

**Submission
No 41**

INQUIRY INTO 2023 REVIEW OF THE WORKERS COMPENSATION SCHEME

Name: Supplementary submission - Mr Matthew and Ms Sarah UBrien
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TO: Standing Committee on Law and Justice – Workers Compensation Review

Dear Committee Members.

Thank you for your correspondence dated 28 August 2023 and the opportunity to include updated information with regard to our original submission to the 2022 Workers Compensation Review. Please consider the following to be additional information to be included with our original submission made on 25 September 2022.

Issues for consideration:

1. Better support for partners, children, and immediate family members affected as a result of an injured workers condition

- 1.1. Our family has been provided access to psychologist appointments for my partner and children. Upon reviewing our claim file with EML, these sessions were listed as psycho-education sessions however what they are in practice is an approval to seek our own sourced psychologist with no instruction or briefing, limited to 8 sessions. The term psycho education indicates that there will be some level of education around the injured workers condition, in my case, PTSD and major depression. This is a very large assumption and left to the individuals (two of which are minors) to navigate this outcome with the psychologist. In fact both types of psychological support are needed. Psycho-education to understand the issues faced by the injured worker and the family unit as a result of the workplace injury, and psychological support for the individual family members. These are two exclusively different things. A limit of 8 sessions for a life long injury, and is only a start of support that needs to be extended to, particularly children, to come to a suitable management and support point.
- 1.2. Consideration should be given to support groups for partners and children, similar to the PTSD groups style of support offered to injured workers. Just like the issues faced by people exiting emergency services work, the feeling of abandonment and isolation is also felt by partners and children in this scheme. There is no currently available support networks for partners or children to link into for support programs with other similarly affected people. Specific programs for children of first responders similar to children of veterans – ie. Kookaburra Kids should be considered that is specific to first responders issues.
- 1.3. Family counselling sessions to support family healing and relationships. The work-related psychological injury has a very damaging effect on personal relationships and can cause relationship breakdown. Secondly the works compensation system has its own corrosive impact on personal relationships. Relationship and family counselling should be made available and covered within the workers compensation benefits to support and assist in the healing and restoration of healthy family and personal relationships. It is impossible for those who have the workplace psychological injury to navigate and heal the damage caused to their family and personal relationships without clinical support, and these relationships are widely recognised as critical in the recovery of psychologically injured workers.
- 1.4. Department of Education currently identify children of defence force personnel, which appears to have been for the purpose of support and other management strategies due to the specific nature of that role. Consideration needs to be given to similarly identifying those children of first responders for the same reason.

