

**INQUIRY INTO 2020 REVIEW OF THE WORKERS
COMPENSATION SCHEME**

Name: Name suppressed

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Partially
Confidential

SUBMISSION FOR
THE 2020 REVIEW OF
THE WORKERS
COMPENSATION
SCHEME

I am an injured worker making a submission in regard to the workers compensation system and those parties that make up that system.

I believe through an examination of my case; it will give the committee an insight into how the entire system is letting down injured workers and how there is currently nothing that can be done about it.

It is my belief that employers, insurers and other parties are exploiting the current system, and injured workers are helpless to receive a fair process.

My Case

On the 26th May 2015 I suffered a psychological injury after a workplace incident. I and two other colleagues subsequently submitted workers compensation claims for Bullying and Harassment over what had taken place.

I work for a large government department and was assigned an injury coordinator to assist me with my treatment and claim. The injury coordinator never contacted me, and immediately all three claims were bunched together as one. The injury coordinator reported to the insurer that no incident had taken place and we had

submitted a claim falsely to be paid as our workplace had gone on strike over the incident that had occurred to myself and two colleagues. The Injury coordinator requested that the insurer decline the claims.

The incident at my workplace was heard in the Industrial Relations Commission over a number of days. My employer stated one narrative to the Industrial Relations Commissioner and the complete opposite to the insurer. My injury coordinator changed her story and began to tell the insurer a completely made up narrative of what had occurred and gave incomplete transcripts of the industrial relations proceedings in an effort to have the three claims declined.

One of my colleagues became aware of what the injury coordinator was doing and made a complaint. As a result, all three of us received a new injury coordinator.

The new injury coordinator instructed the insurer to decline the claims and nominated specific doctors that my employer wanted us to be sent to. The case manager from the insurer and the injury coordinator from my employer emailed back and forth to each other questions that should be asked. There is an excerpt from a telephone transcript from a later investigation that states they were laughing about this process to decline our claims and how they would go about doing it.

The insurer conducted a factual investigation in September 2015 and interviewed the manager that the three claims were against. The manager gave a statement in relation to my claim and nominated two other managers to give witness statements.

I gave a statement but was told by the insurer that I was not allowed to have any witnesses give statements. I was forced to go to WIRO for assistance and then subsequently was allowed two witnesses to give statements for my matter.

The owner of the factual investigations company, who conducts nearly all of my employer's factual investigations for workers compensation matters, emailed my case manager from the insurer and nominated a new defence that my employer should use to defend my claim. This was a defence different to the one the three managers had given in their statements, and different to what my employer had stated in the Industrial Relations proceedings.

It was later found in an investigation into this matter that nearly half of the evidence I supplied with my factual statement was never passed on to the insurer by the factual investigations company.

The lawyer acting for the insurer assessed the claim and wrote legal advice in mid-October 2015 to the insurer

stating he was not in a position to decline the claim as my employer had requested. The lawyer asked to meet with my employer.

Approximately three weeks later, the manager who my claim was against, my new injury coordinator, the lawyer acting for the insurance company and employees of the insurer met to discuss my claim.

As a result of that meeting, the manager who my claim was against altered her statement, adding a new paragraph to her original statement. The original date of the statement – some two months earlier – remained and subsequently this altered statement was used to decline my claim in approximately mid November 2015. When I looked closer at the statement, the cover had the original date, but the last page had a date almost two and a half months later and was a week after the manager had met with the insurers lawyer. The statement was signed by the manager but not witnessed by the factual investigator.

When I received the statements from the two other managers, their statements were not signed or witnessed. In contrast, my statement and that of my two witnesses was both signed and witnessed.

I contacted the factual investigator who took the statements to inquire why none of the managers

statements were witnessed, and only one of them was signed, but had two different dates on it. The factual investigator informed me that all statements were signed and witnessed and stated there was no way to explain why I had received any unsigned statements.

I complained to my case manager at the insurer and was told to request a review of the decision. I was told the review would be conducted by someone in a different section of the insurance company who would assess it independently.

In a later investigation into the matter, it was found that the lawyer who met with the manager and had the statement changed appeared to have conducted the review and inserted other people's names from the insurer into it to make it appear as though they had conducted the review.

I subpoenaed my file from the insurer and discovered there was no legal privilege attached to anything. I found emails from my employer to the insurer and vice versa. I found the legal advice from the lawyer acting for the insurer. I found the original statement the manager in my claim had given – I already had the altered one at that time. I also saw all the insurers case notes and their summaries of what my employer had been falsely telling them.

I appealed my claim and went to Arbitration on December 2017. The insurer continued to fight my claim the entire time. Just before arbitration I was required to hand over all evidence that I would be relying upon for my appeal, and I handed over the legal advice, the original and altered statement, the emails from my injury coordinator, everything. Fair to say the insurers lawyer went berserk and tried to have the evidence suppressed from the proceedings. On the day of mediation, before the hearing began, the insurer overturned their decision and accepted my claim to avoid adverse findings against them.

One of my colleagues took my evidence to ICARE to complain about what had happened. The General Manager of Compliance commissioned KPMG to conduct a forensic claim file review of all three claims. This began around the end of November 2017.

By April 2018 KPMG had submitted their report to ICARE. The General Manager who commissioned the report informed us that there had been findings of collusion and undue influence. The General Manager stated he was having problems with ICARE and suggested we go to the media.

That report was suppressed and any further attempts to contact ICARE were dismissed.

