

Submission
No 27

INQUIRY INTO 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Police Association of NSW

Date Received: 27 July 2022

2022 Review of the Workers Compensation scheme

Submission of the Police Association of
NSW

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Introduction

The Police Association of NSW represents more than 17,000 sworn officers. Their health, safety and wellbeing is our top priority, and the protection and support of injured officers is our core business.

Police officers put themselves in harms' way to protect us. They encounter physical danger, and psychologically distressing and traumatic challenges.

Psychological injuries are particularly damaging to police officers, especially in terms of the impact these injuries have on the long-term health and wellbeing of the officers and their families, their quality of life, and their financial security.

We therefore welcome the focus of this Inquiry on psychological injuries.

While there are aspects of policing that carry inherent danger, that does not mean it should be acceptable that officers are injured, and that those injuries result in them having to leave the policing profession and the financial security of stable employment.

In exchange for the duty police officers perform, it is the responsibility of the NSW Police Force and the NSW Government to control the risks that officers may be exposed to, and to support officers if they are injured.

As demonstrated by the continual increase in the rate of psychological injuries, the amount of time spent off work and time taken to recover, and the unacceptable numbers of medical discharges, NSW is failing police officers.

In this submission, we provide:

Recommendations to the Committee that we believe are within the scope of the Inquiry to examine and bring about meaningful reform.

We also provide (Annexure A to this Submission) the PAN SW's strategies to protect police officers from psychological risks, keep them healthy and get injured officers back to work. No doubt every union that submits to this Inquiry will have incredibly useful strategies specific to the workers they represent.

Recommendations

Preventing Psychological Injuries

Recommendation 1:

The NSW Government adopt the recent Amendments to the Model WHS Regulations that deal with psychosocial risks.

Recommendation 2:

The NSW Parliament and Government lead the nation in developing further WHS Regulations that create obligations regarding specific **psychological** risks to the same level of detail to those that already address physical risks.

Recommendation 3:

Emergency Services Agencies be required to report regularly and publicly on strategies to ensure the psychological safety of their workers, and specifically report on the systematic processes in place to comply with the new WHS Regulations, and the *Code of Practice: Managing Psychological Risks at Work*.¹ This reporting should include:

- Publishing WHS policies specific to mental health and psychological risk factors.
- Regular risk audits and risk register cycles in all workplaces.
- A focus on identification and control mechanisms for workplace conflict, bullying, harassment, discrimination, work intensification, and low control over work.

Improving Recovery from Psychological Injuries

Recommendation 4:

The NSW Government provide devoted funding to:

- Ensure all police have easy access to early intervention treatment without having to go off work on a workers compensation claim, and permitting them to remain fully operational.
- Provide no-cost psych support – look to lessons from the BlueHub model in Victoria, creating a central hub for psychological treatment services in an efficient and controlled manner. The Montreal and Defence models of provision of counselling and support services are also a recommended model. EAP is not fit for purpose to meet this need.
- Place Injury Management Advisors (IMAs) in all Commands to optimise injury management performance in each workplace.

Recommendation 5:

NSW Parliament create a legislative presumption that when an emergency services worker suffers a psychological injury, that injury is a result of their work.

¹ Safe Work NSW, May 2021, *Code of Practice: Managing Psychological Risks at Work*.

Support injured officers at work

Recommendation 6:

Insurers and IMAs be given powers to directly influence the placement of injured workers in suitable positions or make adjustments to positions, to rectify circumstances where workplace managers deny injured officers access to positions.

Recommendation 7:

In the NSWPF context, this would mean Insurers, IMAs and the Workforce Safety Command can direct RTW outcomes, and Commanders cannot prevent an injured worker from taking up a position in their Command.

Recommendation 8:

A review to strengthen the obligation under section 49 of the *Workplace Injury Management and Workers Compensation Act*, and whether the exceptions under 49(3) are frustrating RTW objectives and need to be rewritten.

Recommendation 9:

Public Sector Agencies make a far greater effort to comply with s49 of the *Workplace Injury Management and Workers Compensation Act*, and lower reliance on s49(3)(a).

Recommendation 10:

Public Sector Agencies develop a more innovative approach to workforce capacity, that utilises injured officers for the work they can do and meeting the demand for work they cannot do with others in the workforce.

