

INQUIRY INTO 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

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Letter to standing committee - workers compensation scheme

2022 Review of the lifetime care and support schemes

Dear Sir / Madam.

I am seeking to make this submission to share my experience of failures and deficiencies within the workers compensation scheme that I am still currently navigating.

I have served in NSW government positions from 1995 to 2022 including 17 years in NSW Police Force (1995-2013) and 15 years part-time in Fire Rescue NSW (2006-2022). I was medically retired on psychological injury grounds in May 2022 from my Fire Rescue NSW role as a firefighter, which further resulted in me being medically discharged from my primary full-time employment with Regional NSW as I was deemed unfit and unable to return to my role.

After suffering an acute PTSD and depression episode in March 2021, I took leave from both my primary employment and my part-time role with Fire Rescue NSW and sought urgent medical intervention, the treatment for which continues to this day. From the outset I sought care privately due to concerns I held about the stigma of needing mental health related leave and its impact on both of my careers. Very early in my treatment, both my GP and psychologist expressed concerns of me commencing workers compensation claims due to the intrusive nature of the claims process being detrimental to my current acute mental health condition at this sensitive time.

Since lodging a workers compensation claim in July 2021, I have found the workers compensation process, specifically navigating the process through the insurer EML operating on behalf of iCare, adversarial and extremely detrimental to my recovery. As an example, early in the claims process I was interviewed by a particularly abrasive investigator over the telephone for some hours, which required me to discuss extremely distressing details of the many traumatic rescue and fatality events I have attended during my career. This caused me great distress for the following days, which continued to be revisited in the correspondence between myself and the investigator finalising the interview transcript.

The disjointed nature of the claims process causes enormous duplication, at the expense of the injured workers wellbeing due to the intrusive probing into very upsetting historical events which are invariably in some stage of being worked through in my therapy. To give an example, I have now been subjected to four independent forensic psychiatric reviews at the request and direction from the insurer (EML) by legal representative and my primary employer - all asking essentially similar information from me. I now have further assessments for disability fund insurers and impairment assessments in the near future. The volume of these assessments and their duplicity is completely at odds with the work I am doing within my therapy to try and progress from this injury. I am not surprised that the use of such assessments by insurers was recommended to be reviewed by the 2019 Australian Senate inquiry.

What is not recognised by the workers compensation system is that people needing to lodge a claim for psychological injury such as myself have an obvious cognitive impairment at the time of the claim. While it has been well recognised by people within the system that I am lucky to have a supportive wife that is both a strong advocate for me in this process and has been able to be the intermediary for most of my contact with the insurers, this is not the case for many people in the system. In any case, a system that relies on a family member to assist with the claims process such as has been the case with myself is flawed. There has been little recognition of the critical role my wife has played in this process, other than the offer of some psychology sessions to help her deal with the situation generally.

Despite clear guidelines from the insurance regulator about the handling of multi-employer contribution claims, I was incorrectly advised by EML to lodge a second claim with my former employer the NSW Police Force who I had not worked with for nearly 10 years. This required further administrative actions from myself, to only result in that claim being rejected as they were not the last employer of contribution to my condition as outlined in the legislation. Despite one of my forensic psychiatric reviews requested by EML to establish apportionment of my condition

between the NSW Police Force and Fire Rescue NSW establishing that there was a 50%-50% ratio between the employers, my claim was then rejected by EML acting for Fire Rescue NSW on the 17th March 2022 based on my employment with Fire Rescue NSW was not a substantial contributing factor to my injury.

I am unable to write words that can express the feeling of abandonment this left me at the time, given the service I had given to both the NSW Police Force and Fire Rescue NSW. To have my claims rejected, and my treatment ceased aside from existing previously approved sessions at this time of my life was life altering for not only me, but my whole family. To have been awarded multiple bravery medals for service over many years that was above and beyond that expected of me, to have the two organisations that I once loved both turn their backs on me when I needed help was devastating. This rejection still has an impact on me today, particularly given the ignorance of the workers compensation system handing this decision down just prior to my primary employer requiring an independent psychiatric assessment to determine the viability of my continuation in that job. I have no hesitation in asserting that the timing of the claim rejection and its effect on me severely impacted my assessment for my primary employment. Given that I was terminated from this employment as a result of my condition, and the workers compensation claim not relating to this employer, has left me and my family with a very uncertain financial future. The financial impacts I have suffered as a result of this condition are now significantly inhibiting my ability to focus on my well-being and progress.