At around October 2018 I filed a work injury damages claim against my employer. Despite knowing I had all the evidence from my file, and despite the KPMG report 6 months earlier, my claim was declined, basically stating my employer had done nothing wrong.

At around April 2019, one of my other colleagues subpoenaed the KPMG report for his Work Injury Damages claim. He received a KPMG report dated in July? This report stated there was no findings of collusion. There was also a supplementary report from October that made final findings again stating there was no collusion.

When we inquired where the KPMG report from April was, ICARE informed us it was just a 'draft', however we had communications from KPMG in April stating they had just delivered their final report to ICARE.

A few months later I went to SIRA to complain about what had gone on and what was continuing to go on. I was redirected to WIRO who now handle workers complaints. I wrote down what had occurred and asked to meet with someone to show them the evidence. I called continuously

but could not obtain a meeting and was told by the Director that WIRO ultimately had no power to enforce anything anyway.

A short time later I received an email from the person in charge of WIRO, the independent review officer, stating he had personally investigated my matter and found there was no basis for a complaint and that he could find no evidence of what I had stated in my complaint. It appears the head of WIRO misunderstood my list of facts to be allegations. I wrote back to him and informed him I had all the evidence in my possession and wanted to meet with him to show him. My emails were ignored.

I then reached out to the PSA Union and Unions NSW who were able to send some information on my behalf to Daniel Mookhey for an upcoming budget estimates hearing, in October 2019.

Mr Mookhey put some questions to SIRA's CEO, who was not aware of the situation. However, as a result of those questions, I was invited to meet the Executive Director of SIRA. I walked him through a chronology of the evidence, and he was shocked. From that meeting, SIRA launched an investigation and audit into all three claims. That report is due around the end of June 2020.

In regard to the KPMG investigation, what I can now piece together through transcripts and evidence, is that KPMG

delivered it's report in April 2018. ICARE then held discussions with the insurer and my employer, and then a series of questions were put to KPMG, and ICARE were involved in the deliberative process that brought about the July version of the report. The original April report was now deemed a draft. The April report states there was collusion, the July report states there was not. The CEO of ICARE stated in budget estimates that no further investigations were conducted after the April report was delivered, so it remains a mystery to me how the findings changed so dramatically. I believe SIRA's investigation will shed light on this.

CONCLUDING REMARKS

In regard to the workers compensation system, I don't know how you can fix something so broken.

An employee who lodges a claim has no way of knowing what his employer is telling the insurance company. It appears to me that the system works perfectly for employers and insurers. The employer keeps their premiums down by nipping claims in the bud with requests for the insurer to decline the claims early.

The insurer is happy to oblige because they keep the large contracts, particularly those of large government agencies like my employer.

ICARE who runs the system, has in my case given every assistance to the employer and insurer and absolutely none to the injured workers, myself and my two colleagues. We went to ICARE with evidence that my employer and the insurer had altered evidence to decline our claims, and when KPMG investigated it and found it to be true, their reports were altered to cover up what had taken place.

Workers are now directed to WIRO, but I dealt with the absolute top person in that agency who unbelievably could not find any evidence and refused to meet with me so I could give him the evidence. I was also told WIRO had no enforcement powers so even if they did find this evidence there is very little they could do anyway.

SIRA, in my matter since I met with the Executive Director and later the CEO, have been a great support and I have nothing but gratefulness that they took the time to meet with me and allow me to show them the evidence. However, problems with my employer, the insurer and ICARE continue even now despite all three knowing SIRA is investigating them, and SIRA is unable to intervene in most of these matters.

I believe I am the example of the very worst that the system can inflict upon an injured worker.

No other worker to my knowledge has the evidence I have. No worker has the other sides legal advice, original and altered statements with the same dates, their employer's emails to the insurer stating false narratives, etc.

No other workers besides my two colleagues and I have a \$250,000 forensic claim file review into their matters supporting nearly everything we've said – I believe the April report does support everything.

No worker has SIRA conducting such a large scale investigation and audit into their claims.

And yet, despite all of this, my claim is over 5 years old and my work injury damages claim remains unsettled. If I can have all of this evidence and I can't get anywhere, what chance does anyone else have?

Despite ICARE changing providers to EML, my employer and the insurer involved in my claim were allowed to reunite last year.

No one involved in my claim has had any action taken against them. The same injury coordinators remain at my employer, which begs the question, just how many employees have they done this to?

The lawyer acting for the insurance company remains in the industry. He has been in that industry for decades, so again, how many injured workers has he done this to?

I receive no assistance from my employer, the insurer, or ICARE. I have been left to rot in the wilderness for the past 5 years. My employer and insurer were aggressive against my claim in the beginning, but once they found out about the evidence I possess, there has been no contact since and I am simply ignored.

The system is designed to drag the injured workers matter out so long that their legal fees get so high that any potential settlement down the road just gets eroded away in their own legal fees. The insurer/employer make an unfair low offer and the worker is left with accepting that offer or fighting for justice and pursuing a fair offer, but by the time the offer is fair, with the legal fees taken out, becomes the same amount as the initial low offer anyway.

As far as the model litigant policy, who is there to enforce that?

I cannot offer solutions, but hopefully others can examine my case and make the changes to the system to not have anyone else go through what I have been through.

I am certain many, many other injured workers have endured what I have, the difference between them and I is I am able to prove it.

Thank you for your time in considering this submission