

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

Organisation: Police Association of NSW

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Police Association of NSW



Submission to the
2020 Review of the Workers
Compensation Scheme

Executive Summary

Return to work

The most pressing need for the NSW Workers Compensation Scheme is to improve return to work rates, and this is true for the NSW Police Force as well.

Return to work (RTW) is a key metric of the performance of the workers compensation system, and this Committee has played a key role driving increased focus on RTW outcomes and accuracy of data through its previous inquiries.

Given RTW is a key metric of performance, it is imperative that employers and insurers address the deteriorating RTW rates currently occurring throughout NSW. This trend is applicable to all insurer types, most industries, and is true for (but not unique to) the NSWPF.

This is a problem that all employers, insurers and injured workers must grapple with.

Our experience representing, supporting and advocating for our members indicates the key intervention required is an increased commitment and effectiveness at identifying suitable duties and (most importantly) permanent suitable positions for injured officers with work capacity, or making adjustment to positions when needed.

Medical Treatment

The Police Association notes that SIRA has conducted public consultation regarding regulatory requirements relating to the healthcare arrangements within the NSW Workers Compensation and CTP systems.

Some of the material considered in that consultation has suggested altering the regulatory arrangements in a manner that would make it more difficult for injured workers to access medical treatment through the workers compensation scheme.

The Police Association does not support changes that would deny injured workers medical treatment, and urges the Committee to protect workers in NSW from this potentially damaging proposal.

If injured workers are receiving medical services that are not effective in treating their injury, rehabilitating them, or returning them to work, the answer is not to deny medical treatment. The answer is to improve processes that select appropriate treatment options for injured workers. The Police Association would support improvements of this nature. The attainability of this objective was demonstrated by the success of the NSWPF Recon Program.

Presumption for psychological injuries for emergency service workers

The risks police and other emergency service personnel are exposed to while protecting the people of NSW can be highly damaging to their mental health.

They witness highly traumatic incidents, they are exposed to danger, and work under high pressure responsibilities.

Emergency service workers often find making a claim relating to psychological injuries exacerbates the original injury – the claims process requires them to recount traumatic events,

essentially forcing them to relive those experiences that gave rise to their injury. This occurs in an adversarial claims process.

Many jurisdictions in the United States and Canada addressed this problem by creating a legislated presumption that emergency service workers who have certain psychological injuries suffered that injury as a result of their work. The presumption is rebuttable, so does not lead to incorrect approvals of claims. It simply reduces the burden placed on emergency service workers in making a claim.

After the success of those reforms in North America, Australian jurisdictions are considering similar reforms. Tasmania has already passed that legislation, and a Federal Parliamentary Inquiry recommended a national approach to go alongside States and Territories that pass such legislation.

Return to Work

The importance of RTW as a metric of the Workers Compensation Scheme

Commitment to assisting injured workers return to work is so important because RTW outcomes determine the success of so many objectives of the Workers Compensation Scheme.

The objectives of the Workers Compensation Scheme are outlined in section 3 of the *Workplace Injury Management and Workers Compensation Act 1998*:

3 System objectives

The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives—

- a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
- b) to provide—
 - prompt treatment of injuries, and
 - effective and proactive management of injuries, and
 - necessary medical and vocational rehabilitation following injuries,in order to assist injured workers and to promote their return to work as soon as possible,
- c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- d) to be fair, affordable, and financially viable,
- e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
- f) to deliver the above objectives efficiently and effectively.

All these objectives rely on effective performance in the RTW metric.

It is now well established that the quicker an injured worker is able to return to meaningful duties, the better their recovery and long-term health outcomes will be. Finding a position is also the most financially secure outcome for an injured worker and their family.

Returning an injured worker to work, including use of rehabilitation programs, is also the best way to reduce costs of claims¹, and thereby ensure the scheme remains affordable and financially viable – an injured worker back at work costs the scheme less in entitlements, and through the improvement of health outcomes, will cost the scheme less in rehab and medical costs in the long run.

RTW is also a direct indicator of the effectiveness of other components of the system, like injury management, medical and rehabilitation services, the claims process and case management.

NSW RTW Trends

The SIRA Open Data portal shows the RTW trends (across all insurer types):

	March 2017	Feb 2020	Change
4 weeks	76%	65%	-11%
13 weeks	87%	76%	-11%
26 weeks	90%	81%	-9%
52 weeks	92%	85%	-7%

While different insurer types have experienced this deterioration at differing levels of severity, deterioration is common across the scheme.

The Open Data portal also demonstrates the trend is applicable across all industries as well.