Ending over-use of medical discharge

Recommendation 11:

Review the ability of employers to dismiss/medically discharge injured workers. The ability to do so is frustrating the objectives of the Workers Compensation Scheme. The *Workplace Injury Management and Workers Compensation Act* ought to be amended to require employers to provide reasonable adjustments to one's position or redeployment to another position, unless not reasonably practicable, before they can dismiss an injured worker who has capacity to work.

Recommendation 12:

Where an injured worker in the Emergency Services has capacity to work (albeit not in the Emergency Services Agency) the employer should be required to ensure the transition of that worker into an external job before medical discharge is permitted, so there is no gap between employment.

Recommendation 13

Disputes about suitable work and employers' obligations under the *Workplace Injury Management and Workers Compensation Act*, are better placed in the Industrial Relations Commission of NSW rather than the Personal Injury Commission.

The impact of psychological injuries

While physical injuries make up the majority of workers compensation claims in total, psychological injuries make up a large proportion of the injuries that result in:

- Long term absences from work,
- High claims cost,
- Long term impact on the officer's health and wellbeing,
- Medical discharge from the NSWPF, and
- Loss of financial security for the injured worker and their families.

Therefore, psychological injuries need to be the priority target for Government, Regulators, Employers, Workers and Unions.

Reducing psychological injury rates, and improving the recovery and return to work outcomes for injured workers, would have a huge impact on the cost of workers compensation to NSW, improve productivity, retain highly trained workers, and increased quality of life and financial security for workers.

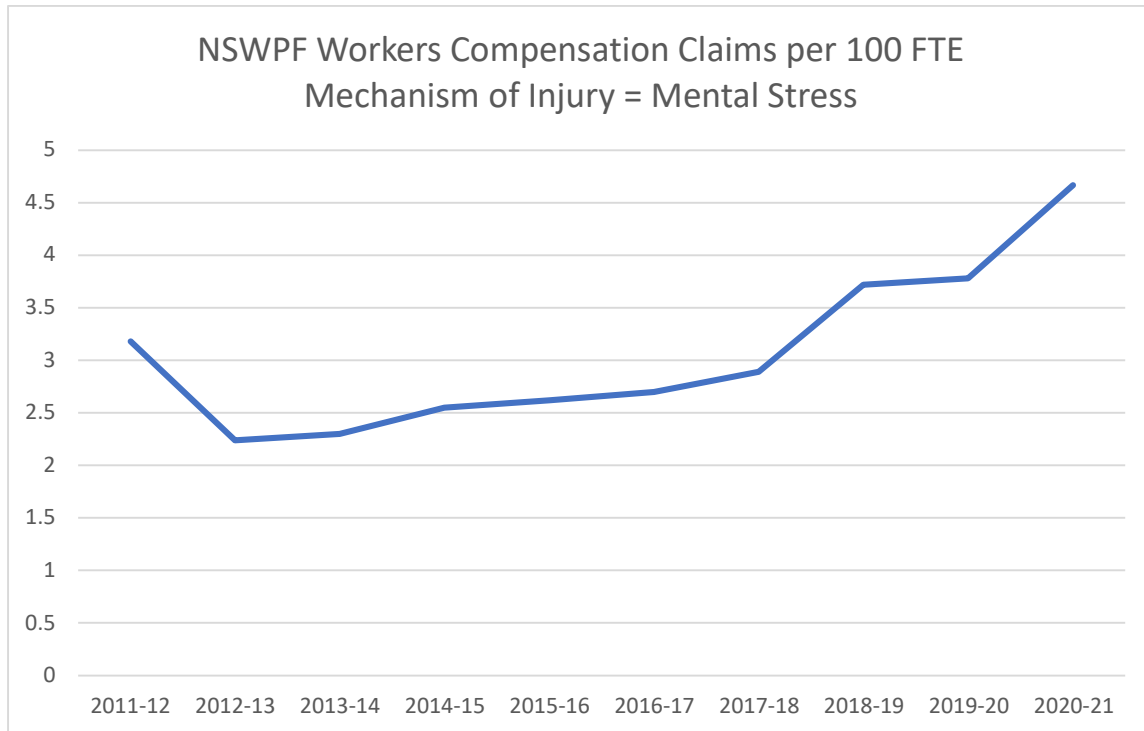
We therefore welcome the focus of this Inquiry on psychological injuries.

The PANSW has provided many times to this Committee and other Inquiries or reviews, the terrible tolls psychological injuries can have on police officers and their families.

Unfortunately, continuous increases in the rate of psychological injury, time off work, and medical discharges means we have reached a new peak the damage this State is doing to our police officers, and greater commitment to rectifying this is urgent.