Further to this, something that has gone unchallenged is why Fire Rescue NSW was allowed to act in a manner contrary to the workers compensation regulators (SIRA) guidelines for managing claims like mine where multiple employer contribution is present. Their delayed decision outcome and ultimate declination of my matter was a major and protracted factor in how detrimental this experience was for my entire family. It seems so clear reading the SIRA Guidelines I cannot see how a government agency that allows cross agency service as in my case can contravene the regulators guidelines resulting in this detrimental outcome with no consequence. The SIRA workers compensation bulletin No. 36 outlines that all insurers are reminded that:

- any issue of liability for contribution from other insurers **should not involve disputation** of a worker's overall entitlement to workers compensation
- if an insurer believes their insured is only partially liable, it is expected that **the claim will continue to be managed and compensation paid** while issues of liability are resolved
- as far as practicable, injured workers should not be disadvantaged while liability is being determined
- the **insurer is expected to continue to pay compensation** to the worker until the dispute has been resolved.

This rejected claim then required me to write out a very lengthy statement for my legal team in preparation to lodge an appeal of the decision. This was traumatic within itself having to go over years of traumatic events yet again and write them out yet again. In my frustration my wife and I wrote a letter to both the NSW Police Minister and the NSW Emergency Services Minister expressing the devastating effect this had on myself and my family. Soon after this we had a lengthy telephone conference with representatives of EML and Fire Rescue NSW as a result of the letter to the minister. An hour after this telephone call, we were notified that the decision to reject my claim and cease my treatment had been overturned in the absence of any new clinical or other information. I cannot understand why it had taken 9 months, the loss of my primary employment with Regional NSW, and an initial rejection to get to this point. I am not surprised why the Beyond Blue 'Answering the Call' report of 2018 cites 61% of emergency services personnel lodging claims for psychological injury feel they are worse at the end of the very process that is designed to provide care and support in returning workers to their pre-injury condition.

Very interestingly, the NSW Budget Estimate hearings on the 2 September 2022 saw specific questions asked of Emergency Services Commissioners about aspects of the Beyond Blue report. While it is clear there has been progress since receiving funding for mental health initiatives since the 2019 bushfires, it was well recognised particularly in Fire Rescue NSW that mental health support was deficient previously. There were also specific questions asked at this hearing about employees that serve in multi-contributational workplaces for mental health trauma claims for which

there appeared to be little understanding of the complexities encountered in reality within the workers compensation scheme even at the Commissioner level of these agencies. It is no surprise that people like myself that are left to navigate a plethora of insurance company representatives, investigators, lawyers, psychiatrists and psychologists on their own while suffering the cognitive impediments that accompany the PTSD and depressive conditions is detrimental to the recovery needed. Nothing was even mentioned about the damage caused by the workers compensation claims process itself by the commissioners, despite 61% of emergency services workers having this experience.

It should also be noted that from the Beyond Blue "Answering the Call" report, it was established that Police and Emergency Services workers claim psychological injury claims at a rate 10 times higher than the Australian average. Given this ratio, and my experience being in line with the 61% detrimental outcomes average, something needs to be done. Even a small step similar to that adopted by the Department of Veterans Affairs where members seeking assistance that are having issues navigating their claims process are allocated an independent advocate that is trained to support members through the process. I can only assert that if it were not for the massive amount of work and support my wife has done for me during my experience, I would not be where I am today, and I still have a very long way to go. The saddest outcome from my experience in the workers compensation process has been the effect on my family, particularly my children. This is something I find intolerable and something needs to be urgently done to prevent other families suffering the same way ours has.

To reduce the adversarial stance of the workers compensation system toward people like myself, the NSW government needs to take meaningful steps towards making presumptive legislation as suggested by the 2019 Australian Senate Inquiry: 'The people behind 000: mental health of our first responders' for PTSD and related conditions in first responders. It is achievable, similar to that done for certain cancers in firefighters, it would no doubt help shift the system to achieve what it is actually there to do, support and rehabilitate those in need.

Should the opportunity be made available we would be happy to speak directly to the committee regarding our experience and issues raised in our submission.

Very respectfully,

Matthew and Sarah U'Brien