The universal experience of this trend shows we cannot cut compensation entitlements and expect claim outcomes to improve – reversing this trend requires commitment to RTW solutions, and we propose some below.

NSWPF experience

The NSWPF has also experienced this trend in the deterioration of injured officers returning to work. The NSWPF Annual Reports demonstrate an increase in the amount of time injured police personnel are spending off work.

There has been a modest increase in the frequency of injury, largely driven by injuries in the categories of “body stressing” and “mental stress”. In the period 2014-15 to 2018-19, the claim frequency has increased from 15.34 claims per 100 FTE personnel, to 18.93.²

At the same time, the number of hours lost per employee through workplace injury increased from 45 hours to 78 hours.³

¹ Randall, C & Buys, N 2013, ‘Managing occupational stress injury in police services: a literature review’, *International Public Health Journal*, vol. 5, no. 4, pp. 413-425.

² NSWPF Annual Report 2018-19, p. 97.

³ See NSWPF Annual Reports 2014-15 to 2018-19, section titled “Leave and turnover”.

The PANSW is witnessing the impact on police officers of this in the following developments:

- the number of injured officers “unfit for work” is increasing compared to the number on suitable duties;
- it is incredibly difficult for injured officers to secure permanent positions; and
- more officers with capacity and desire to continue to work for the NSWPF are being medically discharged against their will.

RTW Solutions for Injured Officers

Innovative approach to meeting work demands

Unfortunately, we are still witnessing officers with capacity to work being unable to secure permanent employment within the NSWPF and are therefore forced to medically discharge against their will.

This is damaging to the officer and expensive for the scheme, and a loss for the NSWPF.

Employer agencies, including the NSWPF, now have access to highly sophisticated data and technology driven analysis of their workforce and work demands. Therefore it is well within their capabilities to analyse the work demands that they need to meet with the workforce available to them, and allocate human resources appropriately, including factoring in a workforce made up of personnel with a diversity of skill sets and capacity, including restrictions due to injury.

Given this, it should now be wholly unacceptable to fail to find work for highly trained police officers with a capacity to work, albeit not able to perform 100% of the functions a police officer may theoretically perform during their career.

A more innovative approach is suggested to enhance RTW programs. Injured officers should be utilised to perform the tasks within their injury related capabilities, to their full extent, and work demands outside their restrictions can be met by other members of a team or command. Job descriptions should be assessed more closely to find roles where injured officers can make a valuable contribution, meet most of the criteria, perform the role in other ways, or meet work demand through other means. Adjustments to positions should be made with more innovation, supported by allocation of personnel to meet work demand using the capabilities contained within a team or command.

Essentially, the onus on the organisation to find meaningful work for the injured employee needs to be prioritised over a perceived need to have 100% of officers in a team capable of performing 100% of the task types contained in their work demand.

Once this occurs, injured workers will feel encouraged to seek help earlier, as they know they are unlikely to lose their job. By seeking help earlier, further injuries are likely to be mitigated⁴.

⁴ Randall, C & Buys N 2013, ‘Managing occupational stress injury in police services: a literature review’, *International Public Health Journal*, vol. 5, no. 4, pp. 413-425.

Commitment by employer, including direct managers, to RTW success

In order to facilitate this, the organisation needs to make RTW outcomes sufficiently important relative to other operational demands. Without that corresponding commitment right through the hierarchy, commanders may perceive it as detrimental to their interests to accommodate injury and work capacity needs and at the same time meet work demands.

We cannot expect all commanders to be fully committed to facilitating the placement of injured officers if their own performance indicators make this a risky task.

The NSWPF needs to:

- make clear that achieving better RTW outcomes for injured officers is a priority for the whole of the organisation;
- set position descriptions and performance indicators for supervisory and command positions accordingly; and
- give RTW indicators sufficient priority to ensure they are not ignored for operational demands.

Supportive case management and RTW processes

The best RTW outcomes will be produced when the injured worker has input into the issues and solutions put forward in implementing their RTW program⁵. This helps the injured officer to feel they are doing meaningful work, and that the procedures surrounding their RTW are fair⁶. It also ensures that all possibilities are put forward to assist in their return to work.

As such, any RTW approach should include ongoing, meaningful communication between workplace supervisors, the injured employee and their selected medical practitioners and support persons, rather than decisions being made without consultation with the employee.

NSWPF and the insurer have developed and implemented models for quality case management, but we are not seeing the benefits of this application universally, in particular in the RTW and permanent deployment space. Too often, the process makes injured officers feel disenfranchised and unwanted. The process of identifying positions is likely to have been frustrating and slow, delaying their placement in a position and making them feel apprehensive about commencing their new role. It is during this process that aggravation or reoccurrence of injuries often occurs, due to the stress of the process.