2. Peer support style start-to-end support within workers compensation process

- 2.1. Currently, defence staff are offered an advocate to assist them navigating the DVA process. I believe these people are volunteers, however the NSW workers compensation scheme is similarly confusing, adversarial and challenging. At present, most people have to engage legal representation to navigate the system. A system that is so legally complex is not a system for people with cognitive incapacitation through psychological injury. Supported through other means might be better.
- 3. Better support for volunteers and retained firefighters to assist involving their primary employer (not the emergency services role) in the claims process with the objective of negotiating a suitable return to work opportunity.**
 - 3.1. Throughout my claim my primary employer (another NSW government agency) was not involved at all in the process other than managing my sick leave. At no time were any negotiations entered between Fire Rescue NSW or EML with my primary employer with respect to my return to work options or management. In isolation, my primary employer directed under the Government Sector Employment Act that I be subjected to an IME based on my capacity to return to my original role, without consideration of the workplace injury suffered during approved secondary employment from that employer. I was subsequently terminated from my substantive employment and as a result completely reliant upon the workers compensation system.
 - 3.2. The mis-handling of my claim between the NSW Police Force and Fire Rescue NSW ultimately led to the loss of my primary employment with the Department of Regional NSW. This is a key issue that will be faced by many volunteers and part time emergency services staff where their primary employer is not the cause of the workplace injury.
- 4. List of approved treatments and therapeutic options made accessible by the insurer to the clinical treating team**
 - 4.1. The Law and Justice Committee 2022 Review roundtable found that workers want more autonomy over their treatment and the healing process. It is impossible to know what (normally) approved therapies and treatments are accessible through the workers compensation system. During our nearly 3 years in the workers compensation system, we have asked repeatedly and been told that injured people cannot be given a list of approved/accepted treatments because people will want more treatments than is needed and it will cost too much. This induces large variations between individuals cases, where a General Practitioner is prepared to request treatments that others may not and further highlights the view the insurers have of injured workers and is another example of the adversarial nature of the system. Injured workers simply want to understand and have access to treatment that will improve their health and outcomes.
 - 4.2. If the treating team are aware of the supports available to family members they can work with the injured person to feel comfortable to access this support and care – I hear time and time again from other partners that they cannot access support because they didn't know they could, or that their partner doesn't tell them or want them to see a doctor because they don't want to be talked about, but ultimately the impact of family and partners needs to be addressed.
- 5. Self-harm data or assessments measuring the impact of the workers compensation system**
 - 5.1. In my case we were informed by iCare that a financial risk assessment was conducted by EML at the beginning of my claim to assess their financial vulnerability that my claim could cause EML. I have asked if a health and safety risk assessment was conducted at time when critical decisions were handed down and they were not. I cannot understand how financial risk assessments take priority over health and safety in the workers compensation scheme that has the objective of recovery and rehabilitation.
 - 5.2. The previous government had a Towards Zero Suicides Initiative, yet as far as we are aware there is still no collection or publication of the self harm or suicide data of those who suicide or attempt suicide while pursuing a claim, with an accepted claim or having had a claim rejected. When any changes or improvements to iCare are to be achieved costings must be undertaken, however how can a true understanding of the real cost of delaying, reducing, limiting or not making the recommended changes be achieved in the absence of the financial cost of suicide and the data relating to workers compensation suicide and self harm not part of such a costing process.

6. Financial advisor access

6.1. People with a psychological workplace injury have a higher presentation of gambling issues, drug and alcohol abuse and are often found to be unfit for work due to their cognitive impacts. Ironically, yet they are often given early access to their super and large financial payouts with many finding themselves in financial ruin given the varying states of vulnerability and difficulties with clear-headed decision making. Injured workers should be given access to free financial advisors so that they can be given the best possible chance to move forward with financial security post injury and treatment and lessen the future burden on government supports in these cases.

7. Enforce regulations and improve transparency

- 7.1. The Summary Report from the roundtable with injured workers as part of the Committee on Law and Justice 2022 Review of Workers Compensation found there are appropriate regulatory standards available, but they are either not being enforced or there is not sufficient power to enforce them.
- 7.2. It is my understanding that the current workers compensation system explicitly excludes those injured workers from being able to make an injury or damages claim against the insurer for mismanagement or resultant damages from the workers compensation process. This needs to be reviewed, particularly given the outcomes of the 2018 report conducted by Beyond Blue (Answering the Call) identified that over 60 per cent of first responders found the workers compensation system detrimental to their recovery.
- 7.3. In our experience, my claim is defined as a 'multi-employer contribution' matter, for which there are clear guidelines issued by SIRA that were not adhered to by the insurer EML. Upon making a complaint to the IRO, later referred to SIRA, I was told that I was not entitled to have the outcome disclosed to us as personal complainants. We are not aware of any other Government complaints system that is conducted with such limited transparency.
- 7.4. Upon examining the State Records Act subsequent to issues faced during a GIPA request relating to my claim, I have found that despite all sorts of contractors to government agencies being subjected to the State Records Act – iCare and its underwritten insurers (including EML in my case) are not considered to be a Public Office and are essentially exempted from the bulk of the records management requirements of normal government departments. This impacts on what records are retained, how long they are retained for and how you can access them under the provisions of the GIPA. I find this exemption intentionally deceptive and obstructionist to transparent process and I cannot think of one reason why this exemption would exist beyond offering protection to insurers acting for iCare.

Respectfully,

Matt U'Brien