialist, her physiotherapist and her psychologist that she is significantly disabled, is in significant lifelong pain and will need ongoing home care and support with cleaning services and a nanny for the children for a long period of time. Her recovery is expected to be very slow. HOWEVER, every couple of months we are subjected to a review from a fresh young university graduate in Occupational Therapy who has no patient experience. She comes to our house and sits on a chair and asks my wife questions whilst she is lying on the lounge in pain. Every single report that is produced following these meetings slowly reduce the support hours offered to the injured worker, who cannot drive or clean, yet there has been little to no improvement in her pain or mobility. I reinforce this is backed up heavily by the aforementioned treating doctors, yet EML follow the advice of the Occupational Therapist on each occasion cutting back support and making the injured workers rehabilitation harder and more stressful. This has (in part) contributed to the

secondary anxiety disorder the injured worker now suffers from. The paucity of the reasons for cutting back assistance in each report is astonishing, unethical and clearly cost driven.

## Submission 2 –

I am a firefighter of nearly 11 years. I have suffered a psychological illness due to corruption, bullying, sexual harassment, unethical work practices, nepotism, coercion to change court statements and a raft of other work related stressors spanning a period of 5 years which included a large scale investigation of corrupt management. I was a witness to the corruption. I experienced bullying for a number of reasons including because I was a witness to the corruption and supported a whistleblower for bringing the corruption allegations to the attention of senior FRNSW Command and the Workplace Standards Branch. I have not been at work since November 2015. EML have delayed my claim this entire time and I have not received an income since that time.

EML have rejected my claim and they have stated that my injuries are not work related. EML scoured the ends of the earth to find doctors notations concerning the death of my nan, the fact I was studying university, that I had some difficulties with my pubescent teenager and other scarce and deficient personal issues that they paid an independent medical examiner to conclude that those issues were in fact the reason I have a Major Depressive Disorder, Generalised Anxiety Disorder, Agoraphobia and Panic Attacks and not the persistent, sustained and significant workplace stressors I faced over the 5 year period.

EML have rejected my claim despite the so called independent medical examiner originally determining that work was the substantial contributing factor to my injury. That was his findings before EML presented him with the obscure and isolated doctors notations concerning temporary and personal stressors, which hardly cause the severe psychological symptoms I have. In addition to this, EML have 2 x other reports from my treating psychiatrist and another independent medical examiner who both opine that my illness is substantially contributed by my work with FRNSW.

It would seem that EML have latched on to some very minor matters which were stressful at the time, but have not caused my illness, and used this to fight and delay the admission of liability in my matter. As a consequence, they have made my condition worse and caused financial burden which is not fair on my family.

## SURVEILLANCE:

EML are in receipt of information from my psychologist who is treating me for my agoraphobia. The treatment plan is a graded increase in exposure to the things that cause me anxiety (going out in public). So what do EML do? EML put surveillance on me. EML have since sent me the surveillance footage and although I only venture outside my home when absolutely necessary, I find it terrifying and take valium. Now that I know I am being followed I refuse to go out in public and this has seriously interfered with my treatment plan and rehabilitation. My psychologist is alarmed at this tactic as she has seen a marked deterioration in my rehabilitation. So much for "A safe timely and durable return to work". I fail to see what surveillance will show about one's psychological health.

In addition to this, the surveillance filmed my daughter going into her catholic primary school. Rather unsavoury in my opinion.

EML:

My dealings with \_\_\_\_\_ and \_\_\_\_\_ have been nothing less than demeaning. They speak very negatively and have no regard for the fact I am trying to cope with a sensitive psychological illness. They are arrogant case managers and need a lesson in dealing with injured workers who suffer from psychological illnesses.

In the beginning of my case, \_\_\_\_\_ would ring me. She would then send me an email “summarising” the conversation we had. On many occasions, \_\_\_\_\_ incorrectly “summarised” the conversations we had via phone and in fact changed the facts and truth of the conversations. I made my own notes of each conversation and I now only deal with her via email for the purpose of keeping transparent records.

As part of my injury was caused by exposure to corruption (corruption which was deemed a Public Disclosure under the Public Interest Disclosures Act 1994) I was not permitted to speak specifically of the matter. \_\_\_\_\_ made repeated unethical attempts to coerce me into divulging my knowledge of the Public Disclosure, despite the fact that EML had already engaged a contract investigator (Procure) to carry out a factual investigation. I have no idea why she put such pressure on me but she made me feel as though my claim would not be accepted if I did not tell her what it was about. I remained steadfast in my position regarding the Public Disclosure.

#### INDEPENDENT MEDICAL EXAMINATIONS:

In the early stages of my claim, EML told me I was required to attend an independent medical examination to “Move my claim along and ensure I receive the correct treatment”. At a later stage EML stated that the examination was not an independent medical examination and that I attended of my own accord. I pointed out to them how they tricked me and that under legislation I was only required to attend an examination if it was indeed a formal independent medical examination. The Fire Brigades Employees Union confirmed this. As such, EML mislead me into attending a diagnostic test with a psychologist that I did not need to go to. They have used some parts of this report to refute my claim for workers compensation. EML have not actioned the complaint I made against them for misleading me. I have plenty of email correspondence to confirm that they called the diagnostic test with the psychologist an “Independent Medical Examination”

#### REASONABLE EXCUSE NOT TO ACCEPT LIABILITY:

EML used false reasons to initially reasonably excuse themselves from accepting provisional liability. EML informed me that they had “evidence that suggests work is not a substantial contributing factor to my injury”. I challenged \_\_\_\_\_ on what evidence she had and she apologised and said, “...we have no evidence...”

I then made a complaint to SIRA and a breach was lodged against EML. At that point in time EML should have accepted provisional liability as the so called reasonable excuse ceased to exist, however they didn't. Another breach with SIRA was lodged.