Strategies such as IMA training, case conferencing and supportive case management models have improved outcomes when applied, and the potential for increased use should be investigated.

⁵ Randall, C, Buys, N & Kendall, E 2006, 'Developing an occupational rehabilitation system for workplace stress', *International Journal of Disability Management*, vol. 1, no. 1, pp. 64-73.

⁶ Wall, CL, Morrissey, SA & Ogloff, JRP 2009, 'The workers' compensation experience: workers' beliefs regarding the impact of the compensation system on their recovery and rehabilitation', *International Journal of Disability Management*, vol. 4, no. 2, pp. 19-26.

Priority placement for injured officers

Injured officers are often capable and driven to continue to perform meaningful work to serve their state. However, securing permanent positions suitable for their fitness is still a very difficult process. This delays their recovery, makes the officer feel unwanted by their employer and potential supervisors, and ultimately ends in medical discharge of an officer who would otherwise have been able to return to work.

Policies that give injured officers priority placements, first in positions in the NSWPF for which they have the capacity to perform, with reasonable adjustments, or absent that positions within other public sector agencies, should be put in place.

Greater involvement of insurer in return to work and medical discharge

We are witnessing RTW decisions and medical discharge being left solely to the employer. Currently, workers compensation performance and RTW indicators are not given the priority they warrant in comparison to perceived operational difficulties of “accommodating” injured officers with anything less than full work capacity.

A greater level of involvement by the insurer would in part address this, given the impact on compensation benefits payable and the ongoing premium impact of those decisions.

The insurer should have a greater role in:

- the provision of suitable duties,
- identification and securing of permanent positions, and
- medical discharge processes.

The medical discharge process needs greater visibility for other stakeholders, to minimise the discharge of officers with work capacity, ensure more innovative RTW strategies have been exhausted, and monitor procedural fairness.

Medical Treatment

In September 2019, SIRA commenced a review of the regulatory requirements for health care in the workers compensation and CTP systems.

SIRA has published the submissions made to the review, but at time of writing this submission, we are not aware of SIRA having published a report for that review.

SIRA states that the objective of the review includes “to manage costs and improve outcomes for injured motorists and workers” and “to ensure that health care arrangements within the personal injury schemes in NSW promote safety and quality in services provided to injured motorists and workers and reflect the principles of value-based care.”

Proposals from this review that would improve outcomes for injured persons should be supported.

However, the material being considered by SIRA also includes regulatory changes to increase the difficulty for injured workers accessing treatment. We submit that this would be ill-advised.

That proposal assumes that tighter restrictions on access to medical treatment reduces cost. We have witnessed the opposite to be true; we see injured officers needing an identified treatment but approval of that treatment delayed. During the delay, the officer must access their full entitlement. The delay of their treatment means their injury is exacerbated and recovery is made all the more difficult, lengthy, and therefore costly.

If there is a view that some treatment provided to injured workers is currently not effective, the solution should involve better identification of underlying causes of injuries, obstacles to recovery/return to work and selection of appropriate treatment, rather than arbitrary limitations on accessing treatment.

NSW police officers have experienced first-hand that this more constructive solution is achievable. The NSWPF Recon Program has been highly effective, in large part due to its relationship to this objective.

For those injured officers who have been able to access the Recon Program, their outcomes have been significantly improved. One of the reasons for this was the expertise of the Recon personnel in identifying root causes of injuries, obstacles to recovery and appropriate strategies for rehabilitation. Many of those officers had, through their prior treatment accessed in the workers compensation scheme, suffered from:

- delay in selection and approval of treatment, and
- selection of treatment services that were ineffective, overly invasive, and excessively expensive.

We heard first hand, multiple cases where officers in the workers compensation scheme had gone through long delays, multiple surgeries, severe pain and long periods of time off work, with little improvement. After a short time in the Recon Program, they experienced rapid and considerable improvement.

The Recon personnel were far more effective at treating injured officers. This improved their rehabilitation and RTW outcomes, and reduced medical costs because only effective treatment was provided, often at a far lower cost and with rapid recovery.

This demonstrates that better outcomes and cost efficacy can be achieved through better assessment procedures and expertise. Arbitrary limitations on access to medical treatment is not required, and would likely exacerbate the deterioration in RTW outcomes already being experienced.

Presumption for psychological injuries for emergency service workers

Many police officers and emergency services suffer severe psychological injury due to the traumatic events they are involved in during their duties, and the psychosocial risks they are exposed to in emergency service agencies.