Preventing Psychological Injuries

The rate at which police officers have been psychologically injured has been increasing consistently for the past decade.



Source: Compiled from NSW Police Force Annual Reports, APPENDIX 6: Injuries & Workers Compensation Claims – Table: Claim frequency rate by mechanism of injury.

Police officers are exposed to traumatic, dangerous or disturbing content in their profession.

Unfortunately, this leads to the false impression that psychological injuries are an inevitable and unavoidable sacrifice for police officers, and preventing psychological injuries and supporting injured officers to recover and return to work is wrongly viewed as an unsolvable challenge.

While the dangerous and distressing work content police officers face does have an impact on stress and trauma, in most cases what turns the experience of that stress and trauma into a psychological injury are workplace and organisational factors in the NSW Police Force, including high workload, little autonomy or control over work tasks and demands, workplace conflict and bullying, and inadequate support from direct supervisors and managers.

It is unavoidable that police will experience danger and psychologically challenging work while performing their duties. But when the main cause of psychological injuries is workplace/organisational factors, that means these are within the control of the NSW Police Force, and therefore successful intervention is achievable.

However, successful intervention also requires true commitment from all levels of the NSW Police Force, and NSW Government, to prioritise those efforts.

Every two years the Police Association of NSW and other Unions submit to this Inquiry strategies to improve the psychological health of workers.

You can see the PANSW strategies in Annexure A to this Submission.

The evidence is there, the recommendations are there.

They need to be actioned, continually evaluated, and their impact on injury and claim trends monitored.

The required time and resources need to be committed to these strategies.

Recommendations

Recommendation 1:

The NSW Government adopt the recent Amendments to the Model WHS Regulations that deal with psychosocial risks.

Recommendation 2:

The NSW Parliament and Government lead the nation in developing further WHS Regulations that create obligations regarding specific **psychological** risks to the same level of detail to those that already address physical risks.

Recommendation 3:

Emergency Services Agencies be required to report regularly and publicly on strategies to ensure the psychological safety of their workers, and specifically report on the systematic processes in place to comply with the new WHS Regulations, and the *Code of Practice: Managing Psychological Risks at Work*.² This reporting should include:

- Publishing WHS policies specific to mental health and psychological risk factors.
- Regular risk audits and risk register cycles in all workplaces.
- A focus on identification and control mechanisms for workplace conflict, bullying, harassment, discrimination, work intensification, and low control over work.

² Safe Work NSW, May 2021, *Code of Practice: Managing Psychological Risks at Work*.

Improving Recovery from Psychological Injuries

With injury rates increasing steadily, and the time it is taking injured workers to recover and return to work increasing dramatically, it has to be acknowledged that the strategies in place to support, treat and rehabilitate workers with psychological injury are not working.

The effectiveness of workplace health programs and treatment delivered through workers compensation needs to be improved.

Specific to the NSW Police Force, at the most recent NSW State Election, the NSW Government committed to “\$16.6 million over four years to continue preventative health and wellbeing initiatives for police officers as part of the Workforce Improvement Program.”

That is \$4.15 million a year devoted to wellbeing for an agency with a total budget of \$5.5 billion, a workforce of 21,879, and annual expenditure on workers compensation of hundreds of millions of dollars.

The amount committed to developing and enhancing wellbeing strategies is a drop in the ocean, and does not fundamentally change the damage that policing currently causes to police officers, nor the barriers to injured officers recovering and remaining in the workplace.

Recommendations

Recommendation 4:

The NSW Government provide devoted funding to:

- Ensure all police have easy access to early intervention treatment without having to go off work on a workers compensation claim, and permitting them to remain fully operational.
- Provide no-cost psych support – look to lessons from the BlueHub model in Victoria, creating a central hub for psychological treatment services in an efficient and controlled manner. The Montreal and Defence models of provision of counselling and support services are also a recommended model. EAP is not fit for purpose to meet this need.
- Place IMAs in all Commands to optimise injury management performance in each workplace.

Recommendation 5:

NSW Parliament create a legislative presumption that when an emergency service worker suffers a psychological injury, that injury is a result of their work.

Support injured officers at work

The most pressing need for the NSW Workers Compensation Scheme is to improve return to work rates. This is especially true for the NSW Police Force.

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.

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 claims, 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.

But we have now seen 5 years' worth of drastic deterioration in the RTW outcomes for injured workers. The performance of NSWPF in returning injured police to work is even more concerning, suffering a similar decline as the broader scheme, but from an already lower starting point.