It has been found there is a strong prevalence of depression in the police compared with the rest of society⁷. Further, when ‘psychological wellbeing is substantially compromised’⁸,

⁷ Wagner, S, White, N, Matthews, LR, Randall, C, Regehr, C, White, M, Alden, LE, Buys, N, Carey, M, Corneil, W, Fyfe, T, Krutop, E, Fraess-Phillips, A, Fleischmann, MH 2019, ‘Depression and anxiety in policework: a systematic review’, *Policing: An International Journal*, pre-print.

workers are at a higher risk of depression. It can certainly be argued that psychological wellbeing of police officers is substantially compromised in their day-to-day work, as well as through general pressures from a paramilitary organisational structure⁹.

For those that then need to access workers compensation entitlements, an overly adversarial claims process can often exacerbate the injury. Emergency service workers are forced to recount their traumatic events, outside a clinical setting, sometimes to insurance agents seeking to disprove their claims or falsely minimise their suffering.

Many describe this process as like a second injury, or being forced to relive the trauma.

This has a negative impact on their health, wellbeing, and rehabilitation prospects.

In addition to this, officers may continue working through their injury to avoid the difficult process of making a claim. This compounds the injury as the officer does not get treatment until the symptoms are far worse, resulting in an adverse outcome for the officer and the organisation. Streamlining processes surrounding responses to workplace injury, including interaction with workers compensation authorities, is likely to reduce the time taken to report injury, meaning that there is a stronger likelihood of rehabilitation¹⁰.

In response to this, a number of parliaments, both internationally and in Australia, have passed or are considering legislation that creates a rebuttable presumption that specified psychological injuries are work related for certain emergency service personnel.

This reduces the burden of emergency service personnel in the claims process, but still allows insurers to dispute such claims where there is evidence they are not entitled to workers compensation.

The intent of the presumption is not to cause acceptance of claimants that should not be entitled to workers compensation, the intent is to reduce the toll of the claims process for those claims that should be (and in practice are ultimately) accepted.

We have seen this presumption implemented in:

- jurisdictions in Canada, including British Columbia, Alberta, Manitoba, Ontario, and New Brunswick,
- state jurisdictions in the United States, including California, Louisiana, Minnesota and Vermont, and
- Tasmania, where the *Workers Rehabilitation and Compensation Amendment (Presumption as to Cause of Disease) Bill 2019* has passed.

In those jurisdictions that have implemented the presumption, we are not aware of any drastic increase in the rate of claim acceptance or cost. As such, the implementation of this legislation will be of benefit to both the injured worker and the workers compensation

⁸ Lawson, KJ, Rodwell, JJ & Noblet, AJ 2012, 'Mental health of a police force: estimating prevalence of work-related depression in Australia without a direct national measure', *Psychological Reports*, vol. 110, no. 3, pp. 743-752.

⁹ Randall, C & Buys N 2013, 'Managing occupational stress injury in police services: a literature review', *International Public Health Journal*, vol. 5, no. 4, pp. 413-425.

¹⁰ Randall, C & Buys, N 2013, 'Managing occupational stress injury in police services: a literature review', *International Public Health Journal*, vol. 5, no. 4, pp. 413-425.

scheme. The presumption for psychological injuries for emergency service workers is strongly endorsed by the PANSW.

An Australian Federal Parliamentary Inquiry also made the following recommendation:

Recommendation 8

4.80

The committee recommends that the Commonwealth Government establish a national stakeholder working group, reporting to the COAG Council of Attorneys General, to assess the benefits of a coordinated, national approach to presumptive legislation covering PTSD and other psychological injuries in first responder and emergency service agencies. This initiative must take into consideration and work alongside legislation already introduced or being developed in state jurisdictions, thereby harmonising the relevant compensation laws across all Australian jurisdictions.¹¹

The Federal Attorney General has committed to considering this through COAG.

This amendment to the claims process is a fair and compassionate one for emergency service workers. It is now common internationally, and appears to be inevitable in Australia in the near future.

The NSW Parliament should move quickly to make similar legislation, and alleviate the suffering of those emergency service workers going through these processes right now, rather than waiting to be the last to do so.

Conclusion

The issues and recommendations we have made in this submission directly influence the health and wellbeing of police officers and other emergency service in NSW, their families, and their financial security.

We urge the Committee to make recommendations consistent with protecting those who protect us.

We are happy to provide any further information that can assist the Committee, and thank you for considering our submission.

¹¹ Senate Education and Employment References Committee, The role of Commonwealth, state and territory Governments in addressing the high rates of mental health conditions experienced by first responders, emergency service workers and volunteers.