Given RTW is a key metric of performance, it is imperative that employers and insurers urgently address the deteriorating RTW rates currently occurring throughout NSW.

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.

When police officers reach Maximum Medical Improvement (MMI), it needs to be a priority for the NSWPF to make every effort to retain that officer's permanent employment in the NSWPF.

Employers need to be more willing to make modified duties/reasonable adjustments to an injured workers' position, or redeployment to another position that suits the officer, including adjustments to that position.

The adjustments/positions should be designed to suit the injured officer's capabilities, rather than requiring the police officer to fit to a narrow position description that was not designed to utilise injured officers to their full capacity.

Too often, police officers with a capacity to perform valuable and meaningful work to serve the people of NSW are offered extremely limited options (if any) for duties they can perform. They can identify work they are capable of doing, but Commanders are unwilling to take them because they view the medical restrictions they have as detrimental to operational capacity.

The view that every police officer needs to be able to perform 100% of the tasks a police officer might ever be called upon to perform is incorrect and no longer sustainable. There must be a commitment to providing suitable positions, welcoming injured officers back into the workplace, and an acceptance that injured officers still provide incredible value to the NSWPF and the community. It is essential to the NSWPF that injured officers remain at work rather than being medically discharged, and operational requirements can be met with injured officers in the workplace.

There are too many injured officers not to accept this, and a failure to do so will just continue the long recovery times, deteriorating return to work rates, and sky rocketing medical discharges.

Success in achieving this objective requires the following:

Recommendations

Recommendation 6:

Insurers and IMAs be given powers to directly influence the placement of injured workers in suitable positions or make adjustments to positions, to rectify circumstances where workplace managers deny injured officers access to positions.

Recommendation 7:

In the NSWPF context, this would mean Insurers, IMAs and the Workforce Safety Command can direct RTW outcomes, and Commanders cannot prevent an injured worker from taking up a position in their Command.

Recommendation 8:

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Recommendation 9:

Public Sector Agencies make a far greater effort to comply with s49 of the *Workplace Injury Management and Workers Compensation Act*, and lower reliance on s49(3)(a).

Recommendation 10:

Public Sector Agencies develop a more innovative approach to workforce capacity, that utilises injured officers for the work they can do and meeting the demand for work they cannot do with others in the workforce.

Ending over-use of medical discharge

A police officer being medically discharged from the NSWPF should be an extremely rare occurrence.

When a police officer is injured, they should be supported throughout their recovery, access best practice treatment and rehabilitation services, be given every opportunity to return to the workplace, and then continue to make a valuable contribution to the people of NSW.

In limited circumstances where they cannot perform work for the NSWPF, they should only be medically discharged when a career transition program has secured them a rewarding career in another job.

Where a police officer has been injured protecting the people of NSW, the employer should not be permitted to dust their hands of them. This approach does nothing for the recovery and long-term health of the officer, nothing for the financial security of them and their family, and is a key driver behind expensive claims.

While medically discharging officers has been seen as operationally convenient, it is costly to all parties in the long run and is no longer sustainable.

Unfortunately, medical discharges continue to occur at an unsustainable rate, and are only increasing.

Recommendations

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Review the ability of employers to dismiss/medically discharge injured workers. The ability to do so is frustrating the objectives of the Workers Compensation Scheme. The *Workplace Injury Management and Workers Compensation Act* ought to be amended to require employers to provide reasonable adjustments to one's position or redeployment to another position, unless not reasonably practicable, before they can dismiss an injured worker who has capacity to work.

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Recommendation 13

Disputes about suitable work and employers' obligations under the *Workplace Injury Management and Workers Compensation Act*, are better placed in the Industrial Relations Commission of NSW rather than the Personal Injury Commission.

PANSW recommended pathway to protecting police officers

WHS Framework to prevent psychological injury

The NSW Government should adopt the recent Amendments to the Model WHS Regulations that deal with psychosocial risks.

The NSW Parliament and Government should lead the nation in developing further WHS Regulations that create obligations regarding specific **psychological** risks to the same level of detail to those that already address physical risks.

Emergency Services Agencies should be required to report regularly and publicly on strategies to ensure the psychological safety of their workers, and specifically report on the systematic processes in place to comply with the new WHS Regulations, and the *Code of Practice: Managing Psychological Risks at Work*.³ This includes:

- Publishing WHS policies specific to mental health and psychological risk factors;
- Regular risk audits and risk register cycle in all workplaces;
- A focus on identification and control mechanisms for workplace conflict, bullying, harassment, discrimination, work intensification, and low control over work.

Other preventative strategies include:

- Resilience and supportive leadership training for all officers through their entire career;
- Wider reviews of policies to ensure consistency with central strategy objectives;
- Physical fitness activity fully paid for on rostered time.

Leadership that looks after all police officers

Equip the current and future leaders of the NSWPF, with the capability, culture and accountabilities to manage psychological hazards and support injured officers or at-risk officers. This includes:

- Role requirements for all positions with supervisory/managerial/leadership roles in the NSWPF - Job descriptions, performance indicators and COMPASS include measurable responsibilities relating to the health and wellbeing of officers under the supervision/management of these positions (including identifying and controlling psychological hazards, and supporting officers with psychological injury or at risk of psychological injury).
- Promote the people with the skills, commitment and temperament to ensure the health and safety of police officers, and help injured officers return to work and recover - the selection criteria and recruitment process should include a strong focus on the ability to achieve those objectives.
- Education and training – build the ability of leaders and future leaders to solve the problem and succeed in the promotions system if they adopt those learning outcomes. This is currently underway with the Leadership and Development Programs Explorer, Influencer, Mastery and Pinnacle. The results of those programs are just starting to become visible with newly promoted officers and existing officers applying this knowledge in their workplaces.

³ Safe Work NSW, May 2021, *Code of Practice: Managing Psychological Risks at Work*.

Rehabilitation

Ensure all police have easy access to early intervention treatment without having to go off work on a workers compensation claim whilst permitting them to remain fully operational.

Provide no-cost psych support – look to lessons from the BlueHub model in Victoria, creating a central hub for psychological treatment services in an efficient and controlled manner. The Montreal and Defence models of provision of counselling and support services are also a recommended model.

Consideration should be given to having IMAs in all Commands.

Review of the Deftac and Shoot requirements for officers who have an injury to permit a graded access to arms and appointments without having to be fit for operational duties.

Recovery @ Work after injury

Genuine return to work options for injured officers with early intervention and ongoing contact with injured officers to encourage early return to the workplace into duties that they want.

Redeployment – review of policies with PAN SW, practical enforcement of policies, and greater effort to comply with WIMWC Act s49 and lower reliance on s49(3)(a).

Graded system for roles/duties within the NSWPF, increasing the ability to alter duties to suit injured officers.

Priority placement for injured officers to enable retention.

Deployment unit with authority to direct Commanders regarding redeployment decisions and modification of jobs.

Supportive case management and RTW processes, including supportive Commanders and colleagues, case conferences, and appropriate stay in touch practices. Input of the injured officer is central to decision making ensuring duties are being offered that are meaningful and give them a sense of worth.

Innovation in using a diverse workforce to meet work demands, enabling greater flexibility in designing positions to fit the capacity of an injured worker, rather than seeking to identify positions that are already considered suitable.

NSWPF to assist in transition to external employer before medical discharge – where an officer is unfit for work in the NSWPF but does have capacity to work elsewhere, the NSWPF should assist that officer into new employment prior to medically discharging that officer resulting in no gap between employment.

Extensive career transition assistance for officers who may be medically discharged which should begin whilst still employed in NSWPF.

Recognition by both the NSWPF and police officers that medical discharge is a last resort for serious injuries, and not a mechanism to exit an officer from the organisation or a retirement transition mechanism.

Policies and Procedures

Genuinely flexible workplaces for all officers (not just under particular conditions), including more individual officer input into rostering systems.

A relief pool to cover all forms of leave and unexpected surges in workload and absences from the workplace.

Ability for all officers to take career breaks as needed and encouragement to expand their skills in Government and non Government agencies.

Encourage and enable Government agency secondments.

Analysis of all policies to ensure that officers are included in the workplace. This means analysing how human resources policies impact on all officers, not just the ones the policy is written for. A clear example is sick leave, where other officers must pick up the workload while that officer is on leave due to their absence.

Complete review of IM and Deployment of injured Officers policies with the view of modification all work to suit injured officers. This must include a review of the ROSA and deftac guidelines to allow for a graded access to arms and appointments when carrying an injury.

Conclusion

We thank you for your consideration of this submission and welcome the opportunity to provide any further input that would assist this Inquiry.

Kevin Morton

President – Police Association of NSW